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Communication from an NGO (The Freedom of Expression Association (İfade Özgürlüğü Derneği - IFÖD)) (21/01/2020) in the Işıkırık group of cases v. Turkey (Application No. 41226/09) and response from the Turkish authorities (28/01/2020)

Information made available under Rules 9.2 and 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 : 1369e réunion (mars 2020) (DH)

Communication d'une ONG (The Freedom of Expression Association (İfade Özgürlüğü Derneği - IFÖD)) (21/01/2020) relative au groupe d'affaires Işıkırık c. Turquie (requête n° 41226/09) et réponse des autorités turques (28/01/2020) ***[anglais uniquement]***

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

RULE 9.2 COMMUNICATION

in the Işıkırık Group of Cases v. Turkey (Application No. 41226/09)

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

21 January 2020

An independent non-governmental organization specialized in defending and promoting freedom of expression

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

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21.01.2020

Rule 9.2 Communication from Freedom of Expression Association (İFÖD) (in the Işıkırık group of cases v. Turkey (Application No. 41226/09)

1. The aim of this submission is to update the Committee of Ministers concerning the persistent failure of Turkish authorities in full and effective implementation of general measures in the **Işıkırık group of cases** with respect to changes in legislation (Articles 220/6 and 220/7 of the Turkish Criminal Code) and judicial practice in fully aligning the domestic legal framework concerning the right to assembly and freedom of expression with the European Court's case law. The submission is prepared by İfade Özgürlüğü Derneği (İFÖD – Freedom of Expression Association), a non-profit and non-governmental organization aims to protect and foster the right to freedom of opinion and expression in Turkey.

Background

2. Işıkırık group of cases comprise of four judgments concerning violations of the applicants' right to freedom of peaceful assembly and/or freedom of expression. *Işıkırık, Bakır and Others* (no. 46713/10), and *Imret (2)* (no. 57316/10) cases concern a violation of the right to freedom of assembly on account of the applicants' convictions of membership of an illegal organisation under Articles 220 § 6 or 220 § 7 and 314 of the Criminal Code as a result of having peacefully taken part in demonstrations (Article 11). *Daş* (no. 36909/07) case concerns violation of freedom of expression on account of the applicant's conviction of membership of an illegal organisation under Articles 220 § 7 and 314 of the Criminal Code because of the draft petitions regarding with prison conditions of Öcalan seized during a search in the premises of an association (Article 10). In these four cases the ECtHR found that **Articles 220 § 6 and 220 § 7 of the Turkish Criminal Code were not "foreseeable"**, considering the extensive interpretation of them by the Turkish domestic courts and decided that the interferences were not prescribed by law.

3. The Işıkırık group of cases underline **structural problems** with respect to the full and effective enjoyment of freedom of assembly and freedom of expression **as a result of extensive and unforeseeable interpretation and implementation of criminal provisions.** The common feature of these cases was the authorities' **failure to show a certain degree of tolerance towards peaceful gatherings and critical expressions**.

The Turkish Authorities' Action Plan

4. The Turkish Government submitted an Action Plan regarding with Işıkırık group of cases only very recently on 16.01.2020 and argued that considering legislative amendments and practice of the domestic courts, similar violations stemming from Article 220 § 6 have been prevented. The government therefore argued that there is no need for further legislative amendments. The government also argued that following the legislative amendment in paragraph 7 of Article 220 of the TCC, aiding an illegal organisation is subject to a lesser imprisonment term compared to the offence of being a member of a terrorist organisation (Article 314§ 2 of the TCC). In the Action Plan Turkish authorities alleged that in light of the assessments of the European Court, Turkey has taken significant steps in recent years so as to

eliminate the deficiencies and provide additional safeguards in the field of right to peaceful gathering and freedom of expression.

5. The authorities stated that, with an aim to bring the judicial practice in line with the European Court's case-law, Turkey has made legislative amendments into the relevant provisions. According to the statements of the Turkish authorities, Article 6(2) and 7(2) of Law No 3713 and the offence proscribed by section 28(1) of the Marches and Demonstrations Act (Law No. 2911) was amended by Law No 6459 which entered into force on 11.04.2013. With this amendment, people who have committed those offences shall not be liable under Article 220/6 of the Criminal Code. Also, Article 220/6 was amended by Law No. 6459, which entered into force on 11.04.2013. With this amendment, Article 220/6 shall be applicable only for armed organizations. The authorities also mentioned that Article 220/6 of the TCC was amended by Law No. 6352, which made possible a reduction in the penalty to be imposed under Article 220 § 6 by up to half. The Turkish Government argued that considering legislative amendments and practice of the domestic courts, similar violations stemming from Article 220 § 6 have been prevented and there is no need for further legislative amendments.

6. The authorities also stated that Article 220 § 7 of the TCC was amended by Law No. 6352, which entered into force on 02.07.2012. According to this amendment, the penalty to be imposed under 220 § 7 may be reduced by up to two thirds, depending on the nature of the assistance. The authorities argued that owing to this amendment, currently, aiding an illegal organisation (Article 220 § 7 of the TCC) is subject to a lesser imprisonment term compared to the offence of being a member of a terrorist organisation (Article 314§ 2 of the TCC).

7. The authorities also mentioned the Law No. 7188, which entered into force on 17.10.2019 and introduced an opportunity to appeal against the final conviction decisions of the District Courts of Appeals requiring less than five years imprisonment. As a result of this amendment, regardless of its duration, 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 Anti- Terrorism Law, could be subject to further appeals before the Court of Cassation following the completion of the proceedings at the District Court of Appeals. The authorities argued that this new provision will further ensure the conformity of the case-law in similar cases.

8. The authorities finally mentioned other measures such as introduction of individual application before the Constitutional Court as well as the Judicial Reform Strategy.

İFÖD's Comments on the Action Plan

9. Firstly, İFÖD would like to indicate that the ECtHR was aware of the above mentioned amendments when finding that paragraphs 6 and 7 of Article 220 of the TCC was unforeseeable and it did not distinguish its examination between the period preceding the amendments and the period thereafter bearing in mind that the provision is still in force. The Court recalled that its "*judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties*" (see *Işıkırık*, §65). The Court made reference to the wording of the relevant provisions and stated that Articles 220 § 6 and 220 § 7 of the Criminal Code formulated without a definition of the expressions contained therein and also that the domestic courts did not develop a consistent judicial interpretation of those provisions. Accordingly, the Court found that existing text and interpretation of the relevant provisions are unforeseeable.

10. Therefore, the authorities did not offer any amendment in the texts of Articles 220 § 6 and 220 § 7 of the TCC in the Action Plan. It is not possible to say that the former amendments mentioned in the Action Plan redressed the unforeseeability found by the Court. Considering the main reason of the violation decision of the European Court was the wording of the Articles 220 § 6 and 220 § 7 and domestic court's interpretation in extensive terms, those amendment does not meet the foreseeability test in its current form. First, the amendment to Article 7 of the Anti-Terror Law excluded the above-mentioned crimes only from the scope of application of Article 220 § 6. However, some forms of expression, may also fall under the scope of Article 220 § 7 (aiding and abetting an organization). This may lead to abusive

application in practice, since a form of expression considered as being in support of an organization, may be sanctioned under Article 220 § 7, instead of Article 220 § 6, in order to sentence the defendants as if they were members of an armed organization under Article 314, although their organic relationship with an armed organization is not established.

11. Therefore, the government's reference to the previous amendments in the Action Plan should be disregarded as the amendments were made prior to the Court's decision in *Işıkırık*. Since the last review of the state of implementation of Işıkırık group of cases, 2012 and 2013 amendments have not been fully aligned with the Courts' jurisprudence. Contrary to the Government's submissions the situation regarding the detentions and criminal investigations have deteriorated. Despite safeguards to end disproportionate measures in the Turkish Criminal Code and the Criminal Procedure Code, there have been no fundamental legislative developments in Articles 220 and 314 of the Criminal Code. There have been a total of **1.056.779 criminal investigations involving 226.258 no prosecutions decisions subject to** Article 314 of the Criminal Code according to the Judicial Statistics of 2016-2018.[1] During the same period **263.316 criminal prosecutions** have been initiated involving Article 314, majority of which involved Article 314 § 2. It should be noted that Ministry of Justice does no longer provide detailed statistics about investigations and prosecution conducted pursuant to Articles 220 § 7 and 314 § 1 and § 2 of the TCC and **has never provided statistical data** in relation to Article 220 § 6 of the TCC through the published official statistics. Therefore, it is not possible to present accurate numbers for Articles 220 § 7 and 314 or any statistics for Article 220 § 6 further assessment.

Risk of lengthy imprisonment sentences continue

12. Although the above mentioned amendments introduced a possibility of reduction in the penalty imposed pursuant to Articles 220 § 6 and 220 § 7 of the TCC they do not guarantee a lesser imprisonment sentence because making reduction in the sentence is in the discretion of the courts and some examples will be given below where more than ten years imprisonment were granted by the courts.

13. Contrary to the government's arguments, **there is still high risk of lengthy imprisonment under Articles 220/6 and 220/7 of the TCC.** The current version of the **paragraph 6** states that "*Anyone who commits a crime on behalf of an (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation. The penalty to be imposed for membership may be reduced by up to half. This paragraph shall be applicable only for armed organisations."* and **paragraph 7** stipulates that: "*Anyone who aids and abets an (illegal) organisation knowingly and intentionally, even if they do not belong to the hierarchical structure of the organisation, shall be punished as a member of the organisation. The penalty to be imposed for membership may be reduced by up to two thirds, depending on the nature of the assistance".* These provisions are applied in conjunction with Article 314 of the TCC and Article 5 of the Prevention of Terrorism Act (Law No. 3713). In that case, there remains a strong possibility of a person to be sentenced up to 15 years imprisonment. This is because Article 314 of the TCC envisages between five to ten years imprisonment for being a member of an armed organisations and according to Article 5 of the Law No 3713 this penalty may be increased up to half of the original sentence if the membership is to a terrorist organization. So, it is possible that a person can be sentenced up to 15 years imprisonment for the crimes stipulated under Articles 220 § 6 and 220 § 7 of the TCC. Since journalists, opposition politicians, civil society activists and human rights defenders are systematically charged with the aiding and abetting armed terrorist organisations such as PKK or FETÖ, they are arrested, detained and punished with lengthy imprisonment sentences. As a matter of fact, the Constitutional Court stated recently, in Mümtazer Türköne case[2] in which the applicant, a journalist, was detained on the suspicion of aiding a terrorist organization (FETÖ) with his writings published through a column on a newspaper, that the

[1] http://www.adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi
[2] *Mümtazer Türköne*, B. No: 2017/17839, 27/11/2019 § 67

provision which allows the detention of the defendant is a serious crime requiring 10 years imprisonment.

14. In recent years, especially after the coup attempt of 15 July, 2016, a considerable number of journalists were arrested and detained within the scope of the investigation into the media leg of the "Gülenist Terror Organization/Parallel State Structure" (FETÖ/PDY)and some of them were convicted for the crime of aiding terrorist organisations pursuant to Article 220 § 7 of the TCC in conjunction with Article 314 of the TCC. Almost all of the journalists were charged because of their critical opinions against the Government or the President. In cases of Erdem Gül and Can Dündar,[3] Murat Aksoy,[4] Ahmet Şık,[5] Murat Sabuncu,[6] Abdullah Zeydan,[7] İzzet Pirbudak,[8] Atilla Taş,[9] Ahmet Kadri Gürsel,[10] Önder Çelik and Others,[11] and Akın Atalay[12] which were decided by the Turkish Constitutional Court, the grounds for applicants' detention and in some cases conviction were the content of their newspaper articles and/or content of their social media posts and various, statements.

15. The systematic abuse of the provision of Article 220 § 7 of the TCC is evident in several cases. By way of example, **Ahmet Altan, and Nazlı Ilıcak** among other journalists were arrested and detained on the suspicion of attempting to abolish the constitutional order and to overthrow the legitimate government. They were accused of spreading subliminal messages through a TV programme in order to incite a coup d'Etat. Furthermore, their writings as journalists and writers were included in the prosecution dossier to evidence of the alleged crimes they committed. They were both sentenced to aggravated life imprisonment by the İstanbul 26th Assize Court and their appeal was upheld at the İstanbul District Court of Appeal level. However, the Court of Cassation quashed this verdict finding it in contradiction with the law stating that the actions of Ahmet Altan and Nazlı Ilıcak did not constitute the offense of "attempting to abolish constitutional order," **but that of "knowingly and willingly aiding the terrorist organization."** After retrial, 2nd Criminal Division of the İstanbul District Court of Appeal has sentenced Ahmet Altan to 10 years and 6 months imprisonment on the charge of "knowingly aiding a terrorist organization without being member of it" and sentenced Nazlı Ilıcak to 8 years and 9 months imprisonment on the same charge. They were released on 04.11.2019 from prison considering the time they had already served in detention. One week later on 12.11.2019 Ahmet Altan was rearrested after an İstanbul court reversed the decision on his release. This example clearly shows that **a journalist and a writer can be detained and be convicted to more than 10 years imprisonment pursuant to Article 220 § 7 of the TCC just because of his writings and speeches critical of the Government and the President**. This example also shows that the judicial authorities employs legal provisions interchangeably with one another to punish peaceful expression of ideas. The unforeseeability of the provision (Article 220 § 7 of the TCC) is still evident in this and similar cases.

16. In the **Cumhuriyet case**, also involving Article 220 § 7 of the TCC, 19 persons, some involving editors and well known writers of the Cumhuriyet Newspaper which has a Kemalist critical publishing policy, were charged with aiding knowingly and willingly a terrorist organisation because of the alleged "changing nature of the publishing policy" of the newspaper. There **was no evidence in the case file other than news and articles** published in the newspaper and authored by the defendants. In other words, the dossier **did not include any concrete evidence** to suggest that the journalists committed any crimes associated with terrorism or any terror organisations. Among others Kadri Gürsel, Musa Kart, Ahmet Şık, Önder Çelik and Akın Atalay were convicted pursuant to Article 220 § 7 of the TCC and

[3] *Erdem Gül and Can Dündar,* B. No: 2015/18567, 25/02/2016
[4] *Murat Aksoy*, B. No: 2016/30112, 02/05/2019
[5] *Ahmet Şık*, B. No: 2017/5375, 02/05/2019
[6] *Murat Sabuncu*, B. No: 2016/50969, 02/05/2019
[7] *Abdullah Zeydan*, B. No: 2016/29875, 18/11/2018
[8] *İzzet Pirbudak*, B. No: 2015/392, 27/06/2018
[9] *Atilla Taş*, B. No: 2016/30220, 29/5/2019
[10] *Ahmet Kadri Gürsel* [GK], B. No: 2016/50978, 2/5/2019,
[11] *Önder Çelik ve diğerleri* [GK], B. No: 2016/50971, 2/5/2019
[12] *Akın Atalay* [GK], B. No: 2016/50970, 2/5/2019

some of the convicted were sentenced to more than five years imprisonment.[13] Although the Court of Cassation quashed the convictions and sent back the case for retrial, the trial court ignored the decision of the Court of Cassation and insisted on its original decision. Therefore, the case will be reviewed by the General Assembly of Court of Cassation for Criminal Matters sometime during 2020. This is therefore, another example in which Article 220 § 7 of the TCC was used to punish journalists for their writings.

17. Another example involves the writers and employees of the **Sözcü newspaper** which also has a Kemalist and critical publishing policy. The owner, editors and some writers and employees of the Sözcü newspaper were arrested within the context of an investigation related to "Fethullahist Terrorist Organization/Parallel State Structure (FETÖ/PDY)", which was later held responsible for the coup attempt on 15 July, 2016. Some of the employees of the newspaper were detained as part of this investigation. The indictment included the crimes "leading an armed terrorist organization", "making propaganda of an armed terrorist organization" and "aiding a terrorist organization knowingly and willingly without being included in its hierarchical structure". İstanbul 37th Assize Court convicted the chief editor Metin Yılmaz, editors Mustafa Çetin and Yücel Arı the writers Emin Çölaşan and Necati Doğru, the correspondent Gökmen Ulu and Accountant Yonca Kaleli pursuant to Article 220 § 7 of the TCC and sentenced them between **two years to three and half year's imprisonment**. The Court solely depended on the journalistic activities of the suspects as concrete evidence when finding them guilty claiming that the **Sözcü team was producing news parallel to the Zaman newspaper** which was a Gülenist affiliated newspaper and shut down by an Emergency Decree.
18. These examples **clearly shows that Article 220 § 7 of the TCC is widely exploited by the Turkish authorities against the critical voices** and that the **provision is not "foreseeable" in its application** since it does not afford the people the legal protection against arbitrary interference with their rights under Articles 10 and 11 of the Convention.

Judicial practice

19. As the law stands as it is, the courts are not the right institution for ensuring the full and effective implementation of general measures in the *Işıkırık* Group cases. Without a complete overhaul of Article 220 § 6 and 220 § 7 of the Criminal Code in line with the Convention standards and the Court's case law, as per the previous findings of the Committee of Ministers, where the root cause of the problem clearly lie, it is not realistic for the courts to specify which acts counts as aid to terrorist organizations or committing an offence on behalf of an illegal organization and apply Convention standards.
20. What is more, none of the judicial organs in Turkey, including the Turkish Constitutional Court, is able to set aside ordinary law in individual cases. In the case of the Turkish Constitutional Court, the maximum it can do through an individual case is to award compensation or to ask for the case to be re-tried by domestic courts. Given the major deficiencies of the laws themselves and the widespread and systematic use of the law by the executives in ways that undermine the Convention standards and Article 19, 26, 28, 34 of the Turkish Constitution, courts cannot compensate for the lack of an adequate legislative and executive framework.
21. As was mentioned previously, in its several decisions the Constitutional Court had found a violation of freedom of expression and violation of peaceful gathering and assembly. However, the Constitutional Court **does not examine the foreseeability requirement** and therefore, this approach of the Court causes the continuation of the violations by the domestic courts' interpretation. Equally, the decisions of the Constitutional Court are not taken into account by the trial courts. In fact, it is true to state that the decisions of the Constitutional Court are completely ignored or the trial court show resistance to applying the Court's decisions as was witnessed in both the Mehmet Altan and Şahin Alpay cases.

[13] Akın Atalay was sentenced to 7 years 13 months and 15 days, Mehmet Orhan Erinç was sentenced to 6 years and 3 months, Mehmet Murat Sabuncu, Ahmet Şık and Aydın Engin were sentenced to 7 years and 6 months and Hikmet Aslan Çetinkaya was sentenced to 6 years and 3 months imprisonment.

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

Conclusions and recommendations

22. There has been **no progress achieved with regard to the provision of an adequate legislative framework** that enables the protection of Article 10 and 11 and full and effective implementation of *Işıkırık* Group cases. What is more, the **legislative framework has become more arbitrary and punitive**.
23. Recent legal amendments do not meet the Committee of Ministers' requirement of fully aligning with the Court's case law in terms of foreseeability and necessity in a democratic society standards. Recent amendments change nothing to the enjoyment of the right to assembly and freedom of expression. In fact, they become even more unforeseeable and more significantly, arbitrary and selective.
24. The executive practice confirms the arbitrary use of Articles 220 § 6 and 220 § 7 of TCC, alongside punitive use.
25. The *Işıkırık* Group cases should remain under enhanced procedure and given the close connection between assembly and expression as foundational pillars of a democratic society, the Committee of Ministers should review the *Işıkırık* Group in frequent and regular intervals as the legislative and executive general measures.
26. The Committee of Ministers should raise concern with regard to not only the lack of progress in fully aligning the Articles 220 § 6 and 220 § 7 of TCC with Convention standards, but also the introduction of retrogressive measures.
27. Finally, the Committee of Ministers should ask the government to provide detailed statistical data (not just percentages) involving Articles 220 §, 220 § 7, 314 § 1 and 314 § 2 of the TCC with regards to criminal investigations, criminal prosecutions and the outcome of such prosecutions (guilty, not guilty, suspended sentences) as well as detailed information about the length of criminal sentences.

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İfade Özgürlüğü Derneği (İFÖD) has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.

Ankara, 28 January 2020

THE TURKISH GOVERNMENT'SSUBMISSION

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 inthe 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 ofthe 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 definedin 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 inthe 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 28and 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 Lawno. 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 § 7regulates 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 liketo 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. Theauthorities 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 individualapplication to the Constitutional Court should be considered as an effective remedyin 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 areenlarging 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.