

**DELEGATION OF TURKEY**

**2 October 2006**

**HUMAN DIMENSION IMPLEMENTATION MEETING  
(Warsaw, 2-13 October 2006)**

**Working Session 1: Fundamental Freedoms (Freedom of Expression)**

**RIGHT OF REPLY**

Mr. Moderator,

We have taken careful note of the remarks made by the US delegate and the Amnesty International representative on Turkey.

Those who follow Turkey closely should know better that Article 301 cases have either been dropped or ended with acquittal almost unexceptionally. The case-law that has been developing, since the New Penal Code entered into force in June 2005, in line with the international standards and the case-law of the European Court of Human Rights is a testimony to the ability of the Turkish judiciary to make distinction between insult and criticism.

A more detailed statement on this matter will be available in written form.

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As part of the comprehensive reform process aiming at strengthening democracy, promoting respect for human rights, and consolidating the rule of law in Turkey, the new Penal Code which was adopted in September 2004 and entered into force in June 2005 was formulated in light with Turkey's international obligations and commitments, the aspirations of the Turkish people and the opinions of the Council of Europe and EU experts.

The gradual development of a case-law which would provide guidance to courts in their interpretation of the provisions of the law is crucial and its merits would be judged on that basis.

The courts in their proceedings do take into account the case law of the European Court of Human Rights (ECtHR), particularly in cases related to freedom of expression. Among the several exemplary decisions, let me refer you to the handling by the court of the case brought against journalist Rahmi Yıldırım under Article 301. The court referred to the interpretation of the European Court of Human Rights that freedom of expression is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. The Court consequently decided to acquit Yıldırım of the charges brought against him.

Likewise, Article 301 cases have either been dropped or ended with acquittal almost unexceptionally.

Furthermore, Decisions of the first instance courts are open to appeal before the Court of Appeals or the Council of State, nationally, and the ECtHR, internationally. Turkey recognized the compulsory jurisdiction of the European Court in 1990.

It should be noted that provisions similar to Article 301 of the Turkish Penal Code are not unprecedented in established democracies. The Turkish judiciary continues to demonstrate its ability to make the distinction between insult and criticism in line with the standards prescribed by international human rights instruments and by the case-law of the ECtHR.

In January 2006, the Ministry of Justice issued guidelines (Circular no.99) regarding the interpretation to be given to the provisions of the Penal Code that give rise to concern. The guidelines highlighted freedom of expression as an essential element for a democratic society. Referring to the interpretation of Article 10 on freedom of expression of the European Convention on Human Rights (ECHR) by the Court, the guidelines underline that the aim of the recent reform of the Penal Code is to protect the rights and freedom of individuals and that the principle should be that "freedom is the rule, not prohibitions." Training programs for judges and prosecutors on the implementation of the new Penal Code is based on this approach.