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For the consideration of Türkiye

Security Studies and Rule of Law

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1. Introduction

1. Security Studies and Rule of Law appreciates **the Human Rights Committee** for its engagement with civil society organizations. We are pleased to present our reflections on Turkey, which will be examined in the upcoming session under the International Covenant on Civil and Political Rights .

2. Security Studies and Rule of Law is a non-governmental organization, founded by criminal justice professionals, based in Geneva, Switzerland in January 2023. Our association aims to defend democratic rights and freedoms, support practices that protect and preserve human rights and the rule of law, and investigate human rights violations, torture, genocide, and all kinds of illegalities and injustices, and make these violations public.

3. It will be presented that Turkey's insufficient and unpersuasive responses to the questions in the LOIPR (2021) will be critiqued with factual data in this submission.

2. Issues included in LOIPR (Arts. 6, 9, and 12 of ICCPR)

(Regarding Enforced Disappearances and Abductions)

In Para. 9 of the LOIPR (2021), Turkey was requested ;

4. (a) to provide information about reports that following the attempted coup in 2016 Turkish nationals who are considered opponents of the current regime have been abducted abroad by State agents, including the number of cases and the current whereabouts of all affected individuals;

5. (b) to respond to allegations of enforced disappearances in Turkey,

6. (c) to be informed regarding detailed the mechanisms in place for investigating alleged abductions and enforced disappearances and providing remedies and information about the whereabouts of individuals to their families, including in relation both to recent cases and to historical cases reported to have occurred in the 1980s and 1990s.

7. Following the 2016 coup attempt, the Turkish government arrested, detained, and investigated numerous individuals accused of being linked to the Gülen Movement under terrorism charges. During this process, the Turkish government employed illegal methods to carry out ***abduction*** operations targeting Gülen Movement members abroad. Domestically, cases of ***enforced disappearances*** involving individuals associated with the movement also emerged. President Erdoğan openly declared[1] in his public statements that Turkey had adopted a strategy of kidnapping and forcibly returning targeted individuals, which has been seen as an attempt to legitimize such actions.

8. When the Turkish government failed to secure the extradition of Turkish citizens allegedly connected to the Gülen Movement, it resorted to unlawful methods. These methods included abductions, forced deportations, and illegal renditions. During these operations, the targeted individuals faced arbitrary detention, house raids, torture, and mistreatment, with their access to lawyers and family members restricted. Additionally, their passports were arbitrarily revoked to facilitate their arrest and unlawful deportation.

9. To conduct such operations, the Turkish government relied on its intelligence agency, MIT, and diplomatic missions. MIT established a special unit for international operations and formed security cooperation agreements with the intelligence services of host countries. These agreements facilitated the abduction and forced repatriation of Turkish citizens abroad. Certain embassies also provided logistical support and planning for these forced renditions.

[1] TRT Haber, Hiçbir ülke FETÖ için güvenli sığınak değildir, September 19, 2016, at https://www.trthaber.com/haber/gundem/hicbir-ulke-feto-icin-guvenli-siginak-degildir-272161.html

10. These illegal actions took place in countries such as *Malaysia, Myanmar, Thailand, Pakistan, Sudan, Kazakhstan, Kosovo, Mongolia, Moldova, Azerbaijan, Ukraine, Gabon, Albania, Lebanon, Cambodia, Kenya, and Kyrgyzstan*. In some cases, the security and intelligence agencies of the host states were complicit in these unlawful operations.

Oversight Mechanisms

11. In response to paragraph 9 of the report by the Human Rights Committee dated August 25, 2021, under the section on enforced disappearances and abductions (*arts. 6, 9, and 12*), Turkey's state report in paragraphs 141-142 asserts that all actions by law enforcement were conducted in accordance with the procedures and principles outlined in the relevant laws, and that judicial authorities, along with national and international bodies, oversee all these actions. However, despite claiming such oversight, the report deliberately avoids mentioning what was discovered during these reviews or what warnings were issued, seemingly attempting to conceal the known reality.

- Reports from independent international organizations, such as Amnesty International (2016 Report),
- The United Nations Committee Against Torture (CAT) Reports (2016-2021),
- The UN Working Group on Enforced or Involuntary Disappearances (2016-2019),
- European Court of Human Rights (ECtHR) rulings,
- The 2020 UN Report on Enforced Disappearances and Allegations of Torture and Ill-Treatment (2021 European Parliament Report) have repeatedly found that Turkey violated the international conventions it is a party to concerning torture and enforced disappearances, and they have called for corrective action.

12. As will be elaborated below, national judicial and law enforcement bodies, particularly after 2016, failed to perform their core duties of investigating and overseeing operations involving abductions from abroad and forced returns to Turkey. Instead, they themselves became perpetrators of these crimes, subjecting their own citizens to inhumane treatment. Therefore, expecting Turkish judicial authorities and national bodies to carry out their oversight duties regarding enforced disappearances and abductions contradicts the natural course of events.

13. A concrete example of this is the local court decision of the Kayseri 2nd High Criminal Court, which, on September 12, 2024, refused to recognize the violation ruling of the Grand Chamber of the European Court of Human Rights in the case of *Yalçınkaya v. Turkey (15669/20) (a leading case)* and reissued the same conviction against the defendant, Yüksel Yalçınkaya.[2]

14. Similarly, there has been no news of Yusuf Bilge Tunç, who has been "***missing***" since August 6, 2019. Law enforcement and the prosecution failed to conduct an effective investigation, deliberately refraining from a proper inquiry into his disappearance, and ultimately, the family received a response to their petition to the prosecution stating that "***there is no ground for prosecution.***"

15. A national judiciary that disregards and fails to implement ECtHR rulings and impedes investigations into enforced disappearances and abductions, seemingly employing a policy of attrition towards applicants, cannot be expected to conduct proper oversight or handle these cases fairly and justly.

Statements Obtained Under Torture

16. In paragraph 143 of Turkey's state report, the claim that allegations of abductions are part of a strategy, suggesting that individuals hiding in so-called "safe houses" (referred to as "gaybubet houses") were instructed to act as though they had been abducted, is nothing more than an excuse to cover up the crimes of abduction and enforced disappearance.

17. Between February 7 and November 6, 2019, Gökhan Türkmen was abducted and tortured. During his court testimony on February 10, 2020, he recounted how, during his period of abduction and enforced

[2] https://www.indyturk.com/node/745040/haber/yerel-mahkeme-yal%C3%A7%C4%B1nkaya-davas%C4%B1nda-ai%CC%87hm-karar%C4%B1na-uymad%C4%B1-ayn%C4%B1-ceza-verildi

disappearance, he was forced under torture to sign a statement falsely claiming, "***I was not abducted, I was in hiding.***" This demonstrates that the Turkish state used this justification as part of a deliberate strategy. In an environment where torture is a reality in Turkey, people facing terrorism investigations and fearing torture are forced into hiding just to meet their basic needs. The state's attempt to conceal its abductions and enforced disappearances by coercing victims under torture into saying, "***I was not abducted, I was in hiding***" serves as another disturbing truth that must be recognized.

Withdrawing ECHR Applications

18. In paragraphs 144 and 145 of Turkey's response report, the state refers to applications such as *Irmak and Others v. Turkey* (Application No. 18036/19), *Zeybek and Others v. Turkey* (Application No. 21330/19), and *Kaya and Others v. Turkey* (Application No. 14443/19), which were submitted to the European Court of Human Rights (ECHR) but later withdrawn by the applicants, leading to the dismissal of the cases. Turkey's report attempts to create the impression that similar cases lack merit before the ECHR. However, the ECHR has not provided an official explanation regarding the reasons for the withdrawals. The Court typically does not detail the reasons behind such withdrawals, leaving it to the applicants' discretion, and such explanations rarely appear in court records.

19. When examining the broader context of enforced disappearances and abductions, there are numerous reasons why individuals might be deterred from submitting applications to the ECHR or, if they have already applied, be forced to withdraw them:

- Lack of Effective Investigation: From the moment the enforced disappearance is noticed by the family, authorities fail to conduct an effective investigation. Prosecutors and police often intentionally obstruct missing person reports, leading to the destruction or suppression of evidence that could be crucial for an effective ECHR application.
- Systematic Pressure and Threats: Law enforcement and prison authorities systematically threaten both the victims and their families. In many cases, victims are coerced into withdrawing their claims regarding abduction, enforced disappearance, and torture through intimidation, especially when visited by their captors or intelligence officials during detention.
- Restricted Legal Access: The victims' meetings with their families and lawyers in prison are often conducted under judicial supervision, in the presence of prison guards, and are recorded both audibly and visually. As a result, victims are unable to freely communicate and access adequate legal support, which often leads to despair and withdrawal from seeking legal recourse.
- Dismissal of Complaints: Victims who file criminal complaints about their abduction, enforced disappearance, torture, or threats from intelligence officers and prison personnel often see their cases dismissed by prosecutors without any investigation, leaving them with no recourse in domestic law.

20. A statement on the official website of Turkey's National Intelligence Organization (MIT) confirms the state's involvement in these operations, as it openly states: "***As a result of operations targeting fugitive FETO/PDY leaders and key figures, since 2016, 114 members of the organization from 28 countries have been brought to justice, and similar efforts continue in different regions.***"[3]

21. In conclusion, the international community, particularly the United Nations and the Council of Europe, must urge Turkey to comply with its international obligations and take necessary measures to prevent the recurrence of such illegal activities. Turkey must be held accountable for these operations, conduct effective investigations into all allegations, and disclose the findings of these investigations. International judicial and quasi-judicial mechanisms should continue to exert pressure on Turkey to ensure compliance with its human rights obligations.

[3] https://www.mit.gov.tr/duyuru_fetopdy-ile-mucadelede-teskilatimizin-rolu_34.html

3. Issues included in LOIPR (arts. 2, 7, 9, 10, 12 and 14 of ICCPR)

(Regarding Prohibition of torture and cruel, inhuman or degrading treatment or punishment)

22. **In Para. 10 of the LOIPR (2021),** Turkey was demanded more information related to the reports that incidents of torture and ill-treatment, including beatings, sleep deprivation, sexual abuse, foot whipping, being forced to strip naked, stress positions, and blindfolding and/or handcuffing for extended periods, were widespread in police lock ups and unofficial detention

In Para. 10 of the LOIPR, Turkey was asked to;

23. a) Respond to allegations of the systematic of the systemic use of torture and ill-treatment, including severe beatings, kicking, punching, verbal abuse, threats of sexual violence, sexual violence, prolonged stress positions, handcuffing, and denial of basic needs, including to extract confessions from accused persons, in the south-east region of Turkey;

24. b) Regarding independent complaints mechanisms that are in place to investigate all forms of torture and ill-treatment, as well as about the number of investigations, prosecutions and convictions

25. International reports show that Turkey is falling further behind every year in terms of human rights violations and rule of law. With the July 15, 2016 coup attempt and the subsequent suspension of the law, human rights violations have become the norm in the country and recommendations and reports by the international community have been ignored. This report examines cases of torture and ill-treatment during and after the State of Emergency (SoE) declared in Turkey following the July 15, 2016 coup attempt. Our aim is to contribute to taking the necessary steps for Turkey to comply with international human rights standards and to eliminate torture altogether.

26. Turkey's responses to the questions asked by the United Nations Committee on the Convention against Torture (CAT) regarding the detention processes and allegations of enforced disappearances in the aftermath of the 15 July 2016 coup attempt emphasize existing legal regulations and procedures, but ignore concrete cases documented by the international community and human rights organizations. Asked in the 2018 Committee report, Turkey's 2020 country report provides theoretical information without any concrete explanation.

27. Another important issue regarding torture is the issue of strip searches in prisons. Although this issue has always been rejected by the government, in November 2021, the Presidency issued a regulation in which the phrase "strip search" was replaced with the phrase "detailed search", thus concretely confirming a situation that existed before. It is a clear indication that similar issues are carried out by decrees with the force of law and then Presidential Decrees during the state of emergency in order to ignore the laws enacted by the Parliament.

28. The issue of torture in Turkey is closely related to the issue of kidnapping by the Turkish government (mostly the National Intelligence Organization). The abducted persons were usually taken to a farm-like place in Ankara and tortured for months. Some of these people (such as Yusuf Bilge TUNÇ) are still missing.

29. Önder Asan was also abducted in 2017. According to the decision of the Constitutional Court, his rights were violated in 2023. The most important point that draws attention here is that when this person reappeared in the security unit, his lawyer Burak Çolak was detained on the grounds that he did not sign the statement prepared by the police. Considering that the police prepared a statement after torture and tried to force the defense lawyer to sign it, it is an undeniable fact that there may be unlawful practices that victims may be exposed to in cases where lawyers are not present.

30. Although Turkey mentions in its response report that the statute of limitations for torture was abolished in 2013 and that torture was introduced as a ground for dismissal from the civil service in 2017, almost no torture cases are subject to judicial investigation and prosecution in practice. Public prosecutors' offices

protect state officials who commit torture with decisions of non-prosecution. In its country report, Turkey gives examples of articles of the law and mentions that supervisory boards inspect necessary places from time to time. Throughout the report, i.e. between paragraphs 146-155, the report remains entirely abstract and conceptual, with no response to concrete cases. It is not realistic that negative reports can be written by inspection boards in Turkey. The dismissal of people who can conduct audits in a transparent manner through Decree Laws is a form of intimidation of the new personnel brought in after the dismissal.

31. Moreover, one of the most important problems in Turkey is the lack of enforcement of existing laws. In a situation where the crime of torture is already recognized as one of the most serious human rights violations in international norms, it is inevitable that Turkey recognizes it as a crime in terms of legislation. In practice, however, allegations of torture are ignored by law enforcement and prosecution authorities. For example, although a person named Ayten Öztürk told the court how and where she was tortured and wrote about it in her letters, a public inquiry, which should have been set up ex officio, was not set up, and the incident was covered up. After being tortured for six months, this person was detained by Ankara anti-terror police officers in an open field on the pretext that there was a detention warrant, as if the six months had never happened. Therefore, it appears that the judicial authorities are complicit in the crimes committed by MIT (National intelligence Organization) and law enforcement officials by remaining silent.

32. As a result, there are many people in Turkey who have been subjected to torture, whose fundamental rights have been violated, and who have demanded or are afraid to demand a judicial inquiry. In the 2020 country report, it was stated that it was observed that Turkey gave theoretical and legislative answers to the Committee's questions. In this respect, we urge you to insist that Turkey's answers to the questions posed by your Committee should not be limited to legislation and should be based on concrete facts and allegations.

4. Issues included in LOIPR (Arts. 6 and 9 of ICCPR)

(Regarding Liberty and security of person)

33. **In Para. 12 of the LOIPR (2021),** Turkey was demanded information about the results of any investigations into the deaths of individuals detained in the prison system, such as Mustafa Kabakçıoğlu;

34. Please be informed about the lack of an effective investigation into the deaths of former police chiefs such as Mustafa Kabakçıoğlu and Zeki Güven in prison in Turkiye.

Mustafa Kabakçıoğlu;

35. Mustafa Kabakçıoğlu, a police chief dismissed by a state of emergency decree, died in Gümüşhane Prison on August 29, 2020. Although he suffered from asthma and high blood pressure, he was not provided with the necessary medical assistance, treatment and conditions appropriate to his illness. Kabakçıoğlu was taken to an isolation cell on suspicion of Covid-19, where he suffered severe health problems. photographs published after his death showed that he died sitting on a white plastic chair.

36. In a petition written on August 27, 2020, two days before his death, Mustafa Kabakçıoğlu complained about the side effects of his medication, stating that he suffered from swelling, numbness, difficulty speaking and walking.

37. In the petition, he stated that his health condition deteriorated, and he became unable to perform his daily tasks. However, the necessary medical interventions were not provided and Kabakçıoğlu died shortly afterwards.[4]

[4]https://www.boldmedya.com/2020/10/14/karantina-hucresinden-cenazesi-cikti-plastik-sandalyede-olum/

Zeki Güven;

38. Zeki Güven is a police chief who joined the Turkish National Police in 1992.[5] He was detained with his wife in June 2018. He died of a heart attack on July 1, 2018 as a result of his health not being protected in prison, being denied blood pressure medication and being kept in difficult conditions. After his arrest, he was publicly made an open target. Former Police Chief Hanefi AVCI said in a statement to Aydınlık Newspaper,"He is involved in the conspiracies. If he speaks, he can shed light on many things" and targeted Güven. [6] Zeki GÜVEN
died of a heart attack in Ankara Sincan Prison on July 1, 2018. In the letters he sent to his wife, he clearly stated that he was subjected to serious pressure from the moment he was detained, his blood pressure medication was not given to him, his medication was interrupted, he was constantly given salty food even though it was compulsory for him to eat salt-free food according to a doctor's report, and therefore he ate his meals by "washing" them.

39. In his letters, GÜVEN wrote*: "Although I petitioned for salt-free meals and told the doctor, I am not given salt-free meals. I found the solution by washing the food. The doctor said salt is POISON. I am literally being poisoned right now. Let's see if anyone will hear my voice.*" [7] The domestic law applications made after the death of GÜVEN did not yield any results.[8]

5. a) Issues included in LOIPR (Art. 9 and 14 of ICCPR)

(Regarding the absence of independence and impartiality of the judiciary system / Arbitrary arrest or detention)

40. **In Para. 16 of the LOIPR (2021),** Turkey was asked related to the legal framework guaranteeing to the judiciary, prosecutors and lawyers full independence from the executive branch within the State party a) relating to the judicial profession, which establish executive control over the Board of Judges and Prosecutors

41. **In Para. 18 of the LOIPR,** Turkey was asked to respond to allegations of the systematic denial of the right to a fair trial, particularly in cases involving terrorism-related charges,

42. **In Para. 19 of the LOIPR,** Turkey was requested to discuss the due process that was afforded to the State officials, including teachers, civil servants, judges, doctors, medical professionals, military personnel and police officers, who were dismissed on the basis of perceived links to the Gülen movement, following the attempted coup in 2016. Also erequested to provide information about the work of the Inquiry Commission on State of Emergency Measures, including the status of the 130,000 appeals against such dismissals and any remedies that have been provided to those affected for loss of employment and related human rights violations.

5.b) State party's responses to LOIPR

(Regarding independence and impartiality of the judiciary/administration of justice)

43. **In the State party's response (para. 199)** on the basis of paragraph 16 of the LOIPR, it is mentioned with the 2017 Constitutional amendment that, the structure of the Council was rearranged in order to eliminate

[5] Throughout his professional life, he worked in terrorism and intelligence units and received many commendations and awards for his successful work.
[6] https://www.aydinlik.com.tr/haber/hanefi-avci-onun-icin-boyle-demisti-konusursa-cok-sey-aydinlanir-95914
https://www.odatv.com/analiz/zeki-guven-ismi-feto-icin-neden-bu-kadar-onemliydi-141983#-analiz-zekiguven-ismi-feto-icin-neden-bu-kadar-onemliydi-03071818-141983
[7] https://www.patreon.com/posts/kaset-suclanan-52749577
[8] When the Constitutional Court's decision dated 22.4.2021 and numbered 2021/4587 is examined, it is seen that the decision was written without any concrete justification.For example;
Regarding the violation of the right to life in terms of giving salty food, not providing nutrients to be determined by the institutional physician to protect the health of the deceased and not conducting an effective criminal investigation, only an explanation was made that there was no interference with the fundamental rights and freedoms stipulated in the Constitution or that the interference did not constitute a violation! No mention was made as to why Güven was kept in solitary confinement and what kind of criminal investigation was carried out into the matter.

the problems arising in its then structure and practices. The structure of the Council is based on the principles of independence and impartiality.

44. **In the State party's response (para. 200-201)**, it is explained the structure of the CJP and claimed its independence from executive control.

45. Paragraphs 199-201 of the State party report dated 2023 mention the independence of the Council of Judges and Prosecutors under Article 159 of the Turkish Constitution and that it will not take instructions from any body. However, the existence of written legislative rules in Turkey does not mean that these rules are realized in practice.

46. *"Judicial independence has been seriously compromised by the replacement of thousands of judges and prosecutors with government loyalists since 2016. Under the presidential system that came into force in 2018, members of the Council of Judges and Prosecutors (HSK), which oversees judicial appointments and disciplinary actions, are appointed by parliament and the president, not by members of the judiciary. As a result, prosecutors and judges often toe the government line. Judges who rule against the government's wishes are dismissed and replaced, while those who convict Erdoğan's critics are promoted.*"[9]

47. Therefore, the independence of the Council of Judges and Prosecutors in terms of implementation should be investigated rather than its independence in terms of legislation (written laws).

48. Asked for his thoughts on the reinstatement by the 5th Chamber of the Council of State of 450 judges and prosecutors dismissed on the grounds of FETÖ links, President Erdoğan said on the official website of the Presidency;

49. "It is not possible for us to remain silent on this decision taken by the Council of State. Just as we, as the People's Alliance, do not remain unresponsive to some strange decisions taken by the Constitutional Court, we cannot remain silent on this. The Council of State does it from time to time, it disturbs us with such decisions, but it seriously disturbs us when the Constitutional Court takes such decisions frequently. For example, the Constitutional Court made a decision about the BTK. Where are you going to go with this? How can such a decision be taken? We are and will continue to pursue this matter. We will follow this matter in the Council of State in the same way." [10]

50. Following Erdoğan's statement, Minister of Justice Yılmaz Tunç stated that the Council of State had initiated a re-examination of 387 names out of 450 judges who returned to their jobs, regarding the Council of State's decision on judicial members dismissed due to FETÖ "[11]

51. In summary, the fact that a finalized judicial decision is subject to review by an administrative board, and that this review takes place after the President of the Republic has expressed his disapproval of the decision, is one of the clearest examples of the lack of judicial independence in Turkey.

52. **In the State party's response (paras 219, 220) on the basis of paragraph 18 of the LOIPR (fair trial),** it is claimed that the CCP contains detailed regulations on the rights of persons involved in criminal procedures. Moreover, the state party explains only theoretically, in terms of legislation, fair trials are available in Turkey.

53. In its 2023 Turkey Report, the **European Commission** stated that *"Turkey is still at an initial level of preparedness in the area of the judiciary. Serious backsliding continued and, despite a number of judicial reform packages adopted in recent years, structural deficiencies in the judicial system remain unaddressed. The continued refusal to implement some judgments of the European Court of Human Rights (ECtHR) remains*

[9] https://freedomhouse.org/country/turkey/freedom-world/2024, Date of access: 25/08/2024

[10] https://www.iletisim.gov.tr/turkce/haberler/detay/cumhurbaskani-erdogan-bae-ve-misir-ziyareti-donusunde-ucakta-gazetecilere-konustu

[11] https://www.aa.com.tr/tr/gundem/adalet-bakani-tunc-mesleklerine-geri-donen-387-isimle-hakim-ve-savci-alakali-hsk-olarak-yeniden-inceleme-baslattik/3140278

a matter of concern. There has been no progress in eliminating the unlawful influence and pressure of the executive on judges and prosecutors, which has a negative impact on the independence, impartiality and quality of the judiciary."[12] , drawing attention to continued negative developments on fair trial.

54. The last paragraph of Article 153 of the Constitution states that "The decisions of the Constitutional Court are binding on the legislative, executive and judicial organs, administrative authorities, real and legal persons."[13] However, **Amnesty International**' s April 2024 report states that *"Can Atalay, who was detained in 2022 in connection with the Gezi Park protests, was elected Hatay MP in parliamentary elections in May, but in July the Court of Cassation rejected Atalay's application for release. In October and December, the Constitutional Court twice ruled that Atalay's continued detention was a violation of his rights. The Court of Cassation, on the other hand, refused to apply the binding rulings of the Constitutional Court, noting that the Constitutional Court judges who ordered Can Atalay's release had "violated the Constitution.*"[14] , explaining that Constitutional Court rulings may not be enforceable in Turkey.

55. On January 30, 2024, Can Atalay's parliamentary deputy was officially dismissed after the Supreme Court of Cassation's decision was read out in the General Assembly of the Turkish Grand National Assembly, despite the Constitutional Court's ruling to the contrary, which binds the legislative, executive and judicial branches.[15]

56. Following the Constitutional Court's reasoned decision, published in the Official Gazette on August 1, 2024, stating that the decision to strip Atalay of his parliamentary seat was "null and void", the General Assembly of the Turkish Grand National Assembly convened in an extraordinary session on August 16. In this meeting, the ruling party MPs voted to ignore the Constitutional Court's decision and not to cancel the decision to revoke Atalay's parliamentary deprivation. During the meeting, ruling party MPs physically attacked opposition MPs, injuring two of them, Ahmet Şık and Gülistan Kılıç Koçyiğit. [16]

57. At present, it is impossible to speak of any Turkish citizen in Turkey, including members of the Constitutional Court and members of parliament, being fully protected by the law and having a fair trial.

58. On August 9, 2024, after a street interview in Izmir, which was broadcast on youtube channel, the interviewer Dilruba Y. was unjustly and unlawfully arrested for her criticism of the access ban on Instagram.com. Dilruba Y. was charged with "inciting the public to hatred and hostility" and "insulting the President" in an indictment. [17]

59. Regarding Dilruba Y., who was arrested for her remarks in a street interview, the Istanbul Bar Association stated: "Punishing a citizen for expressing her personal thoughts in the context of freedom of expression, which is a constitutional right, with the protection measure of arrest is not a legal but a political approach." [18]

60. We can analyze the current situation regarding the right to a fair trial in Turkey with the 2023 ECHR decision "Yüksel Yalçınkaya v. Turkey", which will affect the unlawful trials of many innocent people.

61. *Yüksel Yalçınkaya v. Turkey* concerns the conviction of the applicant for membership of an armed terrorist organization, identified by the Turkish authorities as "FETÖ/PDY" ("Fetullahist Terrorist Organization/Parallel State Structure"), which is believed to have been behind the coup attempt in Turkey on 15 July 2016.

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[12] https://ab.gov.tr/siteimages/resimler/2023%20T%C3%BCrkiye%20Raporu.pdf, Date of access: 25/08/2024

[13] https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf (Constitution of the Republic of Turkey)

[14] https://www.amnesty.org/en/documents/pol10/7200/2024/en/ , p: 367

[15] https://www.reuters.com/world/middle-east/turkish-parliament-strips-status-opposition-mp-after-judicial-clash-2024-01-30/

[16] https://www.reuters.com/world/middle-east/turkish-mps-brawl-during-debate-jailed-opposition-lawmaker-2024-08-16/

[17] https://www.duvarenglish.com/turkish-court-arrests-woman-for-insulting-president-in-street-interview-news-64798

[18] https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=19072&Desc=Dilruba-Y.-Hakk%C4%B1nda-Yap%C4%B1lmakta-Olan-Hukuksuzluktan-D%C3%B6n%C3%BClerek-Derhal-Beraat-ve-Tahliye-Karar%C4%B1-Verilmelidir!

62. Following its assessment, on 26/09/2023, the ECtHR held unanimously that there had been a violation of Article 7 and Articles 6 and 11 of the Convention.

63. On 12.09.2024, Yuksel YALCINKAYA, who was retried by Kayseri 2nd Heavy Penal Court after the unanimous violation decision of the ECHR, was sentenced to prison again by the relevant local court for the acts specified in the ECHR judgment, which did not constitute a crime.[19] Therefore, the Kayseri 2nd Aggravated Criminal Court, which is a local court in Turkey, did not comply with the ECHR judgment, which it is constitutionally obliged to comply with.

64. As will be explained below, the effect of this decision is not limited to the subject matter of the case. Therefore, this decision applies not only to those who are in the same situation as the applicant but also to cases under investigation or pending trial, as well as finalized cases whose trials have been completed. The only group that this decision does not make sense for, and that it excludes from its scope, are the perpetrators of the July 15 coup attempt.

65. In other words, from this decision, it can be concluded that before July 15, 2016, there were cases that did not constitute a crime in essence and even constituted the exercise of a right;

- Anyone who is under investigation, on trial or even convicted for peaceful acts such as using ByLock,
- Opening depositing or withdrawing money from a Bank Asya account,
- Forming or becoming a member of a trade union,
- Forming or becoming a member of an association,
- Ataying in a student's house,
- Attending meetings,
- Reading or subscribing to newspapers or magazines,
- Studying in a school or a tutoring center,
- Being a member of the "service movement" or the "Gülen community",
- Witness/confidential witness statements that imply participation in community activities will benefit.

66. Under Article 46 of the Convention, in the context of the enforcement of judgments, a judgment of the Court finding a violation of the Convention imposes an obligation on the respondent State to put an end to the violation found and to remedy its consequences in such a way as to restore as far as possible the situation as it existed before the violation.[20]

67. The conclusions reached in *Yüksel Yalçınkaya v. Turkey* are also applicable in *similar cases*. Thus, under Article 46 of the Convention, in the context of the enforcement of judgments, a judgment of the Court finding a violation of the Convention imposes an obligation on the respondent State, not only in the present case but also in similar cases, to put an end to the violation found and to remedy its consequences in such a way as to restore as far as possible the situation as it existed before the violation.[21]

68. It is a requirement of Article 90/545 of the Constitution that the findings in the ECtHR judgment be taken into account on a wider scale, including but not limited to the cases pending before the local courts, in order to find an appropriate solution to eliminate the structural problems identified in the ECtHR judgment under Article 6 (right to a fair trial) and Article 7 (legality and non-retroactivity of crimes and punishments) of the ECHR, which affect a large number of individuals in terms of the ECtHR's assessment in Yüksel Yalçınkaya v. Turkey for general measures to be taken.[22]

69. The Republic of Turkey should establish a solution of a general nature (including measures such as, for example, a change of jurisprudence in the case of pending trials in accordance with Art. 311/1-f of the Code of

[19] https://kronos37.news/valcinkaya-davasinda-2-durusma-erdogan-rejimi-aihm-kararini-yine-yok-saydi/
[20] Yüksel Yalçınkaya v. Turkey, application no. 15669/20, para. 404
[21] Yüksel Yalçınkaya v. Turkey, application no. 15669/20, para. 418
[22] Union of Turkish Bar Association, Evaluation of the decision of the European Court of Human Rights in Yüksel Yalçınkaya v. Turkey, (2024), p. 22 https://tbbyayinlari.barobirlik.org.tr/TBBBooks/679.pdf

Criminal Procedure) to eliminate the structural problems identified by the ECtHR in Yüksel Yalçınkaya v. Turkey and in similar FETÖ/PDY trials, in particular arising from Art. 6 (right to a fair trial) and Art. 7 (legality and non-retroactivity of crimes and punishments) of the ECHR within the framework of the principle of restitituo in integrum (reinstatement). 311/1-f of the Code of Criminal Procedure, including measures such as a change of jurisprudence in the case of currently pending proceedings) is also a requirement of Article 148 and Article 46/1 of the ECHR.[23]

70. On the other hand, as explained above, while it is an obligation for Turkey to implement the Yalçınkaya Decision in all similar cases in the light of the ECHR judgment and scientific opinions, hundreds of people continue to be detained and arrested every week on the same grounds and this situation is announced on the official website of the Turkish Ministry of Interior.

71. One month after the relevant ruling (on 24.10.2023), we continued to see in the press with the statements of Ali Yerlikaya, the Minister of Interior, that 611 people were detained across Turkey on charges such as "opening student houses, helping the families of detainees and using Bylock, etc." within the scope of the investigations against the Gülen community, for reasons found by the ECHR not to be criminal elements.[24]

72. On March 29, 2024, following a new operation in which 70 people were detained for allegedly using Bylock, Interior Minister Ali Ayni stated that the operations would continue with determination.[25]

73. The government, which should have provided a general solution by deciding to change the case law after the Yalçınkaya Decision dated 26/09/2023, instead of providing a solution, has detained thousands of innocent people by conducting 24 large operations throughout Turkey between 24.10.2023 and 01 August 2024 for the grounds stated by the ECHR that cannot be a crime with the operations called "Pincer". These operations continue to be published daily on the official website of the Ministry of Interior.[26]

74. **In the State party's response (paras 64-66 and 222-223) on the basis of paragraph 19 of the LOIPR (dismissed public officers following the attempted coup in 2016),** it is explained that Inquiry Commission on State of Emergency Measures is recognized as a domestic remedy to be exhausted by ECtHR and its decisions are subjected to judicial supervision

75. With the Decree Laws issued by the government during the State of Emergency, these public officials were dismissed from their professions on the grounds of "being affiliated with terrorist organizations". The State of Emergency Commission, on the other hand, has approved the dismissals made by Decree Laws on the grounds of "affiliation" as legal, without the need for any evidence.

76. It is not legally possible to speak of "affiliation" to a criminal or terrorist organization as a general ground for dismissals. The positive legal texts that include this phrase do not specify what should be understood by it.

77. In many decisions of the 16th Criminal Chamber of the Court of Cassation, the term "affiliation" is used, and although it is accepted that a company or an association is "affiliated" with a terrorist organization, there is no explanation as to what this means.[27]

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[23] Union of Turkish Bar Association, Evaluation of the decision of the European Court of Human Rights in Yüksel Yalçınkaya v. Turkey, (2024), p. 22 https://tbbyayinlari.barobirlik.org.tr/TBBBooks/679.pdf

[24] https://www.icisleri.gov.tr/77-ilde-fetoye-yonelik-kiskac-operasyonlari-duzenlendi

[25] https://www.icisleri.gov.tr/20-ilde-fetoye-yonelik-olarak-son-bir-hafta-icinde-duzenlenen-kiskac-11-operasyonlarinda-70-supheli-yakalandi

[26] https://www.icisleri.gov.tr/fetopdyye-yonelik-12-ilde-kiskac-3-operasyonlari-duzenlendi
https://www.icisleri.gov.tr/kiskac-4-operasyonlari-ile-32-supheli-yakalandi
https://www.icisleri.gov.tr/21-ilde-fetopdyye-yonelik-kiskac-24-operasyonu-duzenlendi

[27] Court of Cassasation, Criminal Chamber 16, CD, 2.7.2019, E. 2018/7312, K. 2019/4638; 3.7.2019, E. 2019/1486, K. 2019/4719; 20.3.2019, E. 2018/2882, K. 2019/1926; 27.12.2019, E. 2019/5533, K. 2019/8459; 30.9.2019, E. 2019/1329, K. 2019/5631; 23.1.2020, E. 2019/6091, K. 2020/598

78. In a decision of this Chamber, the term "school affiliated with a terrorist organization" was used.[28] No determination has been made as to which crimes were committed and which terrorist activities were organized within the framework of the activities of the school, which was established with the permission of the relevant public authorities and operates under the supervision and control of the State.[29]

79. In its report on dismissals by emergency decrees, the Venice Commission concluded that disciplinary liability or other similar measure must be "*foreseeable"* and that a public official must first understand that he or she has done something incompatible with his or her status before he or she can be punished.[30]

80. Likewise, with regard to dismissals during the State of Emergency, the Council of Europe Commissioner for Human Rights emphasized in his report that *"at the very least, individuals should have had access to the evidence against them and the right to present their arguments before a decision was taken*".[31]

81. In this respect, it is contrary to the principles of proportionality and proportionality to be subjected to a very severe sanction such as dismissal from the profession and lifelong disqualification from practicing the profession by disregarding all legal safeguards, based on vague and unpredictable concepts such as *"liaison and affiliation"*, which had no place in the law before, such as *"liaison and affiliation"*, which was introduced by a Decree Law during the State of Emergency period, exceeding the conditions and requirements of the state of emergency and the derogation notification.

82. It is a requirement of law and basic human rights principles that approximately 130,000 public officials who were dismissed from their jobs by emergency decrees on grounds such as "affiliation and association" should be reinstated to their jobs by lifting the dismissal decisions against them.

6. Conclusion and Recommendations

83. We are honored to present this report to the Human Rights Committee, where we aim to highlight human rights violations in Turkey. We aim to help ensure that Turkey meets its obligations and commitments under the international conventions to which it is a signatory.

84. You are kindly requested to demand from Türkiye;

6.1. . Enforced Disappearances and Abductions

85. When victims are brought before the authorities after their abduction, their statements that they were abducted/tortured are not recorded in official records or are ignored. Therefore, it should be regulated in the legislation that an immediate investigation should be initiated for every allegation that has a basis in this direction.

86. Ensure that those responsible for abductions are thoroughly and effectively investigated and prosecuted.

87. Violations of international instruments on forced abduction should be subject to deterrent sanctions for both the perpetrators and states.

88. The trials of persons forcibly trafficked from abroad to Turkey should be monitored by a special representative appointed by international commissions.

[28] Court of Cassasation, Criminal Chamber 16, 11.3.2020, E. 2019/501, K. 2020/1954
[29] OZGENC, Izzet. (2022), Iltisak" Ibaresi Uzerine, URL: https://izzetozgenc.com/makale/%E2%80%9Ciltisak%E2%80%9D-ibaresi-uzerine
[30] CDL-AD(2016)037-e, Turkey - Opinion on Emergency Decree Laws N°s667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, page: 29-31
[31] Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, CommDH(2016)35, page: 30-32

89. A notice should be given to Turkey by the international community to desist from enforced disappearances and abductions. The state has an obligation to protect the right to life of its citizens.

90. Until the fate of the abducted persons is known, Turkey is required to conduct an effective investigation. This is recognized as a continuing violation of state responsibility.

91. Abducted individuals' right to defense, right to a fair trial and right to a lawyer must be protected. Pressure on lawyers must end immediately.

92. The health of abductees should be examined by independent doctors and they should be allowed regular contact with their families.

93. Abducted persons should be brought before a judge as soon as possible and fair trials should be completed quickly. Prolonged detention leads to human rights violations.

6.2. Prohibition of torture and cruel, inhuman or degrading treatment or punishment

94. Turkey's answers to the questions posed by your Committee should not be limited to legislation and should be based on concrete facts and allegations.

95. Legal and administrative reforms should be undertaken to align with international norms.

96. Executive Decrees No. 667 and 668, which abolish the criminal, legal, financial and administrative responsibilities of state officials who took action during the state of emergency, and the relevant articles of Executive Decree 696, which grants immunity to civilians who intervened in the protests on and after July 15, 2016, should be annulled.

97. Actions or inactions that fall within the scope of torture should be explicitly mentioned in the law to ensure compliance with the UN Convention against Torture.

6.3. Liberty and security of person

98. Please ask again for more detailed information about the individuals like Mustafa Kabakçıoğlu and Zeki Guven who died under suspicious circumstances while in prison in Turkey.

99. Demand an effective investigation into the suspicious deaths of Mustafa Kabakçıoğlu, Zeki Güven and others imprisoned in similar circumstances in Turkey.

6.4. The absence of independence and impartiality of the judiciary system / Arbitrary arrest or detention

100. Urge Turkey to implement the Yalcinkaya decision of ECtHR in national courts and to cease systematic threats of arbitrary arrest and detention.

101. Demand not only by written law rules but also the independence of the judicial authorities in practice.

102. Urge to avoid the use of vague and unpredictable concepts such as "relation, affiliation or contact with terrorist organizations or structure/entities" in judicial proceedings.

103. Demand the reinstatement of public servants dismissed from their jobs by emergency decree.