

Ankara, 28 January 2020

**THE TURKISH GOVERNMENT'S SUBMISSION**  
**IN RESPONSE TO THE RULE 9.2 COMMUNICATION OF İFÖD**  
***Işıkırık v. Turkey Group* (no. 41226/09)**

**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 *Işıkırık* (no. 41226/09) group of cases.

2. At the outset, the Action Plan submitted to the Committee of Ministers in January 2020 in respect of the *Işıkırık* group of cases, comprises Turkey's actions regarding the issues raised in the communication of *İFÖD*. The Turkish authorities reiterate their submission 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**

5. In its communication, *İFÖD* alleges the authorities did not offer any amendment in Article 220 §§ 6 and 7 of the Turkish Criminal Code ("TCC"). Therefore, the Turkish authorities would like to indicate the below-mentioned legislative amendments.

**A. Violations stemmed from Article 7 § 2 of the Prevention of Terrorism Act (Law no. 3713)**

6. 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.

## **B. Violations stemmed from Article 220 § 6 of the TCC**

7. The scope of Article 220 § 6 of the TCC has been narrowed down with the Law no. 6459, which entered into force on 11 April 2013, in order to eliminate the deficiencies noted by the Court in the judgment of *Işıkırık*.

8. According to the new paragraph added to Article 7 of the Law no. 3713, people who have committed the offences defined in Articles 6 § 2 and 7 § 2 of the Law no. 3713 and the offence defined in Section 28 § 1 of the Marches and Demonstrations Act (Law no. 2911) (participating in an unlawful demonstration), shall not in addition be held criminally liable under Article 220 § 6 of the TCC.

9. As stated in the Action Plan, the Venice Commission welcomed the said amendment introduced to Article 7 of the Law no. 3713, which excluded the above-mentioned crimes from the scope of application of Article 220 § 6 of the TCC. The Commission clearly stated that owing to this amendment, the suspects accused of having committed such crimes shall not be punished separately as members of an armed organisation under Article 314 of the TCC (see § 20 of the Action Plan).

10. The authorities would also like to indicate that the concern raised by the Venice Commission has been overcome owing to the practice of the Turkish Judiciary. The sample decisions submitted in the Action Plan, show that the peaceful enjoyment of freedom of assembly does not fall within the scope of Article 32 § 1 of the Law on Public Demonstrations and accordingly Article 220 § 6 of the TCC in practice.

11. Moreover, the penalty to be imposed under Article 220 § 6 of the TCC may be reduced by up to half with the amendment of the Law no. 6352 which entered into force on 2 July 2012. Therefore, Article 220 § 6 regulates a lesser term of imprisonment compared to Article 314 § 2 of the TCC.

12. The Turkish authorities would also like to recall the amendment introduced with the Law no. 7188 which entered into force on 17 October 2019. With the said amendment, convictions under certain crimes including Article 220 §§ 6 and 7 of the TCC, Articles 28 and 32 of the Law on Public Demonstrations and Articles 6 and 7 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.

### **C. Violations stemmed from Article 220 § 7 of the TCC**

13. The Turkish authorities would like to indicate that Article 220 § 7 of the TCC was amended by the Law no. 6352, which entered into force on 2 July 2012. With this amendment, the penalty to be imposed under Article 220 § 7 of the TCC may be reduced by up to two thirds, depending on the nature of the assistance. Therefore, Article 220 § 7 regulates a lesser term of imprisonment compared to Article 314 § 2 of the TCC.

14. 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).

15. The statistics stated in the communication of *İFÖD* could lead to make false assessment as well as misinterpretation of Article 220 §§ 6 and 7 of the TCC since these provisions are not particularly related to the right to freedom of expression and freedom of assembly. The authorities would like to note that the convicts who materially aide a terrorist organisation might be sentenced according to these Articles.

16. In the communication, *İFÖD* asserted some criminal proceedings. The authorities would like to note that the Action Plan is only related to the judgments of the Court included in the *Işıkırık* group of cases. For this reason, the authorities would not like to make a remark on the proceedings which are not included in the *Işıkırık* group of cases.

### **III. INTRODUCTION OF AN EFFECTIVE INDIVIDUAL APPLICATION BEFORE THE CONSTITUTIONAL COURT**

17. The authorities would like to reiterate that the Court has examined the effectiveness of the remedy of individual application with the Turkish 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.

18. The authorities would like to state 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**

19. The Turkish authorities would like to reiterate the explanations stated in the Action Plan in respect of the Judicial Reform Strategy and the preparation of a new Human Rights Action Plan (see §§ 44-54 of the Action Plan).

20. As indicated in the Action Plan, 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.

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

22. 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.

## **CONCLUSION**

23. 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 *Işıkırık* group of cases.

24. 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.