Third Party Intervention

In the Case of Zelal Erdem v. Türkiye (No. 43637/18)

by

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I. Introduction and Background

1. İFÖD will address in its intervention in the case of *Zelal Erdem v. Türkiye* (no. 43637/18) the implications **on the freedom of expression** of the application of article 220 § 6 of the Turkish Criminal Code ("the TCC"). It is understood from the case file that the applicant was detained during a protest in Diyarbakır, Türkiye for allegedly throwing stones at the police. The applicant was then convicted, *inter alia*, under article 220 § 6 and article 314 § 2 of the TCC which criminalizes committing an offence on behalf of an armed terrorist organisation without being a member of that organisation. The applicant argued that her conviction was based on the witness statements of two police officers who arrested her. Relying on Article 6 of the Convention, the applicant complained that the domestic courts **(i)** adopted an overly broad interpretation of article 220 § 6 and article 314 § 2 of the Criminal Code, which was already found to be unforeseeable by the European Court in its case-law; **(ii)** failed to enable her to question the two police officers who testified against her and to deliver a reasoned judgment, and **(iii)** did not provide her with the assistance of a lawyer.

2. The Court asked the parties whether the applicant had a fair trial in accordance with Article 6 of the Convention. Reminding that the European Court of Human Rights ("the Court" or "the ECtHR") already ruled that article 220 § 6 of the TCC is not foreseeable, the Court asked **whether the domestic courts delivered a reasoned judgment in which they discussed the grounds of the conviction based on article 220 § 6 of the TCC**. The Court further questioned whether the domestic courts exhausted all reasonable means for scrutinizing police officers' incriminating statements toward the applicant and asked for an explanation on why the domestic courts had given more weight to the police officers' statements than the applicant. In addition, the Court asked if the domestic courts reminded the applicant that she had a right to a lawyer and whether the applicant waived her right to legal assistance over the course of the proceedings. Considering the fact that the prosecutor requested the applicant to be sentenced under article 220 § 6 and article 314 § 2 of the TCC in conjunction with article 5 § 1 of the Prevention of Terrorism Act, and in this regard, the minimum term of imprisonment could have exceeded five years, the Court requested information on whether the representation of the applicant by a lawyer should have been considered in the interest of justice. Finally, the Court asked if the applicant was able to question the witnessing police officers in the hearing. **İFÖD's submission** will only deal with the first question, namely, the foreseeability of article 220 § 6 of the TCC.[1]

3. İFÖD would like to note from the outset that despite the Court's findings in *Işıkırık v. Türkiye*, the problems arising from the application of article 220 § 6 of the TCC still continue, as will be further explained in this submission. First of all, a brief background on the *Hamit Yakut* judgment[2] of the Turkish Constitutional Court in which the Court executed

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[1] İFÖD has been informing the Committee of Ministers about the wide application of article 220 § 6 of the TCC within the context of the execution of the *Işıkırık* group of cases and has presented three Rule 9.2 Communications to the Committee of Ministers. The submissions concerned problems arising from and in relation to the failure of the Turkish Authorities to amend articles 220 § 6 and 220 § 7 of the TCC. See İFÖD, Rule 9.2 communication to the CoE Committee of Ministers in relation to the *Işıkırık group of Cases v. Türkiye* (App. No. 41226/09), DH-DD(2020)81, DH-DD(2021)494-rev and DH-DD(2022)127.

[2] See *Hamit Yakut*, no. 2014/6548, 10.06.2021.

the pilot judgment procedure in an attempt to prevent similar violations and resolve the structural problem stemming from the application of article 220 § 6 will be presented together with the findings of the Constitutional Court. As will be seen below, the findings of the Constitutional Court demonstrate the continuity of the structural problems set down by the Court in *Işıkırık v. Türkiye*.[3] Although the Constitutional Court operationalised the pilot judgment procedure, it will be argued that the pilot judgment has not hindered the domestic courts from continuing to issue guilty verdicts based on article 220 § 6 of the TCC. In this regard, İFÖD will provide an overview of the legal and political developments subsequent to the publication of the Constitutional Court's *Hamit Yakut* judgment in the Official Gazette on 03.08.2021. Following this, İFÖD will evaluate the consequences of the Constitutional Court's *Hamit Yakut* judgment and its impact on the criminal courts' interpretation and application of article 220 § 6 of the TCC. İFÖD will also address the impact of the unforeseeable interpretation of article 220 § 6 of the TCC by the criminal courts on freedom of expression and freedom of assembly. İFÖD will argue that the judicial authorities continue to interpret and apply article 220 § 6 of the TCC overbroadly and inconsistently.

4. Before moving into explaining the Constitutional Court's *Hamit Yakut* judgment, İFÖD would like to remind the Court that the European Court itself concluded that article 220 § 6 of the TCC had been arbitrarily interpreted by domestic judicial authorities in several of its judgments related to freedom of expression. In cases such as *Sabuncu and Others v. Türkiye* and *Şık v. Türkiye* (No. 2), the Court decided that the applicants' freedom of expression was violated notwithstanding the Constitutional Court's reasoning to the contrary.[4]

5. There exist other substantial differences adopted between the two high courts. So far as the detention of the applicants who were accused of committing the crimes stipulated in article 220 § 6 and 7 of the TCC were concerned, the Constitutional Court in *Ahmet Şık*[5] decision, had found the application inadmissible, whereas in *Atilla Taş*,[6] *Ahmet Altan*,[7] and *Sabuncu and others*,[8] although the applications were found admissible, the Constitutional Court decided in all these cases that the applicants' rights to freedom of expression and freedom of the press had not been violated on the ground that there had been reasonable suspicion to justify the applicants' detention. The Constitutional Court also held in those cases that the detention of the applicants was proportionate.[9] The Constitutional Court found a

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3 *Işıkırık v. Türkiye*, no. 41226/09, 14.11.2017.

4 *Sabuncu and Others v. Türkiye*, no.23199/17, 10.11.2020; *Şık v. Türkiye* (No. 2), no. 36493/17, 24.11.2020; *Atilla Taş v. Türkiye*, no. 72/17, 19.01.2021; *Ahmet Hüsrev Altan v. Türkiye*, no. 13252/17, 13.04.2021; *Murat Aksoy v. Türkiye*, no. 80/17, 13.04.2021.

5 *Ahmet Şık*, App. No. 2017/5375, 02.05.2019.

6 *Atilla Taş*, App. No.2016/30220, 29.05.2019.

7 *Ahmet Hüsrev Altan*, App. No. 2016/23668, 03.05.2019.

8 *Murat Sabuncu*, App. No. 2016/50969, 02.05.2019.

9 *Ahmet Hüsrev Altan*, App. No. 2016/23668, 03.05.2019, § 154; *Murat Sabuncu*, App. No. 2016/50969, 02.05. 2019, § 95; *Atilla Taş*, App. No.2016/30220, 29.05.2019, § 123.

violation of the right to freedom of expression and freedom of the press only in the case of *Murat Aksoy*.[10]

6. However, in the abovementioned cases, the Constitutional Court did not examine whether the interference was prescribed by law, despite the European Court's ruling in *Işıkırık* and related other cases. Although the Constitutional Court found a violation of the right to freedom of expression and freedom of the press in the *Murat Aksoy* judgment, its reasoning did not meet the Convention standards as the judgment did not contain an assessment of the legality of the applicable rules which did not meet the quality of law standards according to the European Court. In fact, on 13.04.2021, the European Court published its decision in *Murat Aksoy v. Türkiye*[11] and the Court, finding a violation of Article 10, clearly stated that the interference with the applicant's rights and freedoms under Article 10 § 1 of the Convention could not be justified under Article 10 § 2 since it was not prescribed by law.[12] The European Court's approach in *Murat Aksoy* was not unique and the Court has persistently reiterated the same legal reasoning[13] in recent judgments where the Court found a violation of Article 10.

I. The Constitutional Court's Pilot Judgement in *Hamit Yakut* (App. No. 2014/6548, 10.06.2021)

7. The applicant in the pilot judgment case, Hamit Yakut, was a member of the Peace and Democracy Party ("the BDP"), a pro-Kurdish leftist political party dissolved in 2014. In the elections of 12.06.2011, the Supreme Election Committee cancelled the nomination of seven independent candidates supported by the BDP. The party representatives decided to issue a press release in Diyarbakır on 20.04.2011. Following the delivery of the press release, supporters of the BDP protested the decision of the Supreme Election Committee. The police intervened in the protests and among three others, Hamit Yakut was charged with committing an offence on behalf of a terrorist organization without being a member of such an organization, participating in an illegal demonstration, and refusing to disperse despite the warnings of the officers, pursuant to article 220 § 6 of the TCC.

8. On 13.12.2012, the 6th Criminal Assize Court of Diyarbakır sentenced Hamit Yakut to 3 years and 9 months imprisonment for committing the crime stipulated in article 220 § 6. He was also sentenced to 6 months of imprisonment for participating in an illegal demonstration. Although *Hamit Yakut* appealed against the decision, the 9th Criminal Chamber of the Court of Cassation upheld the sentence. He lodged an individual application with the Constitutional Court on 06.05.2014. The Constitutional Court delivered its judgement on 10.06.2021, almost seven years after the application had been lodged.

9. The Constitutional Court in its *Hamit Yakut* judgment found that the wording of article 220 § 6 lacked sufficient safeguard against arbitrary interference of the public authorities and

[10] *Murat Aksoy*, App. No: 2016/30112, 02.05.2019.

[11] *Murat Aksoy v. Türkiye*, no. 80/17, 13.04.2021.

[12] *Murat Aksoy v. Türkiye*, no. 80/17, 13.04.2021, § 163.

[13] *Atilla Taş v. Türkiye*, no. 72/17, 19.01.2021, § 191.

this resulted in unforeseeable convictions.[14] The Constitutional Court stated that the domestic courts have interpreted the notion of "on behalf of the organization" under article 220 § 6 of the TCC in extensive terms.[15] The Court concluded that the right to freedom of assembly of the applicant was violated as article 220 § 6 failed to provide legal certainty in terms of its content, purpose, and scope and that the relevant provisions of the law did not meet the quality of law requirements.[16] The reasoning of the Constitutional Court relied heavily on the ECtHR's jurisprudence and opinions of other supervisory bodies and organs of the Council of Europe, such as the Venice Commission and the Office of the Commissioner for Human Rights.[17]

10. Furthermore, the Constitutional Court **exercised the pilot judgement procedure** to prevent similar violations and tackle the structural problem arising from the application of article 220 § 6.[18] The Constitutional Court **deferred for a year** deciding on individual applications in the context of article 220 § 6, effective including the applications pending before it as well as the ones lodged subsequent to the publication of the pilot judgement.[19] The Court announced a list of **103 applications** deferred subsequent to the publication of the pilot decision in the Official Gazette on 03.08.2021.[20] The one-year time period set out by the Constitutional Court **expired on 02.08.2022.**

11. The Constitutional Court's call for a legislative amendment[21] **was ignored by the Parliament during the one-year deferral period** set by the Constitutional Court. Equally, the Constitutional Court itself is **yet to execute the pilot procedure** and decide on the 103 applications deferred by the Court itself. Therefore, the utility of the pilot procedure is very much in doubt in the light of delays caused at the Constitutional Court level in the implementation of the pilot procedure.

12. Moreover, despite the Constitutional Court's pilot judgment, the criminal courts of first instance continue to issue guilty verdicts in article 220 § 6 related prosecutions, ignoring the Constitutional Court's jurisprudence as will be demonstrated below with recent data on domestic judgments.

II. The Question of Amending Article 220 § 6 of the TCC

13. In the above-mentioned pilot judgement, the Constitutional Court analysed the structural problems stemming from article 220 § 6 of the TCC. Within this context, İFÖD would like to draw the Court's attention to the legislative and judicial practice following the publication of the Hamit Yakut decision in the Official Gazette on 03.08.2021. Although the Constitutional Court pointed out the need for a legislative amendment and sent its

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14 *Hamit Yakut*, no. 2014/6548, 10.06.2021, § 108.

15 *Ibid*, § 131.

16 *Ibid*, § 116.

17 *Ibid*, §§ 51-57.

18 *Ibid*, § 128.

19 *Ibid*, § 134.

20 See the list of 103 applications deferred by the Constitutional Court at https://www.anayasa.gov.tr/media/7614/pilotkararlar.pdf.

21 *Hamit Yakut*, no. 2014/6548, 10.06.2021, § 132.

judgement to the parliament, the deputies belonging to the ruling alliance of political parties, namely the AKP and the MHP, have not proposed a bill to amend article 220 § 6 of the TCC within the one-year time period set by the Constitutional Court. The only legislative proposal has been made on 17.02.2021, well before the pilot judgement of the Constitutional Court by Ömer Faruk Gergerlioğlu, a deputy for the pro-Kurdish Peoples' Democratic Party.[22] This legislative proposal is still pending before the Parliamentary Justice Commission as of this submission. It should also be noted that ever since Türkiye adopted the new presidential executive system on 09.07.2018, no legislative proposals presented by the opposition parties passed in the Parliament.[23] Nevertheless, in a recent Action Plan submitted to the Committee of Ministers within the context of the execution of the *Işıkırık* group of cases,[24] the Turkish authorities claimed that the Scientific Commission for Criminal Legislation established under the Ministry of Justice in 2020 has been working on a possible amendment to article 220 § 6 in accordance with the Court's findings in *Işıkırık*. İFÖD would like to note that the Ministry of Justice cannot propose or prepare any legislation because the power of the executive to propose a bill was abolished by the 2017 constitutional amendments. Thus, there are no signs of progress made by the parliament in terms of aligning article 220 § 6 with the CoE standards or principles set out by the jurisprudence of the European Court as well as the Constitutional Court. As the one-year time period prescribed by the Constitutional Court for the amendment of article 220 § 6 of the TCC **came to an end on 03.08.2022** and no amendment was adopted by the parliament, the **pilot judgment procedure was rendered to be completely ineffective** in terms of addressing the structural problems identified by the Constitutional Court.

14. İFÖD is of the view that instead of resolving the problems arising from the application of article 220 § 6, the pilot judgement procedure caused further problems. **Firstly**, it must be noted that the Constitutional Court's decision to defer the examination of the individual applications in relation to the application of article 220 § 6 of the TCC relied on article 75 of the Rules of the Court.[25] Thus, the right to access to a court and the right to an effective remedy enshrined in the Constitution have been limited by the Rules of the Constitutional Court. **Secondly**, the pilot judgment prevented the examination of all applications pending before the Constitutional Court and subsequently made for at least one year without adopting any measure to prevent the execution of past convictions. Therefore, the Constitutional Court's decision to defer the examination of pending applications has exacerbated the violation of the applicants' rights, since their prison sentences continued to be executed even though the Constitutional Court decided that the legal provision on which their conviction based was unforeseeable.

15. Furthermore, the pilot decision did not entail any solution for pending applications even if the Parliament complied with the Constitutional Court's decision and amended the disputed

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[22] See The Legislative Proposal Regarding Amendment in Anti-Terror Law and Turkish Criminal Code, 2/3388, 12.02.2021, available at https://www.tbmm.gov.tr/Yasama/KanunTeklifi/288393.

[23] See Deutsche Welle, "*TBMM'nin yasama karnesi nasıl?*" 17.07.2021, at https://www.dw.com/tr/tbmmnin-yasama-karnesi-nas%C4%B1l/a-58295664.

[24] DH-DD(2022)34, § 108.

[25] See https://www.anayasa.gov.tr/en/legislation/internal-regulations-of-the-court/.

provision. Unless article 220 § 6 of the TCC is abolished in its entirety, the amended version of the provision cannot be applied retrospectively. Therefore, the rationale for the deferral of the examination of pending applications remains unclear and inherently problematic.

16. **Finally**, there is no legal provision in Turkish law regulating how the unconstitutionality in law asserted by the Constitutional Court in an individual application is to be rectified. It is unclear as to whether an obligation exists to rectify the unconstitutionality of a legal provision when the Constitutional Court refers a pilot judgment to the Parliament indicating systemic problems arising from the law. Therefore, there is no clear-cut certainty that the parliament will adopt a law within the prescribed period, amending the laws that were declared to be unconstitutional.[26] In fact, as mentioned above, the Parliament completely ignored the Constitutional Court's pilot judgment in *Hamit Yakut*. It must be also added that, in the unlikely scenario that the Parliament decides to amend such a law, the Parliament is not necessarily bound by the reasoning provided by the Constitutional Court in a pilot judgment.

17. Accordingly, such delays caused by the pilot judgment procedure and the inability of the Parliament to rectify the structural and systemic problems identified by the Constitutional Court will in turn delay further justice for the applicants not only at the Constitutional Court level but also delay further potential applications to the European Court when necessary.

18. İFÖD is of the opinion that this practice is in clear violation of the right of access to a court and that existing Turkish law or its interpretation by the Constitutional Court through its ineffective pilot procedure **does not provide an effective remedy** to the applicants to successfully challenge the unlawful and arbitrary interference with fundamental rights and freedoms.

III. Interpretation and Application of Article 220 § 6 Following the Pilot Judgment

19. İFÖD identified **26 decisions of the 3rd Chamber of the Court of Cassation** involving article 220 § 6 of the TCC subsequent to the publication of the Constitutional Court's *Hamit Yakut* pilot judgment.[27] In **none of these decisions**, the Court of Cassation referred to the

[26] There are some other examples in which the Parliament disregarded the decision of the Constitutional Court. For instance, in the *Süleyman Başmeydan* application (App. No. 2015/6164, 20.06.2019), the General Assembly of the Constitutional Court found that there was a legal gap as to whether confiscation decision to be executed when the pronouncement of the judgment was deferred and sent its judgement to the Parliament in 2019. However, since then the Parliament has not taken any action to rectify the legal gap for almost two and a half years.

[27] The 26 decisions mentioned in this Third-Party Intervention cover the time period between the publication of the *Hamit Yakut* judgment of the Constitutional Court and 23.12.2021, which is the date of the most recently published decision. For the 26 decisions published on the official website of the Court of Cassation and mentioned here, see the judgments of the 3rd Criminal Chamber of the Court of Cassation Docket no. 2021/2785, Decision no. 2021/9383, dated 07.10.2021; Docket no. 2021/3175, Decision no. 2021/9433, dated 11.10.2021; Docket no. 2021/4686, Decision no. 2021/9435, dated 11.10.2021; Docket no. 2021/484, Decision no. 2021/9421, dated 11.10.2021; Docket no. 2021/799, Decision no. 2021/9491, dated 13.10.2021; Docket no. 2021/3782, Decision no. 2021/9545, dated 14.10.2021; Docket no. 2021/488, Decision no. 2021/9560, dated 18.10.2021; Docket no. 2021/2572, Decision no. 2021/9554, dated 18.10.2021; Docket no. 2021/589, Decision no. 2021/9716, dated 25.10.2021; Docket no. 2021/3357, Decision no. 2021/9721, dated 25.10.2021; Docket no. 2021/485, Decision no. 2021/9757, dated 25.10.2021; Docket no. 2021/4778, Decision no. 2021/9725, dated 25.10.2021; Docket no. 2021/5925, Decision no. 2021/9783, dated 27.10.2021;

Constitutional Court's *Hamit Yakut* decision or the European Court's *Işıkırık* and related decisions. It is evident from these decisions that both the domestic courts as well as the Court of Cassation continue to neglect the principles set down by the Constitutional Court as well as the European Court and arbitrarily carry on with convicting the defendants under article 220 § 6 of the TCC.

20. Nevertheless, **in all of the recent decisions**, the legal basis of the conviction relied on articles 220 § 6 in conjunction with article 314 of the TCC. Thus, whilst the criminal offences laid down in articles 220 § 6 stipulate a different criminal act, in practice, the domestic courts sentence the defendants in conjunction with article 314 of the TCC. In this regard, article 220 § 6 still cause lengthy imprisonment sentences for the defendants. Thus, the findings of the Court in its *Işıkırık* judgment concerning the foreseeability of article 220 § 6 of the TCC remain valid and must be reiterated for the current application.

IV. An Overview of the Current Effects of Article 220 § 6 of the TCC on Freedom of Expression

21. The Court has held that the procedural aspect of Article 10 relates to the presence of effective and adequate safeguards against abuse by authorities when interference with the right to freedom of expression is concerned.[28] İFÖD argues that the confirmed unforeseeability of article 220 § 6 of the TCC extends to such arbitrariness in its interpretation that it is applied by the domestic courts in an abusive manner which is at odds with the clear denunciation of the said rule by the Court and the Constitutional Court. Therefore, the interdependency between the right to a reasoned judgment and freedom of expression must be examined through the lens of possible abusive application of article 220 § 6 of the TCC. Even though the case-law of the European Court and the Constitutional Court relating to article 220 § 6 of the TCC concerned so far with the right to freedom of assembly of the applicants,[29] the overlapping nature of the said right with freedom of expression is well-established.[30]

22. The necessity for a sufficiently reasoned judgment at the domestic level when the individuals' freedom of expression is interfered with was noted by the Court in several judgments. The Court highlighted the importance of legal reasoning for its own examination of the purpose and rationale behind the interference with freedom of

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Docket no. 2021/3117, Decision no. 2021/9820, dated 01.11.2021; Docket no. 2021/480, Decision no. 2021/10053, dated 08.11.2021; Docket no. 2021/4184, Decision no. 2021/10026, dated 11.11.2021; Docket no. 2021/10990, Decision no. 2021/10031, dated 11.11.2021; Docket no. 2021/2838, Decision no. 2021/10326, dated 06.12.2021; Docket no. 2021/9561, Decision no. 2021/10424, dated 08.12.2021; Docket no. 2021/9996, Decision no. 2021/10523, dated 09.12.2021; Docket no. 2021/1429, Decision no. 2021/10543, dated 09.12.2021; Docket no. 2021/3210, Decision no. 2021/10544, dated 09.12.2021; judgments of the 1st Criminal Chamber of the Court of Cassation Docket no. 2021/6795, Decision no. 2021/12826, dated 28.09.2021; Docket no. 2020/5604, Decision no. 2021/14540, dated 01.12.2021; Docket no. 2021/215, Decision no. 2021/15272, dated 23.12.2021; judgment of the 5th Criminal Chamber of the Court of Cassation Docket no. 2017/6481, Decision no. 2021/4532, dated 13.10.2021.

28 *Kövesi v. Romania*, no. 3594/19, 05.05 2020, § 203.

29 *Gülcü v. Türkiye*, no. 17526/10, 19.01.2016; *Işıkırık v. Türkiye*, no. 41226/09, 14.11.2017; *Hamit Yakut*, App. No. 2014/6548, 10.06.2021 (Turkish Constitutional Court).

30 Among many, see *Women on Waves and others v. Portugal*, no. 31276/05, 03.02.2009, § 28.

expression.[31] Combined with the undisputed unforeseeability of article 220 § 6 of the TCC, acknowledged by the Court and the Turkish Constitutional Court, the lack of legal reasoning on the domestic courts' part with regard to the applicant's conviction further constitutes an unjustified interference with her right to freedom of expression. In *Bayev and others v. Russia,* the Court recently noted that **it is not obliged to limit itself to denounce repeatedly an unforeseeable legal provision but can assess the application of the said provision in a new case before it in terms of possible abusive application due to the vague composition of the applied rule.**[32] The Court, with reference to the anti-LGBT propaganda laws' effects on freedom of expression, noted that "Given the vagueness of the terminology used and the potentially unlimited scope of their application, these provisions are open to abuse in individual cases, as evidenced in the three applications at hand."[33] As the unforeseeable wording of article 220 § 6 of the TCC has been established by the Court before and the domestic courts fail to demonstrate what acts of individuals may be considered falling under the scope of the crime stipulated therein, the abusive application of the said article and its relationship to freedom of expression must be reiterated by the Court in the case at hand.

23. As demonstrated above, the legislative framework and the judicial practice do not provide for a safeguard against the arbitrary application of article 220 § 6 in cases which relate to interference with the right to freedom of expression. More worryingly, the interpretation and application of article 220 § 6 of the TCC by the judicial authorities has not changed regardless of the European Court's *Işıkırık* and related cases as well as the Constitutional Court's pilot judgment in *Hamit Yakut*.

24. IFÖD is of the opinion that the domestic courts continue to deliberately ignore the ECtHR's jurisprudence as well as systematically disregard the Constitutional Court's pilot judgement. The main reason for such arbitrary judicial behaviour is the lack of a prerogative of the Constitutional Court to rectify the unconstitutionality of a legal provision through individual applications and therefore annulment of such unconstitutional provisions. Therefore, in practice, its pilot judgments bear no real binding force over the lower courts, the legislative and the executive. Lack of teeth and ability to bite often leads into irritable bowel syndrome. As yet, there is no cure to the Constitutional Court's illness which contributes significantly to repeated violations of fundamental rights. A partial remedy would be the fast-track application of the pilot procedure for applications concerning article 220 § 6 of the TCC in the absence of any legislative amendments. The European Court should assess further problems stemming from the Constitutional Court's pilot judgment.

V. Conclusion

25. As noted by the Court in *Cumhuriyet Vakfi and Others v. Türkiye*, obligations imposed on the state parties under Article 6 of the Convention also offer an important procedural safeguard against arbitrary interferences with the rights protected under Article 10 of the

[31] *Mariya Alekhina and others v. Russia*, no. 38004/12, 17.07.2018, § 263.

[32] *Bayev and others v. Russia*, nos. 67667/09 and 2 Others, 20.06.2017.

[33] *Ibid*, § 83.

Convention.[34] İFÖD is of the opinion that the unforeseeable composition of article 220 § 6 of the TCC leads to arbitrary interferences with the right to freedom of expression of individuals.

26. The Contracting States are in principle free to choose the means whereby they will comply with the Convention. However, if the nature of the breach allows for *restitutio in integrum*, it is for the respondent State to give effect to it. If this is not possible the State should provide other remedies to redress the damage caused by the violation. İFÖD is of the opinion that notwithstanding the pilot judgment of the Constitutional court, the implications of the application of article 220 § 6 of the Turkish Criminal Code on freedom of expression and freedom of assembly are still continuing. İFÖD invites the Court to examine the complaints of the applicant from this perspective.

01.11.2022

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İfade Özgürlüğü Derneği (İFÖD) has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The new Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.

[34] *Cumhuriyet Vakfı and others v. Türkiye*, no. 28255/07, 08.10.2013, § 68.