



*Permanent Representation
of Turkey
to the Council of Europe*

Strasbourg, 19 August 2015

Dear Director,

Concerning the alerts issued by the Council of Europe's "Platform to promote the protection of journalism and safety of journalists" on 9 June 2015 and 10 August 2015 under the titles of "LGBT Journalist Beaten by Police Officers" and "Turkey's Chief Public Prosecutor Seeks 7.5 year Jail Term against 18 Journalists over Siege Picture" respectively, submitted by the European Federation of Journalists and the International Federation of Journalists, I am transmitting at annex the responses of the Turkish Government.

Yours sincerely,

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Ambassador
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Encl.:

- Information Notes (2)

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Form concerning bill of indictment prepared by Istanbul Public Prosecutor against a number of editor-in-chief of some newspapers on account of publishing a photo disseminated by a terrorist organization submitted by EFJ/IFJ under “5. Acts having chilling effect on media freedom”

Information Note provided by the Ministry of Justice of the Republic of Turkey

The Istanbul public prosecutor has been taken hostage at his office by two members of the terrorist organization called The Revolutionary People's Liberation Party-Front (DHKP-C)¹ at the Istanbul courthouse and was subsequently killed by a gunshot.

The DHKP-C previously published a photograph of the terrorists who were holding a gun pointed at the head of the Istanbul public prosecutor with the terrorist organization's flag in the background. The photograph in question has been widely disseminated online, i.e. on the Millet, Sok, Posta, Yurt, Bugun, Ozgur Gundem, Aydinlik and Birgun newspapers.

On 30 July 2015 the Istanbul Chief Prosecutor's Office submitted a bill of indictment against the editors in chief of the newspapers which published the photograph. It was stated in the bill of indictment that the act in question amounted to a sort of propaganda of the terrorist organization due to the fact that publishing such a photograph supported the terrorist organization in achieving the aims it pursued. Immediately after, some news agencies gave the issue coverage with the following phrases: “...*indictment seeking up to seven-and-a-half years' imprisonment for 18 journalists*”.

Article 7 of the Anti-Terror Law prescribes that those who make propaganda for a terrorist organization in a manner which would legitimize or praise the terror organization's methods including force, violence or threats or in a manner which would incite the use of these methods shall be punishable by one to five years' imprisonment. If the offence is committed through press and publication, the sentence to be imposed shall be increased by one - half.

It is emphasized in the *Committee of Ministers' Declaration of 2 March 2005 on freedom of expression and information in the media in the context of the fight against terrorism*², the media and journalists should consider their particular responsibilities in the context of terrorism in order not to contribute to the aims of terrorists; they should, in particular, be careful not to add to the feeling of fear that terrorist acts can create, and not to offer a platform to terrorists by giving them disproportionate attention.

It is also highlighted in this Declaration that the media and journalists should respect the dignity, safety and anonymity of victims of terrorist acts and of their families, as well as their

¹ The United States, the European Union and the Republic of Turkey list the DHKP-C as a terrorist organization. It was behind the suicide bombing of the U.S. Embassy in 2013. In 2001, two policemen and an Australian tourist died in a DHKP-C attack in central Istanbul.

²<https://wcd.coe.int/ViewDoc.jsp?id=830679&Site=CM>

right to respect for private life, as guaranteed by Article 8 of the European Convention on Human Rights.

As regards this specific issue, the authorities would like to highlight that the charges against the editors-in-chief of the newspapers in question do not require 7.5 years' imprisonment. The scope of the prison sentence for the offence of assisting a terror crime via making propaganda by using press ranges between 1.5 to 7.5 years. According to the case-law of the Court of Cassation, unless there is an extraordinary situation, the minimum limit of punishment for an offence shall be imposed in principle. In addition, where the punishment is increased by departing from the minimum limit, the reasons for such increase must be set forth in the judgment. In the event that a term of imprisonment longer than 1.5 year is imposed in the instant case, the reasons for it shall be provided in the judgment as required by the case-law of the Court of Cassation.

According to the provisions of the Turkish Penal Code and the Code of Criminal Procedure, there are some options available with respect to prison sentences such as the suspension of execution, suspension of the pronouncement of judgments and commuting the prison sentence to a fine. Indeed, the likely punishment of 1.5 years' imprisonment will be subject to the suspension of the pronouncement of the judgment and suspension of the execution of the judgment. **In other words, almost all of the defendants will most likely not serve a prison sentence for such charge.**