

Ankara, May 2021

**THE GOVERNMENT'S SUBMISSION IN RESPONSE TO THE COMMUNICATION
FROM THE FREEDOM OF EXPRESSION ASSOCIATION (İFÖD) DATED 3 MAY
2021 AND MEDIA AND LAW STUDIES ASSOCIATION (MLSA) DATED 7 MAY
2021**

Öner and Türk Group of Cases (51962/12)

Akçam Group of Cases (27520/07)

Şener Group of Cases (38270/11)

Artun and Güvener Group of Cases (75510/01)

1. The Turkish Authorities would like to make the following explanations in response to the communication of Freedom of Expression Association (İFÖD) dated 3 May 2021 and Media and Law Studies Association (MLSA) dated 7 May 2021 in the *Öner and Türk Group of Cases (51962/12)*, *Akçam Group of Cases (27520/07)*, *Şener Group of Cases (38270/11)*, *Artun and Güvener Group of Cases (75510/01)*.

2. At the outset, the action report submitted to the Committee in April 2021, within the context of *said Groups of Cases*, comprises Turkey's actions regarding the issues raised in the communications. Additionally, as regards the legal regulations and judicial practices aiming to increase standards in the field of freedom of expression, the communication letter dated 28 February 2020 were submitted. The authorities reiterate their submissions in this regard.

3. In this submission the Authorities would like to clarify the following issues raised in the communications.

4. In the relevant communications it was mainly stated that there has been no legislative progress achieved with regard to the provisions of Turkish Criminal Code (TCC), Code of Criminal Procedure (CCP) and Code of Prevention of Terror (CPT) as regards the said groups of cases.

5. As indicated in detail in the action plan dated April 2021, The Turkish authorities would like to note that Article 6 § 2 of the Law no. 3713 was amended on 30 April 2013 by Law no. 6459. As per these amendments, the act of printing and publishing leaflets and statements may be penalized as long as those of which justify or praise or incite the terrorist organizations' methods. Moreover, those methods must be containing violence, force or threat. In this way, the applicability of the said provision has been narrowed down.

Accordingly, an act of pure publishing or printing leaflets of a terrorist organization will not be considered as an offence unless they involve the elements of violence, force or threat.

6. The Authorities would also like to mention another safeguard mechanism introduced with Law no 7188. Before this amendment, convictions less than 5 years imprisonment could only be appealed before the district appellate courts (İstinaf Mahkemeleri). In other words, the District Court of Appeals was the last resort. However, in accordance with the said amendment, regardless of its duration, convictions under certain crimes including Article 6 § 2 of the Anti-Terror Law could be appealed before the Court of Cassation following the completion of the proceedings by the District Court of Appeals. This new provision will further ensure the conformity of the case-law in similar cases.

7. In this respect, the authorities would like to decline the comments that the legislative amendment adopted had a negative impact on account of the fact that this amendment brought a new stage before applying to the Constitutional Court and European Court of Human Rights. The Turkish authorities would like to note this amendment ensured a coherent legal practice with respect to the cases involving freedom of expression.

8. As regards the case law developments, the Authorities would like to mention Ali Gürbüz¹ Judgment (2013/724) of Turkish Constitutional Court dated 25 June 2015. In this judgment the Constitutional Court identified that when the news in the newspaper in which the applicant was concessionaire was examined as a whole, it could not be considered that he praised violence and encouraged people to adopt terrorist methods, in other words, to use violence, hatred, revenge or armed resistance. In addition, it stated that the reasoning of the Assize Court that the news was "unrelated to freedom of imparting information" could not be regarded as a relevant and sufficient justification (§70). The Constitutional Court pointed out that the authorities exercising public authority in limiting the public statements such as the newspaper article published by the applicant had a very narrow margin of appreciation. The Constitutional Court also emphasized that no restriction can be imposed on thoughts which are unpleasant for public authorities or a segment of the society, unless they encourage violence, justify acts of terrorism and support the growing of hatred, and decided that freedom of expression and freedom of the press guaranteed respectively in the first paragraphs of Articles 26 and 28 of the Constitution were violated.

9. As regards the Article 7§2 (Disseminating propaganda in favour of an illegal organisation) of the Anti-Terrorism Act, Law no 3713, the first sentence of section 7(2) of

¹ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/724?BasvuruNoYil=2013&BasvuruNoSayi=724>

Law no. 3713 was amended on 30 April 2013 by Law no. 6459. As per the amendment, the act of making propaganda of terrorist organizations by justifying or praising or inciting their methods has been recognized as an offence only if they contain violence, force or threat.

10. Additionally, the phrase of *“Expressions of thought that do not exceed the limits of reporting or for the purpose of criticism shall not constitute a crime...”* was included in the Article by the amendment of 2019. Accordingly, the law considers that the expressions involving justifying or praising or inciting the terrorist organizations’ methods which contain violence, force or threat amount to terrorist propaganda if they exceed the limits of reporting or criticism.

11. As regards the amendments in the Article 215 of Turkish Criminal Code, On 30 April 2013 by Law no. 6459, Article 215 of the Turkish Criminal code was revised and a new sentence providing that an expression is to cause an eminent and clear danger to the public order, which is in line with the case-law of the ECtHR, was added. That is to say; *“...provided that there emerges an imminent and clear danger to the public order....”*.

12. Accordingly, an expression can amount to praising a criminal or a crime only if causes an imminent and clear danger to the public order. The authorities are of the opinion that these legal conditions provide a Convention compliant safeguard at utmost level. In this respect, legislation is in line with the Convention and Court’s case-law.

13. As regards the article 301 of TCC, the authorities would like to mention followings. In 2008, the relevant legal provision, Article 301 of the Turkish Criminal Code (the TCC, Law No: 5237), was significantly amended to ensure that the individuals’ freedom of expression was not restricted due to this provision. In this respect, a safety clause, which clearly indicates that the expression of an opinion for the purpose of criticism did not constitute an offence, was added in Article 301. Through the new amendment, the term “Turkishness” was replaced by “Turkish nation” and what is the concept of Turkish nation was explained by the lawmaker in the reasoning of the law. In this way, the elements of the offence have been specified. In addition to this, the upper limit for the sentence prescribed by the law has been reduced from three years to two years’ imprisonment. Furthermore, the authorisation of the Minister of Justice to conduct an investigation into an offence regarding Article 301 was adopted as a filtering measure. The Authorities are well aware of the concerns raised in the Altuğ Taner Akçam case. However, it should be noted that implementation of the mechanism in practice has improved in the recent years and eliminated these concerns. For detailed information the Authorities kindly refer the CM to the Action Report dated 8 April 2021.

14. As regards the planned works, in the said action report (see paragraphs 438-466) detailed explanations were put forward. Therefore, the Authorities are of the opinion that steps taken or planned to be taken in the general measures fully comply with the Court's judgment.

15. Lastly the Turkish authorities would like to note that in the submissions in question there are speculations on issues which are not subject to supervision process. In particular these submissions involve ungrounded statistics, exaggerated comments regarding cases that are not included in the supervision process and political comments. The Turkish authorities firmly reject these comments and claims and would not like to comment on these speculations.

Conclusion:

16. The Turkish Government kindly invites the Committee to take into consideration its above-mentioned explanations within the scope of the execution of the judgment in the *Öner and Türk Group of Cases (51962/12)*, *Akçam Group of Cases (27520/07)*, *Şener Group of Cases (38270/11)*, *Artun and Güvener Group of Cases (75510/01)*.