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Meeting: 1398th meeting (March 2021) (DH)

Reply from the authorities (01/12/2020) following a communication from an NGO (İfade Özgürlüğü Derneği (İFÖD - Freedom of Expression Association)) concerning the cases of PAKDEMIRLI and ARTUN AND GUVENER v. Turkey (Applications No. 35839/97, 75510/01).

Information made available under Rule 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1398^e réunion (mars 2021) (DH)

Réponse des autorités (01/12/2020) suite à une communication d'une ONG (İfade Özgürlüğü Derneği (İFÖD - Freedom of Expression Association)) concernant les affaires PAKDEMIRLI et ARTUN ET GUVENER c. Turquie (Requêtes n° 35839/97, 75510/01) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Ankara, December 2020

**THE TURKISH GOVERNMENT'S SUBMISSION
IN RESPONSE TO THE RULE 9.2 COMMUNICATION OF İFÖD**

Pakdemirli v. Turkey Group (no. 35839/97)

Artun and Güvener v. Turkey Group (no. 75510/01)

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 *Pakdemirli* (no. 35839/97) and *Artun and Güvener* (no. 75510/01) groups of cases.

2. At the outset, the Revised Action Report submitted to the Committee of Ministers ("CM") in October 2019 and the Additional Information Note submitted to the CM in May 2020 in respect of the *Pakdemirli* group of cases, and 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 Government has 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. 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))

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 (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)

7. 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))

8. 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

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

10. 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).

11. 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.

III. CASE-LAW OF THE TURKISH JUDICIARY

12. 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 §§ 9-37 of the Revised Action Report of the *Pakdemirli* group of cases and in §§ 30-68 of the Action Plan of the *Öner and Türk* group of cases.

13. 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.

14. 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.

15. In the communication, *İFÖD* asserted some civil and criminal proceedings. The authorities would not like to make a remark on the proceedings which are not included in the *Pakdemirli* and *Artun and Güvener* groups of cases.

16. The statistics stated in the communication of *İFÖD* could lead to make false assessment as well as misinterpretation of related Articles of the TCC. Related information, statistics and percentage are given in the Additional Information Note and in the Action Plans mentioned above.

IV. PROJECTS AND AWARENESS RAISING ACTIVITIES

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

18. As indicated in the Revised Action Report and the Action Plans, the main objectives set out in the Judicial Reform Strategy 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.

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

20. 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

21. 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 *Pakdemirli* and *Artun and Güvener* groups of cases.

22. 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.