

## Summary of Points

### **EIN briefing to the Committee of Ministers on 21<sup>st</sup> February 2020**

The following recommendations were presented at the briefing by:

- 1) Dr Kerem Altıparmak, Freedom of Expression Association, with regard to the Turkish cases
- 2) Adriana Lamačková, Senior Legal Consultant for Europe, Centre for Reproductive Rights, and Kamila Ferenc from the Federation for Women and Family Planning, on the Polish cases
- 3) George Stafford, EIN Co-Director, on behalf of Ecaterina-Georgiana Gheorghe, Executive Director, APADOR-CH, on the Romanian cases

#### **Öner and Türk group of cases v Turkey (51962/12) Nedim Şener group v Turkey (38270/11) and Altuğ Taner Akçam group v Turkey (27520/07)**

Unjustified interferences with freedom of expression, in particular through criminal proceedings, and the consequent chilling effect.

- The Government **should be asked to provide detailed data** about the implementation of relevant provisions of the Criminal Code and Anti-Terror Law. As the government arbitrarily changes the methodology of collecting statistics in each and every action plan, it becomes impossible to detect the real effect of measures. It should also be noted that **the Ministry of Justice stopped publishing detailed statistics involving speech related crimes** in this submission through its Judicial Statistics since 2017. It is considered, therefore, that the Committee of Ministers **should request regular updates and detailed data** on the judicial practice of freedom of expression based investigations, prosecutions and convictions.
- The **government should also be asked to provide examples** where persons have been convicted under the relevant provisions. The government provides some examples of best practice whilst in thousands of other examples peaceful expression of ideas are sanctioned. Without a comparative analysis, examples of best practice could be misleading.
- The same observation can be made about the jurisprudence of the Constitutional Court. As noted, the Constitutional Court, in majority of the cases concerning journalists, has not found violation. A **comprehensive analysis of these cases is necessary** to decide whether the Constitutional Court can provide remedy in those cases.
- The Öner and Türk; Şener and Akçam group of cases **should remain under enhanced procedure** and given the close connection between freedom of expression and media as foundational pillars of a democratic society, the Committee of Ministers should review the Öner and Türk; Şener and Akçam group of cases in frequent and regular intervals concerning the legislative general measures.
- The Committee of Ministers should also carefully examine the introduction of retrogressive measures under Judicial Reform.

[Rule 9.2. submission on these cases by IFÖD](#) (January 2020)

[Rule 9.2 on the Öner and Türk group of cases by Article 19 and Turkey Human Rights Litigation Support Project](#) (February 2020)

**Tysi c v Poland (5410/03), R.R. v Poland (27617/04) P. and S. v Poland (57375/08)**

Issues related to access lawful abortion in Poland.

We recommend that the Committee of Ministers continue its enhanced scrutiny of the Tysi c, R.R. and P. and S. judgments until effective access to lawful abortion is guaranteed for women and adolescents in Poland.

We recommend that the Committee of Ministers request the authorities to:

- Establish effective and timely procedure for women to challenge and resolve disagreements with and between doctors regarding their entitlement to legal abortion care and to exercise their rights in this regard. This mechanism must ensure: a decision within no more than 3 days; the right of judicial appeal; the issuance of enforceable orders mandating a particular health care facility or medical provider to provide the care sought.
- Adopt effective measures to ensure that conscience-based refusals by medical professionals do not undermine or delay women’s access to legal abortion services or prenatal testing. This should include enacting legally binding measures requiring medical professionals to timely refer women who are refused abortion services on grounds of conscience or religion to alternative health care professionals willing and able to perform the abortion; establishing effective oversight and monitoring mechanisms; and ensuring an adequate number and dispersal of medical providers willing and able to perform abortions throughout the country.
- Strengthen enforcement procedures and measures, including by ensuring appropriate sanctions and disciplinary actions against health facilities and professionals for any failures to comply with obligations to provide legal reproductive health services and information.
- Effectively monitor compliance by all health care facilities with their contractual obligations to the National Health Fund and actively enforce these contracts, including by sanctioning breaches by health care institutions and medical providers.
- Adopt effective measures to guarantee women access to reliable information on the conditions and effective procedures for their access to legal abortion care, such as guidelines to all medical facilities and professionals providing reproductive health care.
- Adopt effective measures to ensure that full and reliable information is provided to women and adolescent girls enabling them to take informed decisions about their pregnancy.
- Adopt effective measures to enhance protection of patient data confidentiality.
- Introduce targeted measures to ensure that the needs of adolescents who are seeking legal abortion services are met and that they are treated with respect and due consideration for their vulnerability.

[Rule 9.2 submission by the Centre for Reproductive Rights and Federation for Women and Family Planning](#) (January 2020)

[Rule 9.4 submission by the Commissioner for Human Rights](#) (January 2020)

[Rule 9.2 submission by the Helsinki Foundation for Human Rights](#) (February 2020)

**I ıkırık v Turkey (41226/09)**

Unforeseeable conviction of membership of an illegal organisation for the mere fact of attending a public meeting and expressing views there

**Recommendations for legislative changes:**

- Repeal Article 220(6) and (7) of the Criminal Code in line with the findings of the Venice Commission.
- Article 314 of the Criminal Code must be amended and the sentence required must be decreased. As identified by the Venice Commission, the law needs stricter and clearer criterion stipulated within its text. This includes, but is not limited to, requirement of acts attributed to a defendant to show “in their continuity, diversity and intensity” their “organic relationship” to a prescribed organisation, acts must be “committed knowingly and wilfully within the “hierarchical structure” of the organisation.” The government should ensure a strict application of the criteria.

**Recommendations for policy measures:**

- The government must take all necessary measures to ensure the use of anti-terror legislation in full compliance with the protections provided under the Convention, particularly Articles 10 and 11.
- In light of the recommendations of the Venice Commission,<sup>23</sup> the government should commit to genuine judicial reform, taking concrete steps to restore the independence of the judiciary, including by reforming the method of appointment of the Committee of Judges and Prosecutors.
- In light of the recurring issue of failure to implement judgments of the ECtHR (e.g. in Osman Kavala and Selahattin Demirtas v. Turkey cases) which appears to be also resulted from the government’s approach to those cases, the government must take all necessary measures for the effective implementation of the ECtHR judgments.

[Rule 9.2. by IFÖD on the Isikirik group v Turkey](#) (January 2020)

[Rule 9.2 on the Isikirik group v Turkey by Article 19 and Turkey Human Rights Litigation Support Project](#) (February 2020)

<b>Rezmives and others and Bragadireanu group v Romania (61467/12+ and 22088/04)</b>
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Overcrowding and poor conditions of detention in police detention facilities

We recommend that the Committee of Ministers to:

- request the Romanian authorities to:
  1. Accelerate the construction of 2000 prison places;
  2. Relocate police and pre-trial detention centres away from basements;
  3. Publicise the new draft Action Plan;
  4. Engage with civil society.
- issue an Interim Resolution, noting the lack of a new Action Plan.

[Rule 9.2 on these cases by APADOR-CH](#) (October 2019)