

## 1369<sup>th</sup> meeting, 3-5 March 2020 (DH)

### H46-33 Öner and Türk group (Application No. 51962/12), Nedim Şener group (Application No. 38270/11) and Altuğ Taner Akçam group (Application No. 27520/07) v. Turkey

Supervision of the execution of the European Court's judgments

Reference document

CM/Notes/1369/H46-33

#### *Decisions*

##### The Deputies

1. recalling that these groups of cases concern unjustified and disproportionate interferences with the applicants' freedom of expression on account of: criminal proceedings initiated under various articles of the Criminal Code and Anti-Terrorism Law for having expressed opinions although these did not incite hatred or violence, and the consequent chilling effect on society as a whole; the pre-trial detention of journalists, in the absence of relevant and sufficient reasons; and prosecutions under Article 301 of the Criminal Code, which the Court found not to meet the "quality of law" requirement in view of its "unacceptably broad terms";
2. recalling further that the problem of the disproportionate use of the criminal law in Turkey to punish journalists and other persons who express critical or unpopular opinions has been pending before the Committee in relation to various judgments for over 20 years;

##### *As regards individual measures*

3. invited the authorities to provide information on the reopening of the proceedings in *Yiğın, Zengin and Çakır, Artun and others, Arslan and others, Dündar and Aydınkaya, Saygılı and Karataş, Bayar (24548/10), Sarıtaş and Geyik, Fatih Taş (No. 4), Bayar (55060/07), Yildirim, Kinik, Aktan, Uzan*; and on the erasure of the criminal records of the applicants in the *Demirtaş* and *Erkanlı* friendly settlement decisions containing undertakings by the government;
4. noted that no further individual measures are required in the *Düzel, Yüksel, Gül, Yıldız, Ayaydin, Polat and Tali, Varhan, Fatih Taş (No. 5), Surat, Çamyar (16899/07), Çamyar (42900/06), Özer, Kürkçü, Yurtsever, Ilknur and Birol* cases and decided, without prejudice to the continuing evaluation of the general measures, to close their examination by adopting Final Resolution CM/ResDH(2020)48;

*As regards general measures*

5. welcomed the continuing good practice of the higher courts, in particular the Constitutional Court, in applying the criminal law in accordance with Convention principles; the emerging practice of prosecutors of issuing indictments in a lower proportion of cases under certain of the provisions of the Criminal Code and the Anti-Terrorism Law which gave rise to the violations of Article 10 in these groups of cases; and the amendment of Article 7 § 2 of the Anti-Terrorism Law in October 2019 to clarify that expressions of thought that do not exceed the boundaries of reporting and those made for the purpose of criticism shall not engage criminal liability;

6. stressed however that from the information available it does not appear that the measures taken so far have been sufficient to remedy the problems revealed by these judgments and, in particular, that it appears that prosecutors and the lower courts continue to apply the criminal law without ensuring respect for freedom of expression;

7. requested, therefore, the authorities to provide detailed statistical information showing the total number of prosecutions and convictions for the offences at issue in these groups of cases and also, given the particular importance accorded to freedom of the press by the Court in its case-law, information on the number of journalists prosecuted, convicted and held in pre-trial and post-conviction detention, with details of the allegations involved;

8. noted with interest that the authorities intend to take further measures within the context of the Human Rights Action Plan; invited them to consider further legislative amendments; and urged them, in view of the Committee's previous decisions and the clear case-law of the Court, to revise Article 301 of the Criminal Code without further delay;

9. encouraged the authorities to continue with training and appraisal for judges and prosecutors on the application of the criminal law in compliance with the right to freedom of expression; invited them to reinforce these measures by sending a high-level political message to underline that freedom of expression is valued in Turkish society and that the criminal law should not be used in such a way as to restrict it;

10. decided to transfer the *Artun and Guvener* group of cases, concerning the offences of insulting public officials and insulting the President, to the enhanced procedure and invited the authorities to provide information on the individual and general measures envisaged for the execution of this group of cases;

11. in view of the quantity of judgments delivered by the European Court finding similar violations, the very long time that these issues have been pending before the Committee and the clear grounds for concern revealed by the available information concerning the present situation, instructed the Secretariat, in the absence of signs of concrete progress before then, to prepare a draft interim resolution for consideration by the Committee at its next examination of these groups of cases;

12. decided to resume its examination of these cases at their DH meeting in June 2021.