

Işıkırık Case Group (no. 41226/09) / Article 9.2 of Diyarbakır Bar Association regarding Turkey cases. is the notification.

LOGIN

1. 1) For the implementation of the decision of Diyarbakır Bar Association, Işıkırık v. Turkey (no. 41226/09) / Turkey, supervised by the Committee of Ministers, 9(2) of the “Statute of the Committee of Ministers on the supervision of the execution of decisions and the conditions of friendly settlement” regarding the legislative and judicial situation in Turkey. presents its observations and recommendations under Rule No.
2. 2) Bar Associations in Turkey were established within the scope of the Law No. 1136 on Advocacy and are a professional organization in the nature of a public institution, whose members are all lawyers. In addition to the duties imposed on them by the law as a professional organization, they are the institutional organization of lawyers as a part of the judicial system and contribute to the development of law. Bar associations, in Article 76 of the Law No. 1136, "to develop the profession of attorney, to ensure honesty and trust in the relations of the members of the profession with each other and with the business owners, to defend and protect the professional order, morality, dignity, rule of law, human rights, and to meet the common needs of lawyers. It is defined as a professional organization in the nature of a public institution that carries out all the works for the purpose, has a legal personality and continues its activities according to democratic principles. Article 95 of the same Law states that the Board of Directors of the Bar Association is responsible for 'defending and protecting the rule of law and human rights and making these concepts work'.
- 3) Diyarbakır Bar Association is a bar that continues its monitoring and reporting activities in the field with the centers it has established for legal support due to the fact that it is in a region where violations of rights are very intense. Diyarbakır Bar Association was established in 1927. The number of lawyers registered with the Bar Association is 2100, and it is in the 12th rank in terms of the number of lawyers registered in Turkey.
- 4) Diyarbakır Bar Association conducts research on legal problems and rights violations faced by individuals and groups of individuals due to national or international authorities, aims to develop "human rights and freedoms", uses all national and international legal remedies in the most effective way, and acts against all kinds of discrimination and rights. It is an independent non-governmental non-governmental organization that fights against human rights violations, documents and reports violations of rights, and advocates in national and international mechanisms.

Background

1. 1. The Turkish authorities will ensure that the general measures are fully and fully harmonized with the case-law of the European Court of Human Rights on freedom of expression and freedom of association, through changes in legislation (Articles 220/6 and 220/7 of the Turkish Penal Code) and judicial practice. must be implemented effectively.

2. 2. Işıkırık case group contains four judgments regarding the violation of the applicants' right to freedom of peaceful assembly and/or freedom of expression. In the cases of Işıkırık, Bakır and Others (no. 46713/10) and İmret (2) (no. 57316/10), the applicants became members of an illegal organization within the framework of Articles 220/6 or 220/7 and 314 of the Criminal Code due to their participation in peaceful demonstrations. It concerns the violation of the right to freedom of assembly because they were convicted of the crime (Article 11). In the case of Daş (no. 36909/07), the applicant was convicted of being a member of an illegal organization pursuant to Articles 220/7 and 314 of the Criminal Code as a result of the seizure of draft petitions regarding the prison conditions in which Öcalan was held during a search in an association building. It concerns the violation of freedom of speech (Article 10). In these four cases, the ECHR determined that Articles 220/6 and 220/7 of the Turkish Penal Code were not “predictable”, considering that they were interpreted too broadly by the Turkish courts and decided that the interferences were not prescribed by law.

3. 3. Işıkırık case group underlines the structural problems related to the inability to fully and effectively exercise the freedoms of assembly and expression due to the very broad and unpredictable interpretation and application of penal provisions. The common feature of these cases is the failure of the authorities to show a certain tolerance towards peaceful meetings and critical expression.

4. 4. While deciding that paragraphs 6 and 7 of Article 220 of the TPC are unpredictable, it should be taken into account that the provision is still in force, although there are partial changes. The Court recalled that “the purpose of its decisions is in fact not only to conclude cases brought before the Court but, more generally, to clarify, protect and improve the rules laid down by the Convention, thereby contributing to the observance of the obligations undertaken by States as Contracting Parties” (see Işıkırık, § 65).). The Court referred to the text of the relevant provisions and noted that Articles 220/6 and 220/7 of the Criminal Code had been formulated without definition of the terms contained therein, and further that the domestic courts had failed to provide a consistent interpretation of the application of those provisions. Thus, the ECHR found that the existing text and interpretation of the relevant provisions were unpredictable.

5. 5. 220/6 and 220/7 of the TCK. There is still a risk of long prison sentences under Articles of Association. The current state of the 6th paragraph is as follows: “Anyone who commits a crime on behalf of the organization without being a member of the organization is also punished for being a member of the organization. The penalty to be imposed for the crime of being a member of the organization can be reduced to half. (Additional sentence: 11/4/2013-6459/11 art.) The provision of this paragraph applies only to armed organizations.” In the 7th paragraph, “A person who knowingly and willingly helps the organization, although he is not included in the hierarchical structure within the organization, is punished as a member of the organization. The penalty to be imposed due to membership of the organization can be reduced to one third, depending on the quality of the aid provided. contains the provision. These provisions are implemented in conjunction with Article 314 of the TPC and Article 5 of the Anti-Terror Law (Law No. 3713). In this case, there is a strong possibility that a person will be sentenced to up to 15 years in prison. Namely; According to Article 314 of the TCK, those who are members of an armed organization are sentenced to imprisonment from five to 10 years. According to Article 5 of Law No. 3713, if the organization is a terrorist organization, this penalty can be increased up to half of the original sentence. Therefore, 220/6 and 220/7 of the TPC to a person. A prison sentence of up to 15 years may be imposed for the offenses envisaged in its articles. Journalists, opposition politicians, civil society activists and human rights defenders are detained, arrested and sentenced to long prison terms for systematically accused of aiding and abetting.

6. 6. The right to participate in peaceful demonstrations is related to a violation of the right to freedom of assembly, as they have been convicted of membership of an illegal organization under Articles 220/6 or 220/7 and 314 of the Penal Code. In the Işıklı decision, the court underlines the structural problems related to the inability to fully and effectively exercise the freedoms of assembly and expression due to the very broad and unpredictable interpretation and application of penal provisions.

7. 7. As stated in the Venice Commission's Report dated 15/3/2016 and numbered 831/2015, evaluations were made on the articles 216, 299, 301 and 314 of the Turkish Penal Code. "It has been emphasized that it may fall within the scope of paragraph (6) of Article 220 of the Law No. 5237 (§ 117). As a result, even if he is not a member of the organization mentioned in paragraph (6) of Article 220 of Law No. 5237 in the Report, "He is also punished for the crime of membership in a terrorist organization." repeal of the sentence".

8. 8. In the application of Hamit Yakut (B. No: 2014/6548) on 10/6/2021 by the General Assembly of the Constitutional Court, it was decided that the right to hold meetings and demonstrations, which is guaranteed in Article 34 of the Constitution, was violated, and the pilot decision was implemented. A notification was made to the TGNA in order to eliminate the consequences of the violation arising from the structural problem.

9. Within the scope of the pilot decision taken by the General Assembly of the Constitutional Court, Article 220/6 of the TPC. It has been concluded that the implementation of the article is contrary to the principle of predictability, that it does not provide a measure of protection against its arbitrary comprehensive application by public authorities, and that there is no legal protection against arbitrary interference with the right protected by article 34 of the 1982 Constitution and article 11 of the ECHR.

10. 220/6 and 220/7 of the Criminal Code, which is the root cause of the problem. clauses need to be completely revised in accordance with Convention standards and Court case-law.

11. The pilot violation decision of the Constitutional Court and the constitutional law 220/6 to the Turkish Grand National Assembly, the legislative body, within 1 year. Although it states that there will be a legal amendment regarding the article, there is no initiative in this sense yet. In the meantime, the ongoing trials that are the subject of violations of rights, their detention and the finalized convictions continue to be executed.

12. The Constitutional Court, in its various decisions, determined the violation of the freedom of expression and the freedom of peaceful assembly and association. However, the Constitutional Court did not examine the requirement of predictability and therefore this approach of the Court leads to the continuation of violations with the interpretation of the domestic courts.

CONCLUSION AND RECOMMENDATIONS

9. 9. No progress has been made in providing an adequate legal framework that allows the protection of Articles 10 and 11 and the full and effective implementation of Işıklı Group cases. Moreover, the legal framework has become more arbitrary and punitive.

10. 10. Legal amendments do not meet the requirement to fully comply with the Court's case-law in terms of standards of predictability and necessity in a democratic society. Recent changes have not changed anything in the enjoyment of the right of assembly and freedom of expression. In fact, they have become even more unpredictable and, more importantly, arbitrary and selective.

11. 11. Işıklı cases Group should remain under qualified monitoring and, taking into account the close link between freedoms of assembly and expression as essential elements of a democratic society, the Committee of Ministers should review the Işıklı Group more frequently and regularly in terms of general legislative measures.

12. 12. Committee of Ministers, only 220/6 and 220/7 of the TCK. It should express not only the lack of progress towards the full compliance of the provisions of the Convention with Convention standards, but also the concern that retroactive measures have been taken.

13. 13. Finally, the Committee of Ministers from the government, 220/6, 220/7, 314/1 and 314/2 of the TCK. should provide detailed statistical data (not only percentages) on investigations, prosecutions and decisions (conviction, acquittal, adjournment) related to the articles of association and to give detailed information on the duration of the prison sentences given.

**President Of The Diyarbakir Bar Association
Lawyer Nahit EREN**