

**Doc. 10875 rev (English only)**  
12 April 2006

## **Interference with freedom of expression in Turkey**

Written question No 478 to the Committee of Ministers

Reply from the Committee of Ministers  
adopted at the 961<sup>st</sup> meeting of the Ministers' Deputies (5 April 2006)

### **I. Written Question No. 478 by Mr Salles (Doc. 10735)**

Despite the progress made in terms of legislation and the entry into force of the new Criminal Code, freedom of expression and opinion continues to be obstructed in Turkey. This is incompatible with the commitments given by Turkey when it became a member of the Council of Europe and constitutes a grave violation of Article 10 of the European Convention on Human Rights. It is also incompatible with its status as a candidate for membership of the European Union.

There are currently a number of cases which give us cause for deep concern:

- legal proceedings have been brought against the writer Orhan Pamuk under Article 301 of the Turkish Criminal Code on the grounds that he "publicly insulted Turkish identity". The charges were brought after an interview he gave to the Swiss press in which he said that 30 000 Kurds and 1 million Armenians had been killed in Turkey. Despite the Turkish authorities' repeated assurances to the European institutions and in particular to the Council of Europe, anyone who openly asserts that there actually was an Armenian genocide is, in practice, liable to prosecution;
- the publisher Ragip Zarakolu has likewise been charged under Article 159/1 of the Criminal Code with "insulting the memory of Atatürk" by publishing books about the Armenian genocide. Ragip Zarakolu is well-known in Turkey for defending human and minority rights and has been taken to court several times as a result of his activities in these spheres.

Each of these cases has been strongly condemned by representatives of the European institutions; for example, in a statement dated 26 September 2005, Mr Terry Davis, Secretary General of the Council of Europe, spoke of "the shameful prosecution of one of the most renowned Turkish writers, Orhan Pamuk".

On the basis of these facts and considerations,

Mr Salles,

To ask the Committee of Ministers what steps it intends taking to ensure that Turkey fully respects the right to freedom of expression and opinion in Turkey.

## **II. Reply by the Committee of Ministers**

1. The Honourable Parliamentarian raises important questions relating to freedom of expression and information in Turkey. The Committee of Ministers is well aware of the concerns expressed by the international community on this matter after the entry into force of the new Turkish Criminal Code. It has noted the legal proceedings initiated against the Turkish novelist Orhan Pamuk, the publisher Ragip Zarakolu and other individuals with great concern.
2. The Committee of Ministers recalls that the freedom of expression and information is a fundamental right, enshrined in Article 10 of the European Convention on Human Rights. It expects the principles of the Convention, as interpreted by the European Court of Human Rights, to be strictly respected by all member states.
3. The Committee welcomes the decision taken by a Turkish court on 23 January 2006 to drop the charges against Mr Pamuk, while noting that charges have been brought against a number of other writers, journalists and publishers under Article 301 of the new Turkish Criminal Code and that many of these cases are still pending. It also notes that so far, no case of a similar nature has resulted in sentencing and hopes that this will continue. It underlines that, in accordance with the commitment undertaken by Turkey as a Party to the European Convention on Human Rights, this article and other provisions of the Code relating to freedom of expression and information must be interpreted and applied in line with the Convention.
4. From this perspective, the Committee of Ministers welcomes, in this specific situation, the guidelines issued by the Turkish Minister of Justice to the judiciary on 20 January 2006 and thus the wish to increase knowledge about the European Convention on Human Rights among members of the Turkish judiciary. It notes with satisfaction that the circular letter underlines that the aim of the recent reform of the Criminal Code is to protect the rights and freedoms of individuals and that the principle should be that "freedom is the rule and not prohibitions". The circular letter also underlines that: "According to the case law of the European Court of Human Rights, freedom of expression is part of the fundamental rights and freedoms, that, on one hand, constitutes one of the essential foundations of a democratic society and, on the other hand, one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society". Furthermore, in its operative parts, the circular letter requires, as regards proceedings relating to freedom of expression, that "these be carefully evaluated taking into account also the case law of the European Court of Human Rights in order to establish whether these do not fall within the limits of criticism".
5. The Committee of Ministers will follow attentively the implementation of these guidelines by the Turkish prosecutors and courts, notably in the context of its supervision of the execution of relevant Court judgments. It will ensure that the joint Council of Europe/European Commission training and assistance programme: "Turkey – Judicial Modernisation and Penal Reform" adequately addresses these issues. It remains available to provide its assistance, should the Turkish authorities decide to revise the Criminal Code.