National Security and the Freedom of Expression: An Analysis of the Turkish Cases Brought Before the European Court of Human Rights

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Abstract: The problem concerning the restriction of the freedom of expression is one of the most debated subject of the human rights law. According to the European Convention on Human Rights, the restrictions may only be imposed for one of the legitimate aims set out in paragraph 2, article 10. Among these legitimate aims, one deserves special attention for Turkey: the protection of national security. Since in almost all the cases against Turkey concerning the application of article 10, the exercise of the freedom of expression has been restricted for the protection of national security, public order or territorial integrity, it is important to analyze the jurisprudence of the European Court of Human Rights. In doing so, it is crucial not to limit the analysis with the cases concerning Turkey but to expand it to similar cases concerning other Contracting States. This analysis can provide us with a better understanding of the application of the Court's principles related to freedom of expression to different States.

I. Introduction

"Freedom of expression which constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment is subject to certain restrictions as set forth in paragraph 2 of article 10 of the European Convention on Human Rights" (Sürek no: 1 v. Turkey, Judgement, 26682/95, par. 58). The restrictions imposed on the freedom of expression in order to protect national security can sometimes be challenging. To determine the limits of the margin of appreciation of Contracting States in matters related to the national security is not always an easy

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task. The State's right to fight terrorism cannot be denied or neglected but, on the other hand, the exercise of freedoms, in our case, the freedom of expression, must be observed carefully. The challenge is to find a fine balance between these two. This is especially an important issue for Turkey. Turkey who suffered from the terrorist activities of the PKK (Kurdistan Workers Party) mainly in the Southeastern provinces of the country had to take critical measures for the protection of human rights which also included restrictions over the exercise of the freedom of expression.

Applications related to the violations of the freedom of expression in Turkey are often brought before the European Court of Human Rights. In July 1999 alone, the Court rendered 13 judgements against Turkey and concluded that Turkey violated the article 10 of the Convention in 11 of these 13 judgements[1].

The applications against Turkey are always caused by the implementations of the articles 6 and 8 of the anti-terror law and the article 312 of the Turkish Criminal Code.

This article attempts to analyse at first place, the case law of the European Court of Human Rights related to the freedom of expression in Turkey and the relevant domestic law (as it was by the time of the applications) and secondly, to take a brief look at the recent changes made in the Turkish Constitution, Turkish Criminal Code and Turkish Prevention of Terrorism Act.

II. Turkish Prevention of Terrorism Act (Anti-terror Law):

Turkish Prevention of Terrorism Act has entered into force in 1991 following the abolishment of articles 141, 142, 143 and 163 of the Turkish Criminal Code. The abolished articles were mainly about the prohibition of communist and fundamentalist propaganda. As the abolished articles had been largely criticized in the Turkish doctrine, this was seen as a positive step for the exercise of the freedom of expression. However, by the implementation of the anti-terror law, similar problems began to emerge: vagueness of the definition of terrorism, inequality of sanctions for different authors, absolute character of the ban for the separatist propaganda etc.

Let us, now, move on to analyse the articles 6 and 8 of the anti-terror law which seem to be the most problematic features of the domestic legislation.

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[1] Decisions of violation: Sürek & Özdemir 23927 & 24277/94, Sürek no: 2 24122/94, Sürek no: 4 24762/94, Polat 23500/94, Erdoğdu & İnce 25067/94 & 25068/94, Gerger 24919/94, Okçuoğlu 24246/94, Başkaya & Okçuoğlu 23536/94 & 24408/94, Karataş 23168/94, Arslan 23462/94, Ceylan 23556/94; Decisions of non-violation: Sürek no:1 26682/95, Sürek no:3 24735/94

A. The act of revealing the identity of officers mandated to fight terrorism:

Paragraph 1 of the article 6 of the Turkish Prevention of Terrorism Act reads as follows: "It shall be an offence, punishable by a fine of from five million to ten million Turkish liras, to announce, orally or in the form of a publication, that terrorist organisations will commit an offence against a specific person, whether or not that person's ... identity is divulged, provided that it is done in such a manner that he or she may be identified, or to reveal the identity of civil servants who have participated in anti-terrorist operations or to designate any person as a target." One of the most striking case concerning this article is Sürek no:2. Mr. Sürek, the major shareholder of the magazine called Haberde Yorumda Gerçek, has been convicted many times because of the articles published in his magazine. In Sürek no:2 case, he was condemned for having published: 1- an interview made with Leyla Zana in which she had revealed a dialogue realized between Orhan Doğan, Colonel İsmet Yediyıldız and herself during which she declared that the Colonel told them "your death would give us pleasure; your blood would not quench my thirst" and 2-a news report on a press conference by two former MPs and a British human rights delegation during which they declared that the prefect of Şırnak told them that the chief of the gendarmerie had ordered to open fire on public.

Concerning the case of Sürek no.2, the Commission and the Court took different views in evaluating the alleged words of the Colonel. Deciding that no violation of article 10 had occurred, the Commission stated that the disclosure of the identities of the officials concerned had made them possible targets of terrorist attack and that the incriminated news report, which, in itself, might have contained information of public interest, could well have been published without disclosure of the identities of the two officials concerned (Sürek no:2 v. Turkey, Report, 13 January 1998, par.50).

However, the Court adopted a different point of view. Assuming that the assertions were true, the Court concluded, in view of the seriousness of the misconduct in question, that the public had a legitimate interest in knowing not only the nature of the conduct but also the identity of the officers (Sürek no:2 v. Turkey, Judgement, par.39). The Court added that the identities of the officers in question were already known in the region.

With this decision, the Court makes clear the fact that public has the right to know the misconduct of the officers and their identities. According to the Court the public's right to know the truth about the officers weighs greater than the protection of the "misbehaving" officers from terrorist attacks. On the other hand, the Court underlines the fact that the

identity of the officer in question is already known. It should be noted, however that to publicise the identity of the officer is one thing but to label the officer as a person who has serious hostile feeling towards a party of the population is another. Therefore, the reasoning in the decision of non-violation of the Commission seems to strike a better balance between public's right to know and the right of the officer to be protected from terrorist attacks.

B. The publication of the declarations of terrorist organisations:

Paragraph 2 of the article 6 of the anti-terror law prohibits the publication of declarations made by terrorist organisations. This is an absolute prohibition; according to the law the content of the declaration has no importance. In the eyes of the legislators, there is no difference between a declaration inciting to violence and a comment on the political situation of the country.. According to the Court of Cassation, even if the publisher openly disagrees with the content of the declaration article 6 is still applicable (Court of Cassation, Grand Chamber of Criminal Affaires, 20.9.1993, 9-157/190). Therefore, specific intention of the publisher is not required for the constitution of the crime.

The subject was brought before the Strasburg organs in Sürek and Özdemir application. The major shareholder and the responsible editor of a weekly review were condemned for having published an interview made with a leader of the PKK and a joint declaration of four socialist organisations.

In deciding that Turkey had violated article 10, the Commission did not consider the interview in itself sufficient to justify the interferences with the applicant's freedom of expression. What is essential to the Commission is whether the contents of the interview constituted an encouragement of violence (Sürek & Özdemir, par.69). Considering the fact that the interview was made with the second leader in command of the PKK, the dissenting members regarded the following expressions as an incitement to violence: "Our combat reached a certain level. Tactics have to be developed which match that level, because it is a mistake to wage war with less developed tactics…This war will continue as long as the Turkish State refuses the will of the people of Kurdistan. There will be not one single step backwards. The war will go on until there is only one single individual left on our side".

The Court also shares the view of the majority of the Commission and moves one step further by defining the PKK as the driving force behind the opposition. It can even be argued that the Court finds this kind of interviews useful since they allow the public both to have an insight into the psychology of those who are the driving force behind the opposition to official policy in south-east Turkey and to assess the stakes involved in the conflict.

The Court takes a somewhat dangerous position in defining the PKK fighters as the driving forces behind the opposition. It should be remembered that in Zana case the Court had clearly defined the PKK as a terrorist organisation (Zana v. Turkey, Judgement, 69/1996/688/880, 25 November 1997, par.58).

Can a terrorist organisation be an actor of a State's political life? That is an ambiguous question to answer.

The main conclusion, which can be drawn from this case, is that article 6/2 of the anti-terror law is neither necessary nor acceptable in a democratic society. The absolute ban on the publication of the declarations of terrorist organisations is found unacceptable for both the Commission and the Court. This kind of publication can only be banned if it incites to violence. What is more, leaders or members of the terrorist organisations can make statements on political problems. It should also be legitimate to make interviews with leaders of these organisations. On the other hand, it can be argued that this line of reasoning fails to take the concern over the impact of these publications into account. The same ideas, which do not make any influence on the public when pronounced by ordinary people, can be very harmful when certain people pronounce them. In this point, it is hard not to share the view of the minority in Sürek and Özdemir case. It is also difficult to understand the distinction made by the Court between audiovisual and written media.

In this context, three other similar cases must be analysed. The first one is the Purcell case against Ireland (Purcell et al., 16 April 1991, app. no. 15404/89).In Purcell case, the applicants had complained about the ban on interviews with the members of a lawful political party, Sinn Fein, which was regarded as acting as the political wing of IRA.

The second case, Brind against the UK, consists of a notice issued by the Secretary of State for the Home Department banning the direct appearances of the representatives of para-military organizations and their political wings (Brind and Others, 9 May 1l994, app.no.18714/91). In deciding the inadmissibility of both applications, the Commission stated that the restrictions were designed to deny representatives of known terrorist organisations and their political supporters a possibility of using the broadcast media as a platform for advocating their cause, encouraging support for their organisation and convening the impression of their legitimacy. Thus, by taking into account the widespread terrorism in Northern Ireland and the terrorist's desire to gain access to media to publicise their cause the Commission concluded that the ban was proportionate to the ends to be achieved, namely the protection of national security and the prevention of crime.

In the third case (Hogefeld v. Germany), the applicant was a former member of the Red

Army Fraction (RAF), a left-wing extremist terrorist organisation, who had been arrested and taken in detention on remand (Hogefeld, 20 January 2000, app. no.35402/97).

The case consisted of the applicant's claim that the refusal of the Frankfurt Court of Appeal to grant her a permission to give a journalist an interview in prison infringed her right to freedom of expression. While admitting that the applicant's statements on RAF during the trial alone do not necessarily have to be understood as a promotion of terrorist activities, the Court analysed the situation in the light of the applicant's personal history and decided that in these circumstances the words of the applicant could possibly be understood as an appeal to continue the activities of the RAF. Therefore, the Court followed the reasoning of the domestic court, which mainly relied on the declarations made by the applicant in the course of the trial and concluded that the application was inadmissible.

There are some conclusions to be drawn from these cases:

Until the Hogefeld case, the Court was making a clear distinction between electronic media and printed word regarding to the immediacy of their impact. This was one of the reasons behind the decisions of violation in many applications against Turkey. But this argument is not really convincing. How to explain the decision of violation in Sürek and Özdemir case where the expressions such as "our combat reached a certain level…. Tactics have to be developed which match that level, because it is a mistake to wage war with less developed tactics. Progress can be achieved in the war by using tactics in keeping with the level of warfare which has now been reached. That is why an action of that nature was planned. The idea was to attack in the morning and hold our ground, continuing the clashes throughout the day – and it was successful in the end" (Sürek&Özdemir, par.10).

Were published in a weekly magazine and the decision of inadmissibility in Purcell case where even broadcast of interviews with certain lawful organisations is banned? Can it be claimed that in Sürek and Özdemir case, the members of PKK were not using the press to publicise their cause? Can the difference be justified solely by the immediacy of impact of the means chosen? Hogefeld case is crucial on this point. It is either a clear sign that the Strasburg mechanism changed its jurisprudence regarding the impact of the written press or it is a further contradiction observed in the Turkish cases. It is noteworthy that in Hogefeld case the Court did not only examine the words of the applicant but also her personal history.

C. Separatist Propaganda:

One of the major concerns of the Turkish authorities is to ban all sorts of separatist propaganda. Article 8 of the anti-terror law introduces an absolute ban for such separatist propa-

ganda. The original version of the article 8, adopted in 1991, had set out "No one shall, by any means or with any intention or idea, make written and oral propaganda and hold assemblies, demonstrations or manifestations against the indivisible integrity of the State of the Turkish Republic, its territories and the nation." This article was amended in 1995 as follows: "No one shall make written or oral propaganda or hold assemblies, demonstrations against the indivisible integrity of the State of the Turkish Republic, its territories and the nation". Thus most of the applicants were condemned before the 1995 amendment. However, although welcoming it as an improvement, the Turkish doctrine did not find the amendment sufficient. Here again, the main problem lies on the absolute character of the ban. It is widely discussed that only the propaganda which is likely to incite to violence should be prohibited. The lack of direct reference to violence is critised as being a factor that put the scientific debate in danger (İbrahim Kaboğlu, Düşünce Özgürlüğü in İnsan Hakları, YKY, 2000, p. 117).

It is true that the margin of appreciation is very often exceeded in this field by the national authorities. The national courts tend to qualify almost any expression of idea that contravene with the official policies as separatist propaganda. A very good example of this is the use of the word "Kurdistan". A simple use of this word can lead to the author's condemnation. It is impossible to justify this ban in a democratic society.

Apart from the problem of making reference to the word "Kurdistan", the Commission and the Court make a detailed examination of the applications caused by the implementation of article 8 of the Anti-Terror Law. In Sürek no: 3 case, both the Commission and the Court found that the expressions such as "our struggle is a foreign war against the forces of the Turkish Republic" and "we want to wage a total liberation struggle" were capable of creating the impression among readers that the author of the commentary was encouraging, or even calling for, a continued armed action against the Turkish State and were thus supporting violence for separatist purposes (Sürek no: 3, par. 48).

In Başkaya & Okçuoğlu case the author, a professor of economics, was condemned for having published a book called "Westernisation, Modernisation, Development, Collapse of a Paradigm / An Introduction to the Critique of the Official Ideology". The book contained a critical analysis of the Kurdish problem in Turkey. Noting that the statements in question were featured in an academic study on the socio-economic evolution of Turkey from a historical perspective and showed the prevailing political ideology in the country, the Court decided that the views expressed in the book could not be said to incite to violence; nor could they be construed as liable to incite to violence (Başkaya&Okçuoğlu, par.64).

In cases related to the article 8 of the anti-terror law the Court also takes into account the severity of the penalties imposed on the applicants (Polat, par.48). The applicants were usually condemned to two years of imprisonment.

III. Turkish Criminal Code

A. Incitement to disobey the law:

Paragraph 1 of the article 312 of Turkish Penal Code states: "It shall be an offence, punishable by six months' to two years' imprisonment and a 'heavy' fine of 6,000 to 30,000 liras publicly to praise or defend an act punishable by law as a serious crime or to urge the people to disobey the law." For the legislator, the act of praising is sufficient for the constitution of the crime, in other words, whether the act of praising puts the public safety in danger or not is not an element in the constitution of the crime. This point is highly argued by the Turkish doctrine as it dangerously restricts the freedom of expression.

The first and only judgement of the Court on paragraph 1 of the article 312 is the well-known Zana case. The former mayor of Diyarbakır stated in an interview: "I support the PKK national liberation movement; on the other hand I am not in favour of massacres. Anyone can make mistakes and the PKK kill women and children by mistakes". Considering that the interview had been given by an important public figure and was published in a major daily newspaper in a time of extreme tension, the Court concluded that there was no violation of the article 10.

It should be underlined that the Strasburg organs gives a special importance to the author. The place he occupies in society has a significant role on the potential impact of his ideas. It is considered normal for politicians to express views on the political situation of the country as well as her problems, the causes of these problems and their solutions. They also enjoy large limits of criticism. But they are also expected to be careful for not using the kind of language that can be interpreted as inciting to violence. The best example is to be found in Zana case where taking into account the fact that the speech had been made by the then mayor of a Southeastern City Diyarbakır , a man who had a considerable influence in the region, the Court decided that Turkey did not violate the article 10.

B. Incitement to hatred:

The second paragraph of the article 312 forbids the incitement of people to hatred and hostility on the grounds of a distinction between social classes, races, religions, denominations

and regions. This paragraph can be discussed from two different points of view. The first is to compare this paragraph with similar provisions in international law. We see that similar regulations exist in other countries, especially in Western European countries (Austrian Criminal Code, article 283; French Press Code, article 24).

It can also be said that paragraph 2 of the article 312 is compatible with the article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination which imposes on the Contracting States the obligation of adopting measures designed to eradicate all propaganda which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin.

The second approach is to discuss the compatibility of this paragraph with the principles of the democratic society. In a democratic society where the freedom of expression is a fundamental element (a corner stone, if we use the Court's wording) it can be claimed that in order to constitute the crime the incitement must put the public safety in danger.

The first case related to the paragraph 2 of the article 312 is Incal judgement (Incal v. Turkey, Judgement, 41/1997/825/1031, 9 June 1998). The executive committee of the İzmir section of the People's Party (HEP) decided to distribute leaflets in İzmir criticising the policy of local authorities and calling all democratic patriots to constitute neighbourhood committees to oppose this policy. For this purpose, the president of the HEP informed the İzmir prefecture of the executive committee's decision and asked for permission to implement it. Considering that the leaflet contained separatist propaganda capable of inciting the people to resist the government and commit criminal offences, at the request of the public prosecutor's office, a substitute judge of the National Security Court issued an injunction ordering the seizure of the leaflets and prohibiting their distribution.

The police searched the HEP's premises in İzmir, first at the headquarters, where the party leaders handed over, without demur, nine thousand copies of the leaflet which were still parcelled up, and then at the Buca district office, where the thousand remaining copies were seized.

The Court stated that although the reference to "neighbourhood committees" appeared unclear, those appeals could not, however, if read in context, be taken as incitement to the use of violence, hostility or hatred among citizens. On the other hand, according to the Court the police authorities were in position of asking the executive committee of HEP to change the text. The Court, which decided that the article 10 was violated, seems to have missed an important point. As it is stated in the partly concurring opinion of Judge Gölcüklü, the leaflets were seized before distribution and the applicant was convicted on account of opinions, which were never disseminated (Incal, Partly Concurring Opinion of

Judge Gölcüklü, p.31). Therefore, the Court missed an opportunity to criticise the paragraph 5 of the article 28 of the Turkish Constitution which allows the constitution of a crime related to the freedom of expression even before the dissemination of ideas and makes an exception of the rule "the press crimes are constituted with publication".

In the second case, the applicant was condemned of having written an article which was published in a weekly newspaper under the title "now is the time to speak, tomorrow will be too late". The State Security Court evaluated the following expressions as an incitement to hatred and enmity based on race, class and religion: "a genocide is carried out against the Kurds in Turkey", "the outcry of the Kurdish people is being violently oppressed." The Commission and the Court were not convinced that State Security court's interpretation of the article was necessarily correct. According to them, the applicant expressed his ideas in relatively moderate terms, did not associate himself with the use of violence in any context and did not call upon people to resort to illegal action (Münir Ceylan against Turkey, Report, 11 December 1997, app.no.23556/94, par.45; Ceylan v. Turkey, Judgement, par.36).

Lastly, it must be mentioned that the European Court of Human Rights makes a distinction between different types of expressions. Karataş case against Turkey is a good example of this. In Karataş case, the applicant was condemned for having published a book of poetry in which he used expressions such as: "let the guns speak freely", "the whelps of the Ottoman whore"," the Turks are coming in the corridors of Parliament, in the galleries, in the garrisons, they are preparing genocide like those who know no bounds", "I invite you to freedom, to death in these mountains, in this sacred spring with death we march, freedom is blessed with death, I invite you to die; – time is wounded like the beat of a heart". In its judgement, the Court paid a special attention to the fact that the ideas were expressed through the medium of poetry. According to the Court, poetry is a form of expression with a very small audience who is capable of understanding the real meaning of the poems (Karataş, par.52).

When compared with the Court's reasoning in Müller case where the Court had stated that in Switzerland people who visited a modern art gallery could misinterpret some "obscene" paintings, the argument in Karataş case does not seem to be very convincing (Müller v. Switzerland, Judgement, 25/1986/123/174, 24 May 1998). Either the Court makes a distinction between modern art lovers and poetry readers in favour of the latter or the Turks are much sensible to the interpretation of poems than Swiss people are to modern art paintings.

IV. Recent changes in domestic law:

It is undeniable that Turkey still suffers from critics related to the violations of freedom of expression in the international arena. In order to overcome this problem, the National Assembly has been working on a series of amendments on the Constitution, as well as on the Turkish Prevention of Terrorism Act and Turkish Criminal Code. These amendments, prepared in parallel to the case law of the European Convention on Human Rights, can be summarised as follows:

1. Before the amendment, the article 13 of the Turkish Constitution was a general restriction clause for all freedoms guaranteed in the Constitution. With the amendment it became an article, which set forth the scope of the restrictions of freedoms. Now, according to the article 13, the restrictions cannot touch the hard core of the freedom and they cannot contradict with the needs of the order in a democratic society and secular republic and the principle of proportionality. Even before the amendment of the article 13, Constitutional Court applied the principle of proportionality. Nevertheless, it is an important step towards the protection of human rights to make the notion of proportionality a constitutional principle. The new article 13 is now compatible with the provisions of The European Convention which trace the scope of restrictions such as paragraphs 2 of the articles 8, 9, 10, 11.
2. Paragraph 3 of the article 26, which banned the use of a language forbidden by law in the exercise of freedom of expression and paragraph 2 of the article 28, which provided that "publication cannot be made in a language forbidden by law", have been abolished. This particularly interests the ban on publications in Kurdish language.
3. The legitimate aims for the restriction of the freedoms guaranteed in the Constitution, which formerly took place in article 13, have been transferred to the related articles. As a result of an omission, certainly not deliberate, "the protection of morals" does not take place in paragraph 2 of article 26 as a legitimate aim for the restriction of the freedom of expression. It is now possible to claim that certain articles of the Turkish Criminal Code-those, which prohibit the publication of obscene material-, do not find their base in the Constitution. Thus, their annulment can be required.
4. New article 8 of the anti-terror law provides that shall be punished to one up to three years of imprisonment and to a fine to one to three billions of Turkish Lira those who make written, oral or visual propaganda or hold assemblies, demonstrations with the aim of destroying the indivisible integrity of the State of the Turkish Republic, its

territories and the nation unless their act requires heavier fine. If the crime is committed in such a way to encourage the use of terrorist means the punishment is increased to one third and in case of recurrence the imprisonment cannot be diverted to fine.

Now the specific intention is required for the constitution of the crime. By adding "the aim of destroying the indivisible integrity…" to article 8 as a constitutive element of the crime the legislator tried to harmonise the article with the article 10. However, the lack of reference to "violence" in article 8 prevents it to be completely compatible with article 10. This problem can be overcome in practice by the national courts with the application of the standards of the European Court of Human Rights: clear and present danger for public safety.

5. New article 312 of the Turkish Criminal Code provides that "it shall be an offence, punishable by six months' to two years' imprisonment publicly to praise or defend an act punishable by law or to urge the people to disobey the law.

Shall be punished to imprisonment from one to three years those who incite people to hatred and hostility to each other on the grounds of a distinction between social classes, races, religions, denominations and regions in such a way to imperil the public safety.

Shall be punished according to the article 1 those who insult a part of the population in a way to degrade and harm the human dignity.

The punishment for the acts defined in the preceding paragraphs shall be doubled where they have been committed by the means enumerated in paragraph 2 of article 311[2].

In order to protect the freedom of expression in matters related to political debate, the legislator introduces the concept of "to put the public safety in danger" to the new article 312. In other words, according to the new article 312, the exercise of the freedom of expression cannot be interfered unless there is a clear and present danger for the public safety. The necessity of the danger for public safety for the construction of the crime is a positive step for the exercise of the freedom of expression. This approach, developed by the United States Supreme Court, has also been adopted by the European Court of Human Right's Judge Bonello. In his dissenting and concurring opinions, he consistently criticises the Court's reasoning and claims that the "clear and present danger" criteria should be applied to all Turkish cases related to the article 10[3]. With this amendment article 312 of the

[2] These means are: mass media, newspapers, magazines, audio tapes, records, films, leaflets, placard and posters.

[3] Sürek & Özdemir, p.41; Okçuoğlu, p.31; Karataş, p.33; Arslan, p.23; Ceylan, p.19; Sürek no 1, p.38; Sürek no 2, p.22; Sürek no 3, p.24; Sürek no 4, p.32; Polat, p.27; Erdoğdu 0 & İnce, p.28

Turkish Criminal Code became compatible with the article 10 of the European Convention on Human Rights. On the other hand, the paragraph 3 of the article 312 introduces a new kind of crime to the Criminal Code: The crime of insulting a party of the population. This new crime, which is similar to group libel in Anglo-Saxon law, differs from ordinary crime of insulting in two ways. First, it does not require the identification of the victim and second, the insult must be made in such a way to degrade and harm the human dignity in order to fall into the scope of paragraph 3.

V. Conclusion

The question whether these amendments will decrease the number of condemnations that Turkey receives before The European Court of Human Rights remains unknown. As it is seen before, the Court tends to restrict the margin of appreciation of Turkey in matters related to the protection of national security. Considering that paragraph 2 of the article 6 of the anti-terror law remained untouched, the same problems concerning this article are likely to arise before the European Court of Human Rights. As regard to article 8 of the anti-terror law and article 312 of the Turkish Criminal Code, their interpretations by the national courts will be crucial. The text of these articles will not contradict article 10 of the Convention if the national courts follow the criteria of the European Court of Human Rights concerning the exercise of the freedom of expression.

ÖZET: İnsan hakları hukukta en tartışmalı konulardan bir tanesi şüphesiz düşünceyi açıklama ve yayma özgürlüğünün sınırlandırılması sorunudur. Avrupa İnsan Hakları Sözleşmesi'nin 10. maddesinin 2. fıkrasında bu özgürlüğün hangi sebeplerle ve ne şekilde sınırlandırılabileceği düzenlenmiştir. Bu sınırlama sebeplerinden "milli güvenliğin korunması" Türkiye açısından özel bir önem taşımaktadır. Avrupa İnsan Hakları Mahkemesine Türkiye aleyhine yapılan başvuruların hemen hemen hepsini düşünceyi açıklama ve yayma özgürlüğünün milli güvenliğin, kamu düzeninin ve toprak bütünlüğünün korunması amacıyla yapılan sınırlandırılmalara ilişkin olaylar oluşturmaktadır. Bu sebeple ilgili Mahkemenin konuya ilişkin içtihatlarını dikkatli bir şekilde incelemek gerekmektedir. Bunu yaparken sadece Türkiye ile ilgili kararları değil, aynı zamanda diğer Sözleşmeci Devletler aleyhine yapılan benzer başvuruları incelemek de son derece faydalıdır. Böylelikle Mahkemenin düşünceyi açıklama ve yayma özgürlüğü konusunda ortaya koyduğu ilkeleri her Sözleşmeci Devlet için ne şekilde uyguladığı anlaşılabilir. Aynı şekilde, konuya ilişkin yeni yasal düzenlemelerin yapılması ve değerlendirilmesi açısından da açıklayıcı nitelik taşır.