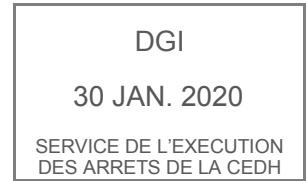


Ankara, 29 January 2020



**THE TURKISH GOVERNMENT'S SUBMISSION**  
**IN RESPONSE TO THE RULE 9.2 COMMUNICATION OF İFÖD**  
**Öner and Türk v. Turkey Group (no. 51962/12)**  
**Altuğ Taner Akçam v. Turkey Group (no. 27520/07)**  
**Nedim Şener v. Turkey Group (no. 38270/11)**

**I. INTRODUCTION**

1. The Turkish authorities would like to make the following explanations in response to the submission of *İfade Özgürlüğü Derneği (İFÖD)* with respect to the *Öner and Türk* (no. 51962/12), *Altuğ Taner Akçam* (no. 27520/07) and *Nedim Şener* (no. 38270/11) groups of cases.

2. At the outset, the Action Plans submitted to the Committee of Ministers in January 2020 in respect of the *Öner and Türk*, *Altuğ Taner Akçam* and *Nedim Şener* groups of cases, comprise Turkey's actions regarding the issues raised in the communication of *İFÖD*. The Turkish authorities reiterate their submissions in this regard.

3. In this submission, the authorities would like to clarify the following issues raised in the communication of *İFÖD*.

4. As general measures, the Turkish authorities have taken a number of measures aiming at preventing similar violations. These measures include, in particular, legislative amendments, introduction of an effective individual application before the Constitutional Court and measures on the publication, the projects and awareness raising activities, and dissemination of the judgments of the European Court of Human Rights ("the Court").

**II. LEGISLATIVE AMENDMENTS**

**A. Öner and Türk Group (no. 51962/12)**

5. The authorities would like to reiterate that the Court found that the implementation of the legal provisions by national courts in practice was problematic rather than the wording of the said provisions in the judgments of the *Öner and Türk* group of cases. The Court also highlighted that the national courts did not provide adequate or relevant reasoning in their decisions.

6. Turkey has taken significant steps in recent years so as to eliminate the deficiencies and to provide additional safeguards in the field of freedom of expression.

**1. The offence of disseminating propaganda in favour of an illegal organisation (Article 7 § 2 of the Prevention of Terrorism Act (Law no. 3713))**

7. At the outset, the authorities would like to state that the first sentence of Article 7 § 2 of the Law no. 3713 was amended on 30 April 2013 by the 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 (see §§ 20-21 of the Action Plan of the *Öner and Türk* group of cases).

**2. Printing and publishing the declarations and statements of terrorist organizations (Article 6 § 2 of the Law no. 3713)**

8. Turkey also amended Article 6 § 2 of the Law no. 3713 with the Law no. 6459. As per this amendment, 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 (see §§ 22-23 of the Action Plan of the *Öner and Türk* group of cases).

**3. Praising an offence or an offender (Article 215 of the Turkish Criminal Code (Former Article 312 § 1))**

9. Article 215 of the Turkish Criminal Code ("TCC") was also amended with the Law no. 6459. Article 215 of the TCC was revised and a new criterion, namely providing that an expression is to cause an imminent and clear danger to the public order, was added in line with the case-law of the Court (see §§ 24-25 of the Action Plan of the *Öner and Türk* group of cases).

**4. The latest amendments introduced on 17 October 2019 with the Law no. 7188**

10. The authorities would also like to reiterate a very recent legislative amendment made with the Law no. 7188 on 17 October 2019.

11. With this amendment, a new sentence was added into Article 7 § 2 of the Law no. 3713. According to this amendment, expressions of thought that do not exceed the limits of reporting or for the purpose of criticism shall not constitute a crime (see §§ 26-27 of the Action Plan of the *Öner and Türk* group of cases).

12. The Turkish authorities would also like to recall the amendment introduced with the Law no. 7188. With the said amendment, convictions under certain crimes including Article 215 of the TCC and Article 6 §§ 2 and 4 and Article 7 § 2 of the Law no. 3713, 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.

**B. *Altuğ Taner Akçam* Group (no. 27520/07)**

13. The Turkish authorities would like to repeat that Turkey has amended Article 301 of the TCC before *Altuğ Taner Akçam* judgment<sup>1</sup>, in order to further narrow down the application of the said provision and accordingly further improve freedom of expression.

14. In 2008, the relevant legal provision, Article 301 of the TCC, 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 of the TCC. The decisions provided in the Action Plan of the *Altuğ Taner Akçam* group of cases prove that the Turkish Judiciary has aligned its case-law in line with the said amendment.

15. With 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. Thus, 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.

16. Furthermore, the authorisation of the Minister of Justice to conduct an investigation into an offence regarding Article 301 was adopted as a filtering measure. Firstly, if the public prosecutor's office considers that the expression concerned does clearly fall within the scope of freedom of expression, it can issue a non-prosecution decision without seeking an authorisation of the Minister of Justice. This means that the first filter mechanism is the public prosecutor's offices.

17. If the public prosecutor's office considers that the alleged act may fall within the scope of Article 301 of the TCC, then the public prosecutor's office will seek authorisation of the Minister of Justice. This authorisation requirement prevents the conduct of unnecessary investigations about the activities considered to fall within the scope of freedom of expression. This means that the second filter mechanism is the authorisation of the Minister of Justice.

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<sup>1</sup> The authorities would like to underline that in *Altuğ Taner Akçam* judgment, the domestic proceedings were completed with a non-prosecution decision in 2007 (before the legislative amendments explained above).

18. The authorities would also like to give further information on the principles followed by the Ministry of Justice within the context of the authorisation proceedings concerning Article 301 of the TCC.

19. The authorisation proceedings are conducted by the Directorate General for Criminal Affairs of Ministry of Justice. In accordance with the information provided by the Directorate General for Criminal Affairs, the sources used within the context of the authorisation proceedings include, among others: Articles of the Constitution and the Convention related to freedom of expression; the case-law of the Court, the Constitutional Court and the 16<sup>th</sup> Criminal Chamber of the Court of Cassation; the Progress Reports published by the European Union; and Recommendations of the Committee of Ministers.

20. The criteria applied for rejecting and granting the authorisation are determined in a detailed manner. The authorisation is rejected if the expressions concerned fall within the scope of freedom of expression. For example, the permission to carry out an investigation is rejected for expressions which do not incite to violence or which concern topics regarding the general public interest and political discourses.

21. Detailed information, especially the criteria applied within the context of the authorisation proceedings, and sample decisions in respect of the authorisation proceedings are provided in “the Additional Info Note” for the *Altuğ Taner Akçam* group of cases submitted on 29 January 2020.

22. The Turkish authorities would like to state another legislative amendment made in Article 158 of the Code of Criminal Procedure (“CCP”). With this amendment in 2017, it was adopted that public prosecutors shall issue a decision of non-prosecution without commencing a criminal investigation if convinced that the complaint lodged has no basis. Therefore, individuals are no longer obliged to answer charges before public prosecutors on each occasion a complaint is lodged against them.

23. The Turkish authorities would also like to recall the amendment introduced with the Law no. 7188 which entered into force on 17 October 2019 (see § 12 above). This amendment is also applicable for the offence defined in Article 301 of the TCC.

24. Details of legislative amendments are indicated in §§ 24-42 of the Action Plan of the *Altuğ Taner Akçam* group of cases.

#### **C. *Nedim Şener* Group (no. 38270/11)**

25. At the outset, the authorities would like to recall that the measures aimed at preventing similar violations under Article 5 § 3 have been taken within the framework of the

*Demirel* (no. 39324/98) case. The Committee of Ministers decided to close this case in November 2016 (see Resolution CM/ResDH(2016)332, 1270th meeting).

26. The Committee of Ministers took into account the below-mentioned legislative amendments, namely amendments made in the CCP (2012) and the Law no. 3713 (2014) which limited the maximum length of detention to five years for most serious crimes and broadened the scope of measures alternative to detention. Also, the amendments of the CCP in 2013 allowed challenging the lawfulness of detention on remand in an adversarial procedure. According to this new procedure, the courts shall decide on extension of detention on remand after hearing a detainee or his/her legal representative and in their presence. Introduction of the right to compensation for unlawful detention on remand in the CCP was also welcomed by the Committee of Ministers.

27. In addition to the above-mentioned amendments, Turkey has taken an additional step to reduce the length of detention. With the Law no. 7188 dated 17 October 2019, the period of detention on remand during the investigation period was reduced (see § 11 of the Action Plan of the *Nedim Şener* group of cases).

28. Detailed information related to the general measures in respect of Article 5 of the Convention is indicated §§ 6-15 of the Action Plan of the *Nedim Şener* group of cases.

### **III. CASE-LAW OF THE TURKISH JUDICIARY**

29. Detailed information and sample decisions of the public prosecutor's offices, the first instance courts, the District Courts of Appeals, the Court of Cassation and the Constitutional Court are indicated in §§ 30-68 of the Action Plan of the *Öner and Türk* group of cases.

30. Detailed information and sample decisions of the public prosecutor's offices, the first instance courts, the District Courts of Appeals, the Court of Cassation and the Constitutional Court are indicated in §§ 43-57 of the Action Plan of the *Altuğ Taner Akçam* group of cases.

31. In the communication, *İFÖD* asserted some criminal proceedings. The authorities would like to note that the Action Plans are only related to the judgments of the Court included in the *Öner and Türk*, *Altuğ Taner Akçam* and *Nedim Şener* groups of cases. For this reason, the authorities would not like make a remark on the proceedings which are not included in the said groups of cases.

32. The statistics stated in the communication of *İFÖD* as Annex 2 could lead to make false assessment as well as misinterpretation of Articles 301 and 314 of the TCC since

these provisions are not particularly related to the right to freedom of expression and freedom of assembly. The first list submitted as Annex 4 by *İFÖD* in the communication is a speculative data obtained from unofficial sources. The authorities would like to note that the convicts who materially aid a terrorist organisation might be sentenced according to the related Articles of the TCC.

33. Related statistics and percentage are given in the Action Plans of these groups of cases.

34. The authorities would also like to reiterate the remedy of individual application before the Turkish Constitutional Court. The Court has examined the effectiveness of the remedy of individual application with the Constitutional Court in its decision in the case of *Hasan Uzun v. Turkey* and the Court indicated that the individual application to the Constitutional Court should be considered as an effective remedy in respect of all decisions that had become final after 23 September 2012.

35. The authorities recall that the Constitutional Court analyses the individual applications before it in accordance with the circumstances of the case and in the light of the Constitution and the Convention and the case-law of the Court and the Constitutional Court, and establishes its decisions.

#### **IV. PROJECTS AND AWARENESS RAISING ACTIVITIES**

36. The Turkish authorities would like to reiterate the explanations stated in the Action Plans in respect of the Judicial Reform Strategy and the preparation of a new Human Rights Action Plan.

37. As indicated in the Action Plans, the main objectives set out in the document can be listed as follows strengthening the rule of law, protecting and promoting rights and freedoms more effectively, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial in a reasonable time. Furthermore, the right to freedom of expression is one of the most important headings under the Judicial Reform Strategy. The Judicial Reform Strategy aims to raise the standards applied by the courts in freedom of expression cases to the European Convention standards.

38. The authorities also indicate that the preparation of a new Human Rights Action Plan is underway within the scope of the Judicial Reform Strategy.

39. It is also noteworthy to state that the pre-service and in-service trainings of the judges and public prosecutors are enlarging with the Justice Academy. The Turkish authorities would like to highlight that human rights law and more specifically the case-law of the Court are included in the training of the judges and public prosecutors.

### **CONCLUSION**

40. The Turkish authorities kindly invite the Committee of Ministers to take into consideration the above-mentioned explanations within the scope of the execution of the *Öner and Türk, Altuğ Taner Akçam* and *Nedim Şener* groups of cases.

41. Furthermore, the Turkish authorities would not like to speculate on the claims raised in the communication that are not subject to any current application or judgment of a violation.