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COUNCIL OF EUROPE
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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action plan (21/03/2018)

Communication from Turkey concerning the INCAL group of cases v. Turkey (Application No. 22678/93) (appendices in Turkish are available at the Secretariat)

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Réunion : 1318e réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de la Turquie concernant le groupe d'affaires INCAL c. Turquie (Requête n° 22678/93) (des annexes en Turc sont disponibles au Secrétariat) ***(anglais uniquement)***

ACTION PLAN
INCAL V. TURKEY GROUP OF CASES
(22678/93, 9 JUNE 1998)

I. CONTENT OF THE JUDGMENTS

1. The cases concern violations of the applicants' right to freedom of expression (Article 10) on account of:

- their convictions for having disseminated propaganda on behalf of terrorist organisations (under Articles 6 and 7 of the Anti-Terrorism Law); published articles or books or prepared messages addressed to a public audience inciting to hatred or hostility or praised a crime or a criminal (under Article 312 of the former Criminal Code (Articles 215 and 216 in the Criminal Code currently in force))(Incal group of cases);

- their automatic convictions, by virtue of Article 6 § 2 of the Anti-Terrorism Law, for publication of statements made by a terrorist organisation, without taking into account the statements' context or content (Gözel and Özer group of cases); the Court held under Article 46 of the Convention in this case that the violations disclosed a structural problem and that Turkey should revise Article 6 § 2 of the Anti-Terrorism Law.

2. According to the Court, these statements, articles, books, publications etc. did not incite to hatred or violence and the interferences with the applicants' freedom of expression were therefore unjustified.

3. In certain cases, the Court found violations of Article 6 on account of: lack of independence and impartiality of State Security Courts, failure to communicate the prosecutors' opinion to the applicants, lack of access to legal aid in police custody and excessive length of proceedings (violations of Article 6).

II. INDIVIDUAL MEASURES

4. The Government has taken measures to ensure that the violations at issue have been brought to an end and that the applicants are redressed for their negative consequences.

II.a. Reopening of the proceedings

II.a.1 Cases of which applicants did not request for reopening of the proceedings

5. As for totally 13 cases, the applicants did not request for reopening of the proceedings/investigations within the time limits prescribed in Articles 172 § 3, 311 § 1 (f) or Provisional Article 2 of the Code of Criminal Procedure. In this regard, the Government considers that it cannot be held responsible for failure of the applicants to submit a request to initiate a fresh investigation or proceedings (see Annex 1).

II.a.2 Cases of which fresh proceedings has been requested

6. At the outset the Government would like to reiterate its explanations in its former action report concerning seven cases in respect of which applicants' request were granted and they were acquitted by domestic courts of alleged offences (see action report dated 22 July 2016, pr. 6).

7. On the other hand, as for the case of Belek (36827/06, 36828/06 ve 36829/06) mentioned in the former action report (action report dated 22 July 2016) the Government would like to state that the request for the reopenning of the proceedings was granted by all the domestic courts and that the applicant was acquitted of the all said offences concerning each applications.

8. Furthermore the Government would like to inform the Committee that in the cases of *Güllü* (57218/10) and *Belge* (50171/09), the applications lodged for reopening of the proceedings was admitted by the domestic courts, and the applicants were acquitted of the alleged accusations. In the case of *Bayar* (55060/07) request for reopenning of the proceedings made by the representative of the applicant was granted by the İstanbul Assize Court and the fresh proceedings are ongoing.

II.b. Deletion of criminal records

9. The criminal records recorded in the particular system may be deleted in some situations occurred pursuant to Article 12 of the Criminal Records Law no. 5352. The records shall be deleted where the act in question no longer constitutes an offence under the law, or where a decision of acquittal or a decision of no need for imposing a penalty has become final as a result of reversal in favour of the administration of justice or a retrial conducted.

10. On the other hand, where the convict requests deletion of the records in 5 or 15 years after, depending on the crimes, serving his sentence, the criminal records may be deleted on the condition that no other offence has been committed within that period.

11. At this stage, as regards the conviction records, the Turkish Government submits the list of applicants whose criminal records have been deleted (see Annex 2).

II.d. Just Satisfaction

12. The just satisfaction amounts awarded to the applicants were fully and timely paid within the deadline set by the Court.

13. In view of the above, the Turkish authorities consider that the individual measures have been taken in compliance with the Committee of Ministers' practice in the past and under these circumstances, no further individual measures are required.

III. GENERAL MEASURES

14. The Turkish authorities have envisaged or taken a number of measures aimed at preventing similar violations. These measures are in particular aims at legislative arrangements regarding freedom of association, training and awareness-raising measures as well as an array of other measures aimed at preventing similar violations.

15. At the outset, the authorities would like to point out that in its decision dated 19 September 2017, the Committee of Ministers had decided to examine the cases concerning convictions under former Article 159 and current Article 301 of the Criminal Code under the *Taner Akçam* group of cases in view of their similar nature.

16. The Government would like to reiterate its former action plan that certain Articles which constitute problems in the context of freedom of expression were reviewed and aligned with the international human rights standards. In particular, within the scope of the legislative amendments made in 2012 and 2013 (the 3rd and the 4th Judicial Reform Packages). Furthermore as it was detailed below certain amendments were put into force after those reform packages.

17. The Government would also like to indicate that the Article 142 of the Law no. 765 was repealed on 12 April 1991, and that its former explanations whether the subjects of some of the cases were relevant to other group of cases (see action report dated 22 July 2016, pr. 88-99).

III.a Measures taken in accordance with the decision adopted by the Committee of Ministers in the 1294th DH meeting (19-21 September 2017);

18. The authorities would like to give information concerning the measures taken within the scope of the Committee's decision dated 19 September 2017.

III.a.1.Measures to align the practice of prosecutors and first instance courts to ensure that they apply the case law of the the European Court

19. At the outset the Government would like to reiterates its explanations concerning case law of the Court of Cassation in its former action report submitted on 8 July 2016. The authorities will only submit special examples of the decisions of domestic courts and prosecutors' officess in its present action report which indicates the domestic authorities are now raised their awareness concerning the case law of the European Court and the European Convention on Human Rights.

III.a.1.a. Praising an offence or an offender article 215 of the Law no. 5237 (Former Article 312 § 1)

20. As the Committee is aware of the fact that in 30 April 2013, the offence revised and added a new prog providing that an espression is to cause an eminent and clear danger to the public order, which is in line with the case-law of the ECtHR.

21. The Governemnt would like to demonstrate that prosecutors' offices and domestic courts from different parts of the country renders decisions and judgements referencing the ECtHR judgements and the European Convention on Human Rights concerning freedom of expression protected by the Article 10 of the Convention (see Annex 3).

22. In this regard, Adana Assize Court ordered acquittal of the suspects in its decision dated 22 June 2017. Accordingly; a bill of indictment was lodged with the Assize Court charging the applicants with praising a terrorist organisation's acts in Syria. However the domestic court found the applicants not guilty on the ground that the expressions of the suspects subjected to impugned offence fell within the context of freedom of exression protected by the Convention. The Assize Court referred some of the judgments of the European Court as well (for instance Zana/Turkey).

23. Moreover, İzmir Assize Court found the suspects not guilty for their sharings on social media who were charged with praising the crimes of an illegal organisation and disseminating propaganda of this organisation. İzmir Court declared that being told that a terrorist is immortal, did not affect the order of public and those statetments must be accepted within the context of freedom of expression, on the basis of the case law of the European Corut and Court of Cassation as well.

24. On the other hand, İstanbul Prosecutor assessed in its non-prosecuton decision whether the statements in a news portal should be accepted within the scope of freedom of expression. In its decision prosecutor referred the judgments of the Court namely; Ceylan / Turkey, Şener / Turkey, Polat / Turkey, Handyside / U.K., İncal / Turkey, Thoma / Luxemburg. Istanbul prosecutor did comprehensive evaluations concerning freedom of expression as well as freedom of media in that non-prosecution decision. The government would like to state that those examples shows that domestic judicial authorities are aware of the Court's case law and they duly implement it.

The effect of those adjustments

25. Those amendments and practice changed have positively affected the statistics. The Government would like to draw the Committe of Ministers (CM) attention to the statistics, encouraging that the domestic courts have adapted themselves to the change of provision.

26. With this regard while 692 conviction decisions were rendered by the domestic courts between 2010 and 2013 for the offence of praising the guilt and the guilty; only 178 conviction decisions have been rendered since the amendment until the end of 2017.

27. The Government therefore considers that all general measures have been taken for this sort of violation and no other general measures are required.

III.a.1.b. The offence of incitement to hatred or hostility under Article 216 of the Law no. 5237 (Former Article 312 § 2)

28. As it was cleared in the former action plan that one of the most common areas of violations found in the Incal group of cases concerns the offence of incitement to hatred and hostility among the people or degrading them. The judgments finding a violation in connection with this offence entirely stemmed from the wording of Article 312 § 2 of the Law no. 765, which was in force during the violations occurred.

29. As it is known by the Committee that this offence was revised in 2005 under Article 216 of the Law no. 5237. Within the scope of this redefinition, the elements of the offence were reviewed and aligned with the Courts judgments. In the wording of Article 216, the concept of "clear and imminent danger to the public safety" has become anew prog. In other words, the new article provides that this offence shall be constituted if there emerges a clear and imminent danger to the public safety.

30. The Governemnt would like to demonstrate that prosecutors' offices and domestic courts from different parts of the country rendered their decesions and judgements referencing the ECtHR judgements and the European Convention on Human Rights concerning freedom of expression protected by the Article 10 of the Convention (see Annex 4).

31. In this regard, İzmir Prosecutor's Office initiated an investigation within the context of a complaint included as follows: "after the victim's detention for the offence of undermining constitutional order, a daily newspaper served a fake news with a title of "Terrorist Family is in harness" was amounted a violation of victim's right not to labelled as criminal. However, on 10 November 2017, İzmir Prosecutor issued a non-prosecution decision for this complaint, holding that it was not fair to expect from a journalist to assess sophisticatedly like a prosecutor all its news before they were published. He referenced the judgments of Thorgeirson/Iceland, Thoma/Luxemburg, Lingens/Austira, Jerusalem/Austira, Dichan and others/Austria of the EctHR.

32. In the same manner Mersin Assize Corut decided the suspects not guilty for the offence of incitement to hatred or hostility on 10 May 2016. In so doing the domestic court found that a public release included a statement; "*The Government made Cizre a cruelty area"* fell within the scope of freedom of expression and media.

33. On 8 December 2014, Adana Prosecutor issued a non prosuciton decision for a complaint depending on a brochure which included a statement "we rebel against educiton system of Government". Prosecutor decided that those wording did not undermine public order, and had to be accepted within the context of freedom of expression. He referred the judgments of İbrahim Aksoy/Turkey and Kızılyaprak/Turkey, in which the Court rendered its principles concerning lawful deprivation of of freedom of expression.

34. A legal organisation initated a march on 14 June 2016 when some of the participants shouted as "we don't let the honorless pervets to walk.... " An investigation concerning the LGBTİ complaint started against those statements. However İstanbul public prosecutor thought that those statements did not met the threshold of insulting required to fell within the scope of right not be discriminated on the basis of sexual choices. This must be foreseen within in the scope of freedom of movement of expression. He referenced a number of ECtHR judgments as well.

The effects of those adjustments and good practice

35. Following the redefinition of the progs of this offence, the number of cases that are brought before the courts has significantly decreased. With this regard between 2010 and 2014, the prosecutors rendered 1318 decisions on non-prosecution for the offence of inciting the people to hatred and hostility; this number has increased to 7500 since the year of 2014.

36. Moreover between 2010-2014 domestic courts rendered 489 acquittal decisions however this number has increased to 948 since the year of 2014 until the present time.The relevant statistics indicate that there has been a significant decrease in the number of cases brought before courts after the arising awareness of the domestic atuhorities within the meaning of Article 216 of the Law no. 5237. Those demonstrate that the implementation of judicial authorities are in line with the ECtHR judgments.

37. The Government therefore considers that all general measures have been taken for this sort of violation and no other general measures are required.

III.a.1.c Printing and publishing the declarations and statements of terrorist organizations (Art. 6 § 2 of the Anti-Terror Law)

38. The ECtHR found violation in its judgments relating to this article that the practice concerning the offence of printing and publishing leaflets and statements which justify or praise the methods of terrorist organizations, as set out in Article 6 § 2 of the Anti-Terror Law, was not compatible with the ECHR standards set by the case-law of the ECtHR.

39. As the Committee is aware of the fact that the authorities amended Article 6 § 2 of the Law no. 3713 by adding another two progs on 30 April 2013. As per this 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. Accordingly, an act of pure publishing or printing leaflets of a terrorist organization will not be considered as an offence unless they include the progs aforementioned.

40. The Government considers that the request for amendment of Article 6 § 2 of the Law no. 3713 was added to the assessment as a result of an error of fact. The said article was amended in 2013 in accordance with the findings of the ECtHR in the *Gözel and the Özer* group of cases (43453/04).

41. In this way, the elements of the offence have been made narrow and more concrete.

The Current version ensures compliance with the standards of the ECtHR in the context of freedom of expression.

Impact analysis in respect of Article 6/2

42. The effect of the amendment and the practice may be understandable by using statistical data. In order to understand the progress the Government would like to submit here a comparable period before and after the amendment.

43. The Government would like to draw the Commitees attention that the number of the non-prosecuton decisions rendered by the prosecutors under Artcle 6/2 of the Anti Terrorism Law has significantly increased from the date on which the amendment was put into force. Namely; while the prosecutors rendered 19 non-prosecution decision in 2013, this number was 25 in 2015 and 42 in 2016 respectively.

44. On the other hand while the domestic courts convicted 4 suspects under afore-mentioned Article in 2013, all suspects were acquitted by the domestic court in 2014, 2015 and 2016 respectively.

45. The Government would like to draw the CM's attention in here that no detention order issued for those kinds of acts for 7 years.

46. The Government therefore considers that all general measures have been taken for this sort of violation and no other general measures are required.

III.a.1.d The offence of making propaganda of terrorist organizations (Article 7 § 2 of the Law no. 3713)

47. The ECtHR found in its judgments relating to this article that the practice of the Turkish courts was not compatible with the ECHR standards set by the case-law of the ECtHR. In this regard, the Court noted that the domestic courts had failed to duly take into account the element of incitement to violence, in compliance with the case-law of the ECtHR, in rendering decisions on conviction for such offences.

48. The Government would like to reiterate that the violation in this heading stems from the wording of the Article. In order to settle this issue, the elements of the offence set out in Article 7 § 2 of the Anti-Terror Law were redefined on 30 April 2013. 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, which is in compliance with the case-law of the ECtHR.

49. Thus, the progs of the offence have been further concretized and the provision has been made narrowed in order to bring the judicial practice into line with the case-law of the ECtHR. Accordingly, peaceful enjoyment of freedom expression in this respect will not any more constitute a crime.

50. The Governemnt would like to demonstrate that prosecutors' offices and domestic courts from different parts of the country renders their decisions and judgements referencing the ECtHR judgements and the European Convention on Human Rights concerning freedom of expression protected by the Article 10 of the Convention (see Annex 5). As is seen from the decisions of the domestic authorities, the examination methods, ground and progs of the crime are similar to the methods and criterias used by the ECtHR.

51. In this regard, according to the decision of Mersin Assize Court dated 2 November 2017, suspects' expressions during a meeting as "Long Live the Kurdish Leader Abdullah Öcalan" should fall within the scope of the freedom of expression in that there were element which might lead to conclude that the suspects used it for violence. Mersin Public Prosecutor also detailed the scope of disseminating prapaganda with reference to ECtHR's case law in its non-prosecution decision dated 10 November 2017.

52. With the same manner İzmir Assize Court decided that the statement used by suspect as "long live DHKP-C(an illegal terrorist organisation)" did not fall witihn the context of the offence of disseminating propaganda. The domestic court found in line with the ECtHR judgments of *Zana/Turkey, Sürek/Turkey* and *Gözel and Özer/Turkey* in its decision. A different chamber of İzmir Assize Court also held in its judgment dated 14 November 2017 that possession of posters and books of Abdullah Öcalan (the leader of a terrorist organisation, PKK) at home, did not constitute a violation of Article 7/2 of Anti Terror Law by itself and this act must be considered witihin the scope of freedom of expression.

53. Adana Public Prosecutor examined an offence of posession of a book about processes of PKK terrorist organisation between the foundation and present time in line with the idology of this organisation and decided not to prosecute the suspect on 25 May 2017 holding that punishment of the applicant for posession such type of a book did not necessary for democratic society. Furthermore, Adana Assize Court found no violation of Article 7/2 of

Anti Terror Law, holding that the statements as "PKK is a youth movement etc.." had to be accepted within the cohtext of freedom of expression in its decesion dated 17 January 2017.

54. Diyarbakır Assize Court found in its judgment 13 November 2017 that protests of "so called" isolation of Abdullah Öcalan during a meeting must be acknowledged within the scope of Article 10 of the Convention and that the suspects not guilty in this respect.

55. Finally, the statement as "we don't recognise the Government" in a newspaper found within the context of Article 10 of the Convention in the non-prosecution decision of İstanbul Public Prosecutor dated 10 January. In doing so the public prosecutor referred several judgments of ECtHR in its decison and held that the suspects were not to be prosecuted.

Impact analysis in respect of Article 7/2

56. The Governement would like to draw the Committee's attention that while the number of the non-prosecution decisions between 1 January 2011 and 11 April 2013 under Article 7 (2) of the Law no. 3713 was 2282, after the amendment the number went up to 3015 in 2015, 4988 in 2016 an 7114 in 2017 respectively. The number of the non-prosecution decisions in 2018 is 1126 for only three months.

57. Furthermore domestic courts gave 1013 acquittal decisions in 2013 yet this number have significantly increased year by year after that time. Namely; domestic courts ordered 2869 acquittal decisions in 2015, 4487 decisions in 2016, 5028 decision in 2017 respectively.

58. As is seen from the statistics, following the amendment made by the Law no. 6459 on 11 April 2013 and change of practice of the domestic authorities there has been an increase in the number of decisions of non-prosecution rendered by the Chief Public Prosecutors' Offices and the acquittal decisions given by domestic courts under Article 7 (2) of the Law no. 3713. These numbers demonstrate the effect of the amendment and the practice.

59. The Government therefore considers that all general measures have been taken for this sort of violation and no other general measures are required.

III.a.2. Measures to ensure that criminal investigations are not initiated solely on the basis of expressions of opinion

60. First of all the Government would like to provide information on the amendments introduced by the Decree-Law no. 694 having entered into force upon its publication in the

Official Gazette of 25 August 2017 in relation to the fundamental rights including freedom of expression which directly concerns the execution of the European Court's judgments in the cases of *Incal and Akçam*.

61. The right not to be labelled as criminal (*lekelenmeme hakkı*) is among the main principles of the Convention system. As is known, it is incumbent on the State to protect the corporeal and spiritual existence of an individual charged with an offence against any unjustified attack until a final judgment is issued by a court. On the basis of this principle, the Government would like to indicate that by the Decree-Law in question; a preliminary assessment mechanism prior to the investigation stage has been put into place.

62. According to the Article 158 of the Code of Criminal Procedure, a public prosecutor having received a complaint as to the commission of an offence shall, directly or through law enforcement officers, initiate an investigation and collect evidence and try to identify the suspect(s) in order to establish the facts of the complaint. The proceedings in this regard had to be conducted on the basis of the investigation file, which required that the statements of everyone against whom the complaint was lodged, be taken as suspects or that at least, a decision of non-prosecution be rendered in respect of the relevant persons who could not be characterized as a suspect.

63. However, by Article 145 of the Decree-Law, subparagraph 6 was incorporated into Article 158 of the Law no. 5271. The subparagraph 6 has enabled the public prosecutors to render a decision of non-investigation, rather than non-prosecution, in the event that it is clearly understood, without requiring any inquiry, that the act, which is the subject matter of the complaint, does not constitute an offence, or that the report or complaint in question is of an abstract and general nature.

64. After this amendment, the person, who was complained of, will not be characterized automatically as a suspect. For instance, in the event that they considered that a complaint made against a person clearly falls under the scope of the freedom of expression or freedom of press or that they considered that the complaint is not of a nature justifying or praising or inciting to the terrorist organizations' methods containing violence, coercion or threat, public prosecutors will be able to protect the interests of the person complained of, without initiating an investigation into the complaint in question.

65. In this way, unnecessary investigations especially as regards the freedom of

expression will be prevented. It is also possible to have the records corrected by notifying the decisions of non-investigation to the relevant law enforcement units. The persons' "right not to be labelled as criminal" will be protected by ensuring that such decisions are registered in a separate system and that the access to such decisions is restricted except for the courts and prosecutors' offices.

66. Concerning *"the right not to be labelled as criminal"* the prosecutors rendered 6271 non-investigation from the date of on wihch the amendment put into force, namely on 25 August 2017 until at the end of January 2018.

67. The Governemnt is of the opinion that this provision directly concerns freedom of expression cases supervised under the group of *Incal*. In this regard the authorities would like to demontstrate that how it is relevant from these cases with the non-investigation decisions of the prosecutors.

68. Those decisions demonstrates that prosecutors did not initiate investigations solely depending on the expressions under the offence of Article 7/2 of the Anti-Terror Law (see annex 6). The Governement is of the opinion that these provisions will be the common compponent of the fredom of expression machinery at the future practice.

69. The Government therefore considers that all general measures have been taken for this sort of violation and no other general measures are required.

III.a.3 Awareness-raising activities in respect of freedom of expression

The Justice Academy of Turkey

70. The Justice Academy which is the sole institution for pre-service and in-service training of judges and prosecutors was established in 2003 with a legal entity and scientific, financial and administrative autonomy. The Academy has been providing in-service and pre-service trainings on right to liberty and security since its establishment. In the curricula of the pre-service training, the following subjects are provided;

a) Implementation of Protective Measures in the Light of the ECtHR Judgments,

b) Grounds of the Court Judgments in the light of the ECtHR,

c) Human Rights and Practices of the ECtHR,

d) Arrest- Custody- Detention- undercover Witnessing,

e) Reflections of the ECtHR Judgments in the Domestic Law,

f) ECHR and Turkey,

g) Arrest-Custody-Detention Practices,

h) Freedom of Expression,

i) European Union Law.

The following subjects are covered as an in-service training program;

a) Freedom of Expression in the ECtHR Judgments and Procedure of Justification in the Detention Orders,

b) Implementation Procedure of the Protective Measures

c) Violations of Article 5 of the ECHR,

d) Arrest- Custody- Detention- undercover Witnessing,

e) A General View of Wiretapping-Techniques for Taking Statements-Protective Measures in Anti-Terrorism.

Temporary Activities of the Justice Academy Concerning Freedom of Expression

71. After the date of the submission of the former action plan in 2017; witihin the context of the Joint Project on Supporting the Individual Application to the Constitutional Court in Turkey;332 criminal judges got “freedom of expression and private life” lessons from November 2017 to January 2018.

72. The issue of freedom of expression has been included in the pre-vocational training curriculum of the candidates for judges and public prosecutors as 12 hours.

The Project on Strengthening the Capacity of Turkish Judiciary on Freedom of Expression

73. The objective of this project, which was planned to be carried out by the Justice Academy of Turkey between 2 September 2014 and 31 March 2017, namely for a two-year-

period, was to strengthen the respect for freedom of expression in the Turkish judiciary in line with the provisions of the Convention and the case-law of the ECtHR.

74. With a view to addressing the issues concerning the interpretation and practice of freedom of expression and to ensuring the application of the European human rights standards, the project focused on the training activities to be designed for a great number of judges and prosecutors (including candidates) in order to raise awareness about freedom of expression and the media. In four international workshops judges and legal experts from the high courts of other European countires and ECtHR came together with the members of Turkish judiciary.

75. Within this Project;

- new freedom of expression curricula was developed and publiced.

- a pool of trainers with 75 judges and prosecutors.

- 267 new books purchased and the library of the Academy enriched.

- aproximately 3000 judges and prosecutors received pre and in service trainning.

76. The Project came to an end with a closing ceremony on 31 March 2017.

III.b. The Action Plan on the Prevention of Human Rights Violations

77. The Action Plan which was set out after very long and comprehensive studies was prepared and submitted to the Board of Ministers for its adoption as an Action Plan and a reference document for all the public institutions with a view to prevent human rights violations. The Action Plan consists of 14 main aims, and 46 goals have been set in order to materialize the aims in question. Short, medium and long terms have been envisaged for the activities that shall be carried out with a view to reaching these goals. In this context, the Action Plan also includes goals and activities under the aim of enabling freedom of expression and freedom of media in the widest sense.

III.c Individual Application to the Constitutional Court

78. The Turkish authorities would also like to indicate that, in 2012, legislative amendments were adopted to introduce a possibility of an individual application before the Constitutional Court in respect of violation of human rights. Although this is not a major

response to the shortcomings identified by the European Court in this case, the Turkish authorities would like to observe that an individual in the applicant's situation could today pursue the avenue of lodging an individual application to uphold his or her Convention rights, including in the present case. In this respect, the Turkish authorities would like to recall that the European Court indicated in Hasan Uzun(10755/13) case that the individual application to the Constitutional Court should be considered an effective remedy as of 23 September 2012.

79. The Constitutional Court established the important principles regarding freedom of expression in the judgments it delivered in 2014 and 2015 on the applications lodged by Fatih Taş[1] (Plenary Session), İsa Yağbasan and Others[2] (Second Section) and Mehmet Ali Aydın[3] (Plenary Session).

80. With respect to the *Fatih Taş* application, the Constitutional Court found that subjecting the applicant to investigation and prosecution for a long period, namely more than approximately 11 years on account of the books he had published and continuing to leave him under the risk of receiving a penalty due to the decision on suspension of prosecution that had been issued had not been compatible with the aims sought and that therefore, it had not been "*necessary in a democratic society*". Thus, the Constitutional Court held that the applicant's freedom of expression guaranteed under Article 26 of the Constitution had been violated. A similar conclusion was reached in the *Ali Gürbüz and Hasan Bayar*[4] application. The Constitutional Court held that there had been a violation in that case on the ground that the copies of the newspaper had been seized, the applicants had been subjected to investigation and prosecution for approximately 6 years and 5 months on account of a news item they had published and they had been left under the risk of receiving a penalty due to the decision on suspension of prosecution that had been issued without taking into account the annulment decisions of the Constitutional Court and the quashing decisions of the Court of Cassation. In its decision on the application in question, referring to the *Abdullah Öcalan* application, the Constitutional Court pointed out that an interference with an individual's freedom to express and disseminate his thoughts merely on his own behalf cannot be justified and that expression

[1] Decision of the Constitutional Court, (Docket no. 2013/1461), dated 12 November 2014.

[2] Decision of the Constitutional Court, (Docket no. 2013/1481), dated 20 November 2014.

[3] Decision of the Constitutional Court, (Docket no. 2013/9343) dated 4 June 2015.

[4] Decision of the Constitutional Court (Docket no. 2013/568) dated 24 June 2015.

of thoughts by a member or a leader of a prohibited organization cannot on its own justify an interference with the freedom to express and disseminate one's thoughts, either.

81. Similarly, it is pointed out in the decision on the *Mehmet Ali Aydın* application that no restriction can be imposed on thoughts which are found unpleasant by the public authorities or a segment of the society unless they incite violence, seek to justify terrorist acts or support the emergence of hate. On the other hand, it was considered that the interference made with the applicant's freedom of expression had not been necessary in a democratic society since the risk that he might again be subjected to prosecution and punishment had persisted.

82. In its decision on the *Tuğrul Culfa* application, the Constitutional Court held that it had to be convincingly established how the interference made by the first-instance court with the applicant's freedom of expression on account of the statements included in the impugned news met a pressing need and why the punishment of the interference made with the complainant's honour and reputation weighed heavier than the applicant's freedom of expression. The Constitutional Court held that the interference had not been necessary in a democratic society under Article 13 of the Constitution since the reasons adduced by the first-instance court for the interference with the applicant's freedom of expression were not found to be sufficient and relevant.[5]

83. In its decision on the *İsa Yağbasan and Others* application, the Constitutional Court held that where a language, which is appropriate for properly conveying opinions and ideas, cannot be used due to criminal sanctions, it is not possible to mention the existence of individuals' right to express or hear opinions and ideas. Thus, it was considered that punishment of the applicants for printing leaflets including an invitation to the Newroz festival in Kurdish language had not met a pressing social need. Therefore, the interference with the freedom of expression in that case was not considered to have been necessary in a democratic society.

III.d Translation of the ECtHR Judgments

84. The Turkish authorities ensured that the European Court's judgment be translated into Turkish and published on its official website which was made available to the public and

[5] Decision of the Constitutional Court (Docket no. 2013/2593) dated 11 March 2015.

legal professionals alike (http://hudoc.echr.coe.int/).

85. The Turkish authorities also ensured that the European Court's findings be disseminated among the competent bodies to ensure that similar violations be prevented. To this end, the European Court's judgment was transmitted to the domestic court which rendered the impugned decision. It was also transmitted to the Constitutional Court, the Court of Cassation and the High Council of Judges and Prosecutors.

86. Besides the ECtHR judgments, "thematic information notes", are also translated into Turkish by the Turkish Ministry of Justice, including freedom of expression. The translated thematic information notes are published both on the website of the Department of Human Rights http://inhak.adalet.gov.tr/inhak_bilgi_bankasi/tematik_bilginotu/tematik.html and on the website of the Court http://echr.coe.int/ECHR/en/Header/Press/_Information+sheets/Factsheets/ with the Turkish language option.

VI. CONCLUSION

87. In light of the measures taken or envisaged, and progresses made, the authorities consider that supervision of this group of cases should be continued under the standard supervision hereafter.

88. The Government shall provide information to the CM in case of further developments.

ANNEXES:

1- List of cases of which the applicants did not request for reopening of the proceedings/investigations.

2- List of applicants whose criminal records have been deleted.

3- Sample decisions/judgments of the domestic authorities concerning Article 215 of the Law no. 5237.

4- Sample decisions/judgments of the domestic authorities concerning Article 216 of the Law no. 5237.

5- Sample decisions/judgments of the domestic authorities concerning Article 7/2 of the Law no. 3713.

6- Sample decisions of the domestic authorities concerning Article 158 of the Law no. 5271.

No	Application Number	English Case Title	YY Durumu
1	11461/03	FALAKAOGLU AND SAYGILI v. Turkey	No request for reopenning of the proceedings
2	15066/05	ASLAN AND SEZEN(No:2)	No request for reopenning of the proceedings
3	1544/07	BELEK AND ÖZKURT	No request for reopenning of the proceedings
4	18482/03	KARAKOYUN and TURAN v. Turkey	No request for reopenning of the proceedings
5	24748/03	IMZA v. Turkey	No request for reopenning of the proceedings
6	31706/10	GULER AND UGUR v. Turkey	No request for reopenning of the proceedings
7	33347/04	MENTES No. 2	No request for reopenning of the proceedings
8	44227/04	BELEK AND VELIOGLU v. Turkey	No request for reopenning of the proceedings
9	64116/00	YALCINER v. Turkey	No request for reopenning of the proceedings
10	603/09	Bayar v. Turkey	No request for reopenning of the proceedings
11	29969/07	Colak v. Turkey	No request for reopenning of the proceedings
12	48583/07	Ozalp v. Turkey	No request for reopenning of the proceedings
13	14742/10	Ali Gürbüz v. Turkey	No request for reopenning of the proceedings

No	Application Number	Name	Ciriminal Records
1	10037/03	DEMIREL and ATES v. Turkey	Conviction erased
2	11840/02	FALAKAOGLU v. Turkey (no. 2)	Conviction erased
3	11976/03	DEMIREL AND ATES (no. 3) v. Turkey	Conviction erased
4	12606/11	YAVUZ AND YAYLALI v. Turkey	Conviction erased
5	13799/04	KANAT and BOZAN v. Turkey	Conviction erased
6	15450/03	MUDUR DUMAN v. Turkey	Conviction erased
7	15719/03	MEHMET CEVHER ILHAN v. Turkey	Conviction erased
8	16229/03	FALAKAOGLU v. Turkey	Conviction erased
9	16853/05	TEMEL	Conviction erased
10	17445/02	ERDAL TAS v. Turkey (n°3)	Conviction erased
11	20863/02	AKTAN v. Turkey	Conviction erased
12	22147/02	FALAKAOGLU AND SAYGILI v. Turkey	Conviction erased
13	22479/93	OZTURK v. Turkey	Conviction erased
14	22678/93	INCAL v. Turkey	Conviction erased
15	23144/93	OZGUR GUNDEM v. Turkey	Conviction erased
16	23556/94	CEYLAN v. Turkey	Conviction erased
17	23927/94	SUREK AND OZDEMIR v. Turquie	Conviction erased
18	24122/94	SUREK v. Turkey (no. 2)	Conviction erased
19	24874/04	UNSAL OZTURK No. 2	Conviction erased
20	24914/94	OZTURK v. Turkey	Conviction erased

21	26976/95	SUREK v. Turkey	The judgment of İstanbul State Security Court dated 18.07.1993 have been erased
22	27214/95	C.S.Y. v. Turkey	Conviction erased
23	27215/95	GOKCELI v. Turkey	Conviction erased
24	29365/95	Unsal OZTURK v. Turkey	Conviction erased
25	29847/02	ERDAL TAS v. Turkey (n°4)	Conviction erased
26	29849/02	CAPAN (2) v. Turkey	Conviction erased
27	29910/96	TANIYAN v. Turkey	no criminal record indicated
28	30007/96	HALIS v. Turkey	Conviction erased
29	31080/02	DEMIREL AND ATEŞ No.2	Conviction erased
30	31236/96	KALIN v. Turkey	Conviction erased
31	32455/96	ZARAKOLU v. Turkey (no. 1)	due to Article 9/2 of Law no. 5352
32	32985/96	ALTAN v. Turkey	Conviction erased
33	33179/96	Seher KARATAS v. Turkey	Conviction erased
34	34685/97	DICLE v. Turkey	Conviction erased
35	35071/97	GUNDUZ v. Turkey	Conviction erased
36	35076/97	EROL v. Turkey	Conviction erased
37	35721/04	OZER v. Turkey (I)	Conviction erased
38	36141/04	BINGÖL	Conviction erased
39	36635/08	FATIH TAS	Conviction erased

40	36827/06,36828/06, and 36829/06	BELEK	conviction erased
41	3847/02	YILDIZ and TAS v. Turkey	Conviction erased
42	39457/03	SAYGILI and FALAKAOGLU v. Turkey	Conviction erased
43	39708/98	PAMAK v. Turkey	Conviction erased
44	40303/98	GUMUS and others v. Turkey	Conviction erased
45	40987/98	KORKMAZ v. Turkey (n°1)	Conviction erased
46	41445/04+	ÖNAL	Conviction erased
47	41618/98	ODABASI v. Turkey	Conviction erased
48	41959/02	CAMYAR AND BERKTAS	Conviction erased
49	42119/98	OZKAYA v. Turkey	Conviction erased
50	42435/98	AYDIN v. Turkey	Conviction erased
51	42436/98	GERGER v. Turkey (no. 2)	Conviction erased
52	42589/98	KORKMAZ v. Turkey (n°2)	Conviction erased
53	42590/98	KORKMAZ v. Turkey (n°3)	Conviction erased
54	42605/98	SAHIN v. Turkey	Conviction erased
55	42779/98	CETIN v. Turkey	Conviction erased
56	42920/98	Haydar YILDIRIM and Others v. Turkey	Conviction erased
57	43452/12	DAGTEKIN v Turkey	Conviction erased
58	43453/04	GOZEL v. Turkey GOZEL AND OZER	Conviction erased
59	43807/07	KILIC AND EREN	Conviction erased
60	43928/98	KARKIN v. Turkey	Conviction erased
61	45585/99	AYHAN v. Turkey (no. 1)	Conviction erased
62	46454/99	CEYLAN v. Turkey (n°2)	Conviction erased

63	46733/99	DICLE v. Turkey (n° 2)	Conviction erased
64	47520/99	Akin BIRDAL v. Turkey	Conviction erased
65	477/02	YILDIZ and TAS v. Turkey	Conviction erased
66	47796/99	EROL v. Turkey	Conviction erased
67	48387/99	KAYA v. Turkey	Conviction erased
68	4870/02	GUL and Others v. Turkey	Conviction erased
69	48944/99	ERGIN v. Turkey (no. 1)	Conviction erased
70	48988/99	BARAN v. Turkey	Conviction erased
71	49566/99	ERGIN v. Turquie (no. 2)	Conviction erased
72	50273/99	ERGIN AND KESKIN v. Turkey (no. 1)	Conviction erased
73	50691/99	ERGIN v. Turkey (no. 3)	Conviction erased
74	50934/99	KOC and TAMBAS v. Turkey	Conviction erased
75	51002/99	ZANA v. Turkey	Conviction erased
76	51962/12	ONER AND TURK v. Turkey	Conviction erased
77	52056/08	BULENT KAYA v. Turkey	Conviction erased
78	53047/99	BIRDAL v. Turkey	Conviction erased
79	53648/00	TURHAN v. Turkey	Conviction erased
80	54916/00	BAKIR v. Turkey	Conviction erased
81	56362/00	YUKSEL (GEYIK) v. Turkey	Conviction erased
82	56566/00	YAŞAR KAPLAN	Conviction erased
83	57103/00	CETIN AND SAKAR v. Turkey	Conviction erased
84	57258/00	YARAR v. Turkey	Conviction erased
85	57299/00	VARLI AND OTHERS v. Turkey	Conviction erased
86	58756/00	KAR and Others v. Turkey	Conviction erased

87	59405/00	ERBAKAN v. Turkey	Conviction erased
88	62230/00	YILMAZ v. Turkey	Conviction erased
89	62677/00	SAYGILI AND SEYMAN v. Turkey	Conviction erased
90	63733/00	ERGIN v. Turkey (no. 4)	Conviction erased
91	63925/00	ERGIN v. Turkey (no. 5)	Conviction erased
92	63926/00	ERGIN AND KESKIN v. Turkey (no. 2)	Conviction erased
93	64609/01	CAMLIBEL v. Turkey	Conviction erased
94	65849/01	GUZEL v. Turkey (no. 2)	Conviction erased
95	71353/01	Yalcin KUCUK (no. 3) v. Turkey	Conviction erased
96	71978/01	CAPAN (1) v. Turkey	Conviction erased
97	71984/01	DOGAN v. Turkey (no. 2)	Conviction erased
98	73715/01	KUTLULAR v. Turkey	Conviction erased
99	77365/01	FALAKAOGLU v. Turkey	Conviction erased
100	77641/01	YILDIZ and TAS v. Turkey	Conviction erased
101	77642/01	YILDIZ and TAS v. Turkey	Conviction erased
102	984/02	BURAN v. Turkey	Conviction erased
103	9858/04	DICLE v. Turkey	Conviction erased
104	50171/09	BELGE v. Turkey	Conviction erased
105	43217/04	ASLAN AND SEZEN	Conviction erased
106	57218/10	GULLU v. Turkey	Conviction erased
107	14742/10	ALI GURBUZ v. Turkey	decisions of suspension of rendering judgement do not appear in the criminal records