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Meeting:	1459th meeting (March 2023) (DH)
Item reference:	Action Plan (17/01/2023)

Communication from Türkiye concerning the case of OYA ATAMAN v. Turkey (Application No. 74552/01)

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Réunion :	1459e réunion (mars 2023) (DH)
Référence du point :	Plan d'action (17/01/2023)

Communication de la Türkiye concernant l'affaire OYA ATAMAN c. Turquie (requête n° 74552/01) ***(anglais uniquement)***

January, 2023

DGI
17 JAN. 2023
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

ACTION PLAN

Oya Ataman Group of Cases (74552/10)

Judgment of 5 December 2006, final on 5 March 2007

I. CASE DESCRIPTION

1. There are 11 cases in total examined under the Ataman group of cases (See appended table 1 for the list of cases)
2. This group concerns violations of the right to freedom of peaceful assembly, including the prosecution of participants and/or the use of excessive force to disperse demonstrations.
3. Certain cases also concern unjustified detention orders against the participants, failure to carry out effective investigations into the applicants' allegations of ill-treatment or lack of an effective remedy in this respect (violations of Articles 2, 3, 5, 10, 11 and 13 of the Convention)[1]
4. The issues related to the general measures to ensure effective investigations into allegations concerning the unlawful use of force by law enforcement officers are examined under the *Batı* group of cases, although questions relating to the reopening of investigations in the individual cases continue to be examined as individual measures within this group.
5. The issues related to the general measures with respect to failure to provide concrete and sufficient reasoning and to consider alternative measures for the applicants' pre-trial detention (violation of Article 5, paragraph 1) are being examined under the *Nedim Şener* group of cases (38270/11).

II. INDIVIDUAL MEASURES

➢ Just Satisfaction

6. The just satisfaction amounts, including the costs and expenses awarded by the Court in the present cases have been paid within the deadlines set forth by the Court, and relevant payment documents have been submitted to the Committee of Ministers (see appended table 2 for details).

[1] The total number of cases included in the group was 74. At its previous examinations of the group, the Committee closed 63 cases in which no further individual measures were possible or required (CM/ResDH(2019)59).

- **Other Measures**

- ***Reopening of the investigations or proceedings***

- ***Cases in which the applicants have still time to request reopening of the proceedings***

- ***Silgir*** **(60389/10), (Violation of Article 11, Date of Final Judgment:03/08/2022)**

7. On 9 September 2005 the applicant participated a demonstration. The prosecution office filed a bill of indictment against the applicant for his alleged unlawful acts during that meeting. On 9 December 2006 the criminal court of first instance convicted the applicant under the Law no 2911 as charged, and sentenced him to imprisonment and a sum of judicial fine. The proceedings became final in 2010.
8. The Court held that the applicant's conviction was not necessary in a democratic society for the purposes of Article 11 of the Convention. There had therefore been a violation of this provision.
9. The authorities would like to indicate that Article 311 § 1 (f) of the Code of Criminal Procedures (Law no 5271, hereinafter "the CCP") provides the applicants with the opportunity to request the reopening of criminal proceedings within one year of a final judgment by the Court finding a violation.
10. The applicant has not availed himself of this opportunity so far. However, he can make such a request until 3 August 2023.
11. The authorities will inform the Committee on further developments in this case.

- ***Ekrem Can and Others*** **(10613/10), (Violation of Article 11, 6 §§ 1 and 3 (c), Date of Final Judgment:05/09/2022)**

12. On 18 November 2003 the applicants participated in a protest. A criminal investigation was initiated against the applicants in relation to this event and they were convicted in the ensuing proceedings.
13. The Court declared the application admissible in so far as it concerned (i) all the applicants' convictions under Article 113 of the Criminal Code and (ii) the convictions of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras under Article 170 § 1 (c) of the Criminal Code.
14. The Court concluded that there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras. The Court further found that the applicants' convictions were not "necessary in a democratic society" for the purposes of Article 11 of the Convention.

15. The authorities would like to indicate that Article 311 § 1 (f) of the CCP provides the applicants with the opportunity to request the reopening of criminal proceedings within one year of a final judgment by the Court finding a violation.
16. The applicants have not availed themselves of this opportunity so far. However, they can make such a request until 5 September 2023.
17. The authorities will inform the Committee on further developments in this case.

- ***Cases in which individual measures have been settled following the Committee's last examination of the group***

- ***Kemal Çetin*** **(3704/13), (Violation of Article 11, Date of Final Judgment: 26/08/2020)**

18. In March 2007 a committee of seven individuals, including the applicant, organised a meeting. In April 2007 the public prosecutor's office charged the applicant and other six members of the organising committee for having failed to prevent the start of the meeting before the declared time and for the use of unauthorised slogans and placards during the demonstration. On 19 September 2008 the Criminal Court found the applicant and six other committee members guilty of organising an illegal demonstration. They were sentenced to one year and three months' imprisonment. On 9 May 2012 the Court of Cassation upheld this judgment. In 31 July 2012, following the entry into force of Law no. 6352, the Criminal Court stayed the execution of the applicant's sentence, putting him on probation for three years.
19. The Court found that the applicant's conviction had not been necessary in a democratic society and therefore had breached his right to freedom of assembly.
20. The authorities would like to indicate that Article 311 § 1 (f) of the CCP provides the applicants with the opportunity to request the reopening of criminal proceedings within one year of a final judgment by the Court finding a violation.
21. The applicant used the above remedy and requested reopening of the proceedings with reference to the judgment of the European Court.
22. The applicant's request was granted and he was acquitted on 29 June 2021. This decision became final on 7 September 2021 (see Annex 1).
23. The applicant does not have any criminal record regarding the offence in respect of the violation.
24. In the light of the above information, the authorities consider that no further individual measures are required in the instant case. The case is therefore ready for closure in respect of individual measures.

- ***Şenşafak*** **(5999/13), (Violation of Article 11, Date of Final Judgment:07/07/2020)**

25. On 8 March 2005 the applicant, who was a civil servant and a member of a trade union, made a press statement in a demonstration. On 24 March 2005 the Mersin Public Prosecutor's Office issued and indictment against the applicant on the grounds that the demonstrators including the applicant had obstructed the traffic and that no prior notification had been made in violation of the Law no. 2911. On 9 October 2006 the Mersin Criminal Court of First Instance convicted the applicant as charged and sentenced him to one year and three months' imprisonment. This decision was quashed by the Court of Cassation, and subsequently on 23 December 2009 the first instance court decided to suspend the pronouncement of its judgment under Article 231 of the CCP. This decision was upheld by the Court of Cassation on 17 April 2012.
26. The Court found that the applicant's conviction had not been necessary in a democratic society and therefore had breached his right to freedom of assembly.
27. The authorities would like to indicate that Article 311 § 1 (f) of the CCP provides the applicants with the opportunity to request the reopening of criminal proceedings within one year of a final judgment by the Court finding a violation.
28. The applicant used the above remedy and requested reopening of the proceedings with reference to the judgment of the European Court.
29. The applicant's request was granted and the Mersin Criminal Court of First instance acquitted him on 25 November 2021. This decision became final on 16 June 2022 (see Annex 2).
30. The applicant does not have any criminal record regarding the offence in respect of the violation.
31. In the light of the above information, the authorities consider that no further individual measures are required in the instant case. The case is therefore ready for closure in respect of individual measures.

- ***Eğitim ve Bilim Emekçileri Sendikası and Others*** **(2389/10), (Violation of Article 3 and 11, Date of Final Judgment:20/09/2022)**

32. On 5 June 2009 the applicants participated a demonstration. The security forces intervened and the applicants were injured during this intervention. An investigation was initiated for the applicants' injuries which was concluded with a non-prosecution decision. The investigation initiated against the applicants was also discontinued.
33. The European Court considered that the force used by the security forces against the applicants was not proportionate. The Court also found that the investigation into the

incident was not effective. There had therefore been a violation of Article 3 of the Convention. The Court further held the intervention of the security forces into the incident had violated the applicants' right to freedom of assembly.

34. Concerning the violation of Article 11 of the Convention, as noted above, the proceedings against the applicants had been discontinued at the material time. Therefore, having taken account of the nature of the violation established by the Court, the authorities consider that no further individual measures are required in respect of the Article 11 violation.

35. As concerns the violation of Article 3, following the Court's judgment in the present case, the competent public prosecutor's office reviewed the case on 22 December 2022 and decided that it was no longer possible to reopen the investigation which had become time-barred on 1 September 2018 (see Annex 3). Therefore, the authorities regrettably indicate that no further individual measures are possible in respect of the Article 3 violation in this case.

36. In the light of the above information, the authorities consider that no further individual measures are required in the instant case. The case is thus ready for closure in respect of individual measures.

- ***Cases in which individual measures had already been settled prior to the Committee's previous examination(s) of the group, but the authorities' request for closure was not accepted***

37. The authorities would like note, as also acknowledged by the Committee, that individual measures in the cases specified under this head had already been settled prior to their previous examination(s) of the group. However, these cases have not been closed in spite of the Committee's established practice as to the partial closure of the groups.

38. The reason for non-closure of these cases, in the notes at the Committee's last examination of the group on 16 September 2021, was explained as follows; "*the cases of Abdullah Yaşa and Others, İzci, Ataykaya and Süleyman Çelebi and Others contain indications from the European Court under Article 46; and the cases of Ataman and Akarsubasi, are leading cases"* (see CM/Notes/1411/H46-38, 16 September 2021).

- **As concerns the cases of *Abdullah Yaşa and Others*, *İzci*, *Ataykaya* and *Süleyman Çelebi and Others;***

39. The authorities would first like to note that Article 46 indications in these cases mainly touch on the same issue on general measures, that is to say the use of tear gas

by security forces in demonstrations. As explained in detail below, in reaching its conclusions in these cases, the Court mainly criticized the fact that there had existed no clear legislative or regulatory framework on the use of such equipment at the material time. Further, in reaching its conclusions in these cases, the Court made references one to the other.

40. The authorities would like to underline that the facts of these cases all took place before 2008. In 2008, Türkiye adopted clear regulations on the use of tear gas in demonstrations which is also noted in the Court's above judgments. The regulatory framework has been further strengthened in 2016. Under these circumstances, taking the view that significant improvements have been achieved on the issue, the authorities consider that the Committee could decide closure of these cases in respect of both individual and general measures. Alternatively, these cases could be closed in respect of individual measures, and general measures on the issue could continue to be examined under the leading case of *Ataman*. In any event, since all these four cases concern the same issue, instead of keeping them open all together, it would be practical to close three of these cases and keep one case open.

41. In addition to these, the authorities would further like to note that the above approach, keeping cases with Article 46 indications, has not been adopted by the Committee of Ministers in similar cases. In the following cases, the Committee decided in line with its established practices. The authorities would like to draw the Committee's attention to the following examples in this respect:

42. The Committee decided to close *Krasteva and Others v. Bulgaria* (5334/11) on 21 October 2020 (CM/ResDH(2020)217). This case was clone of the *Tomov and Nikolova* (50506/09) group. The leading case concerned a violation of Article 1 of Protocol No. 1 of the Convention on account of the applicants' deprivation of property. In the clone case of *Krasteva and Others* the European Court indicated, under Article 46, that the general measures should include the introduction of a remedy capable of ensuring compensation reasonably related to the market value of the lost property. The Committee, however closed this case in respect of individual measures. Concerning the general measures, recalling that the question of general measures required in response to the shortcomings found by the Court in the present judgment continued to be examined within the framework of the *Tomov and Nikolova* case, the Committee underlined that the closure of this case therefore in no way prejudged the Committee's

evaluation of the general measures required. The referred *Tomov and Nikolova* group is still pending before the Committee under enhanced procedure.

43. Similarly, the case of *Topallaj v. Albania* (32913/03) was closed on 4 June 2020 (Resolution CM/ResDH (2020)93. This case was clone of the *Luli and Others* (64480/09) group. In the clone case of *Topallaj,* referring to its findings in *Luli and Others* in respect of Article 46 of the Convention, the Court urged the respondent State, as a matter of priority, to adopt general measures to introduce an effective domestic remedy for the excessive length of proceedings. The Committee however closed this case in respect of individual measures despite the Article 46 indication. Concerning the general measures, recalling that the question of general measures required in response to the shortcomings found by the Court in the present judgment continued to be examined within the framework of the *Luli and Others* case, the Committee underlined that the closure of this case therefore in no way prejudged the Committee's evaluation of the general measures required. The referred *Luli and Others* group is still pending before the Committee under enhanced procedure.

44. The above-mentioned examples clearly illustrate that the Committee, in line with its established practice, closes repetitive cases requiring no further individual measures even if they involve Article 46 indications. All in all, the authorities reiterate their request for closure of the below listed clone cases under this head in respect of individual measures.

- ***Süleyman Çelebi and Others* (37273/10), (Violation of Article 3, 11, Date of Final Judgment:24/08/2016)**

45. The applicants were a number of (19) individuals and a trade union. On 1 May 2008 the applicant trade union organised a demonstration in İstanbul with the participation of its members including the applicants. The demonstration was considered to be unlawful and therefore the group was dispersed by the police. The applicants complained that they had been injured during the intervention. The criminal investigations in to these complaints were discontinued by the prosecution office in 2009. Criminal Proceedings were also initiated against the applicants for having organised or participated in an unlawful demonstration. Nevertheless, these proceedings were concluded with acquittal or non-prosecution decisions in 2008.

46. The Court held that the force used against the applicants Yaşar Yaradılmış ve Rahmi Yılmaz had been disproportionate. The Court also found a procedural violation of

Article 3 on account of the ineffectiveness of the investigation to this end. The Court further held that the applicants' right to freedom of assembly had been violated due to the dispersal of the demonstration, in the absence of any compelling social need.

47. Concerning the violation of Article 11 of the Convention, as noted above, the proceedings against the applicants had been discontinued by acquittal or non-prosecution decisions. Therefore, having taken account of the nature of the violation established by the Court, the authorities consider that no further individual measures are required in respect of the Article 11 violation.

48. As concerns the violation of Article 3, as explained above, the proceedings had been discontinued in 2009. Following the Court's judgment in the present case, the competent public prosecutor's office reviewed the case on 25 June 2021 and decided that it was no longer possible to reopen the investigations which had become time-barred on 1 May 2016 (see Annex 4). Therefore, the authorities regrettably indicate that no further individual measures are possible in respect of the Article 3 violation in this case.

49. In the light of the above information, the authorities consider that no further individual measures are required in the instant case. The case is thus ready for closure in respect of individual measures.

- ***Abdullah Yaşa and Others (44827/08)*, (Violation of Article 3, Date of Final Judgment:16/10/2013)**

50. On 29 March 2006 a demonstartion was held in Diyarbakır. The aplicant was injured during the police intervention. The applicant complained about his injury and on 6 November 2007 the public prosecutor's office issued a decision not to prosecute considering that the force used by the police had not been disproportionate. By a decision of 31 December 2007 the President of the Siverek Assize Court dismissed the objection against the decision not to prosecute.

51. The Court considered that the use of force against the applicant in the circumstances of the case was not proportionate to the aim pursued. There had therefore been a violation of Article 3 of the Convention.

52. The authorities would like to indicate that Article 172/3 of the CCP provides the applicants with the opportunity to request the reopening of criminal investigations within three months of a final judgment by the Court finding a violation. Nevertheless, the applicants did not use this remedy within deadline set forth in the Law.

53. Against this background, the public prosecutor's office reviewed the case on 23 June 2021 and decided that it was no longer possible to reopen the investigation which had become time-barred on 18 February 2017 (see Annex 5). Therefore, the authorities regrettably indicate that no further individual measures are possible in respect of the Article 3 violation in this case.
54. In the light of the above information, the authorities consider that no further individual measures are required in the instant case. The case is thus ready for closure in respect of individual measures.

- ***İzci (42606/05)*, (Violation of Article 3, 11, Date of Final Judgment:23/10/2013)**

55. On 6 March 2005 the applicant took part in a demonstration and he was injured during the intervention of the security forces. On 8 April 2005 the Chief Prosecutor at the Court of Cassation concluded that the applicant had not mentioned a specific incident that could be attributed to the Governor. A decision was thus made not to prosecute the Governor. On 9 December 2005 the Istanbul prosecutor filed an indictment with the Istanbul Criminal Court of First Instance and accused a total of fifty-four police officers of the offence of causing injuries by exceeding the limits of their powers on the use of force. The criminal proceedings against the police officers were discontinued on 8 September 2011 on account of the statute of limitations.
56. The Court held that the force used by the security forces was disproportionate. The Court further found that the criminal proceedings which had been time-barred were ineffective. There had therefore been a violation of Article 3 of the Convention both in its substantive and procedural aspects. The Court also found that the force used towards the applicant was disproportionate and not necessary within the meaning of Article 11 of the Convention.
57. Concerning the violation of Article 3, as also noted in the Court's judgment, the proceedings against the police officers had been time barred in 2011. Accordingly, the authorities regrettably indicate that no further individual measures are possible under this head.
58. As concerns the violation of Article 11, as noted in the Court's judgment, no criminal investigation or proceedings were initiated against the applicant in relation to the incident. The Court based its conclusions on the fact that the interference of the security forces to the impugned demonstration was not necessary. Therefore, depending

on the nature of the violation established by the Court, the authorities consider that no further individual measures are required under this head.

59. In the light of the above information, the authorities consider that no further individual measures are required/possible in the instant case. The case is thus ready for closure in respect of individual measures.

- ***Ataykaya* (50275/08), (Violation of Article 2, Date of Final Judgment:22/10/2014)**

60. On 29 March 2006, the applicant's son lost his life during a police intervention into a demonstration. A criminal investigation was initiated into the incident. On 3 April 2008 the Diyarbakır public prosecutor's office issued a permanent search notice for the purposes of identifying the suspect, with effect until 29 March 2021, when the offence would become time-barred.

61. The Court held that it had clearly not been established that the lethal force used against the applicant's son was "absolutely necessary". In addition, the Court considered that the investigation into the incident lacked the effectiveness required by Article 2 of the Convention. Accordingly, there had been a violation of this provision under its substantive and procedural heads.

62. The authorities would like to inform the Committee that the Diyarbakır Chief Public Prosecutor's Office carried out a multilateral investigation with a view to identify the perpetrator(s) of the incident. In order to achieve this goal; investigation case was transferred to a specialist homicide bureau and a deputy chief public prosecutor was specially tasked by the Diyarbakır Chief Public Prosecutor. The Deputy Chief Public Prosecutor initiated a fresh progress and sent a letter to the relevant police office to determine new witnesses and other concrete evidence for identifying perpetrators. The eye witnesses were heard by the Public Prosecutor's Office. All of them stated that they could not see who had shot the applicant's son as the security forces interfering with the incidents had put on gas masks. The traces and remnants of cartridge killing the applicant's son were retrieved during the post-mortem forensic autopsy. These evidence were examined in the criminal laboratory; however, the rifle used to fire that cartridge could not be detected as the gas cartridge in question had not kept characteristic features of the arms used since it was made up of plastic pieces. Crime scene footage was re-examined. However, the suspects could not be identified. That being the case, on 7 June 2021, the prosecution office issued a decision of non-prosecution on the grounds first that the perpetrator/s could not be identified, and

second due to the fact that the case was time-barred on 28 March 2021 (see Annex 6**).** Therefore, the authorities regrettably indicate that no further individual measures are possible due to prescription in this case.

63. In the light of the above information, the authorities consider that no further individual measures are required/possible in the instant case. The case is thus ready for closure in respect of individual measures.

- **As concerns the case of *Akarsubaşı;***

64. The authorities would like to recall that this case concerns a violation of Article 11 of the Convention on account of the imposition of an unjustified administrative fine on the applicant for having participated in a meeting. It appears in Hudoc-Exec the case is a leading case and as well clone of the precedent *Ataman* case.

65. The authorities would first like to underline that in the present group, there are a number of cases where the Court found Article 11 violations on account of initiation of criminal investigations or proceedings against the applicants for having participated in meetings. Therefore, the core issue in these cases is that unjustified sanctions applied on the applicants. Taking this as basis, and taking account of the domestic case-law developments on the issue (see general measures below) the authorities consider that the Committee could close *Akarsubaşı* and continue its examination of the general measures under the leading case of *Ataman*.

66. In addition to these, the authorities would further like to note that the above approach has not been adopted by the Committee of Ministers in similar cases. In the following cases, the Committee decided in line with its established practices. The authorities would like to draw the Committee's attention to the following examples in this respect:

67. For instance, the Committee decided to close the leading-repetitive case of *Mikuljanac, Malisic and Safar v. Serbia* (41513/05) on 9 March 2022 (Resolution CM/ResDH(2022)51) in respect of individual measures. Its precedent *Jevremovic v. Serbia* (3150/05) is still pending before the Committee under enhanced procedure.

68. The Committee followed the same approach in many cases. This illustrates that the Committee, in line with its established practice, closes leading repetitive cases requiring no further individual measures. All in all, the authorities reiterate their request for closure of the below listed clone cases under this head in respect of individual measures.

- ***Akarsubaşı* (70396/11), (Violation of Article 11, Date of Final Judgment:14/12/2015)**

69. On 13 October 2010 the applicant took part in a demonstration, organised by his trade union, in front of the Adana court building. A statement was made to the press during the gathering. The police commissioner fined the applicant pursuant to section 32 of the Misdemeanours Act (Law No. 5326) for having been involved in this public statement to the press, in breach of the prefectural decision establishing the conditions and public areas in Adana where this type of press event could be held. On 15 May 2011 the Adana Criminal Court of First instance dismissed the applicant's appeal.
70. The Court found that the judicial fine imposed on the applicant had not been necessary in a democratic society and therefore breached his right to freedom of assembly.
71. The authorities would like to indicate that the applicant had the opportunity to request the reopening of impugned proceedings. However, he did not use the above remedy.
72. In the light of the above information, the authorities consider that no further individual measures are required in the instant case. The case is thus ready for closure in respect of individual measures.

- ***Ataman* (74552/10), (Violation of Article 11, Date of Final Judgment:14/12/2015)**

73. The applicant organised a demonstration in Sultanahmet Square in Istanbul in the form of a march followed by a statement to the press. The police requested the group of 40-50 people, who were demonstrating by waving placards, to break up, telling them that the demonstration was unlawful as no prior notification had been given, and that they would be disturbing public order at a busy time of day. The demonstrators refused to comply and attempted to force their way through. The police used force to disperse them.
74. The European Court held that the forceful intervention of the police had been disproportionate and had not been necessary for the prevention of disorder.
75. The authorities would like to note that, in the present case, no criminal investigation or proceeding had been initiated against the applicants. The Court ruled that there was a violation due to interference with the demonstration under Article 11. Therefore, having taken account of the nature of the violation established by the Court, the

authorities consider that no further individual measures are required in respect of the Article 11 violation.

76. In the light of the above information, the authorities consider that no further individual measures are required in the instant case. The case is thus ready for closure in respect of individual measures.

III. GENERAL MEASURES

77. The Turkish authorities have taken or envisaged a number of measures aimed at preventing similar violations. These include legislative arrangements, domestic case-law developments, training and awareness-raising measures and as well as an array of other measures.

A. The time period of the events that gave rise to the present violations

78. At the outset, the authorities would like to note that the events that gave rise to the violations examined in the present group took place between 1995 and 2011. To be more specific, in 71 cases the facts of the cases took place before 2010 most of them in the early 2000s. The most recent facts, in only four cases, date back to 2010 and 2011. According to the authorities, in order for the Committee to make a better assessment of the general measures adopted, details of which are given herein, this time period should be taken account of.

B. Freedom of assembly and association (Violations of Article 11)

a. Introduction

79. The authorities would like to underline that the freedom of assembly is safeguarded at the highest level in the Constitution. Article 34 of the Constitution provides:

Article 34 of the Constitution
Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. ... The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.

80. The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches is mainly regulated in the Law No. 2911 on Meetings and Demonstrations (hereinafter "the Law no 2911"). This is also supported by other legislative and regulatory framework details of which will be given below.

81. In a number of cases examined under the present group, Court found violations of Article 11 of the Convention. In reaching its conclusions, in these cases, the Court mainly criticized the application of the relevant legislation in practice. Concerning these violations, despite the fact that there was no call from the Court to this hand, Türkiye has strengthened its legislative framework with a view to further safeguard the right to freedom of assembly. Furthermore, as a major response to the Court's findings in these cases, the administrative and judicial authorities have improved their practice.
82. As noted above, in the present cases the Court mainly found that the domestic authorities had interfered with demonstrations in breach of the requirements of Article 11 of the Convention. The basis of these interferences and the Court's findings may be examined under two heads:

i) Interventions into demonstrations

83. In some cases, the security forces intervened the demonstrations considering that the events were unlawful. The basis for these interventions were Sections 6, 7, 10, 17, 22, 23 and 24 of the Law no 2911.
84. The Court first found in these cases that the interferences were "prescribed by law". The Court recalled that the Contracting States can impose limitations on holding a demonstration in a given place for public security reasons. Nevertheless, although a demonstration in a public place may cause some disruption to ordinary life, including disruption of traffic, it is important for the public authorities to show a certain degree of tolerance towards gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of its substance. In the present cases, however, it considered that the interventions, in some cases forceful, were disproportionate and not necessary for the prevention of disorder within the meaning of Article 11 of the Convention.

ii) Initiation of criminal investigations or proceedings in relation to demonstrations and/or imposition of criminal sanctions or administrative fines

85. In some cases, criminal investigations or proceedings were initiated against the applicants. In some of these cases the applicants were subsequently convicted. In these cases, applying *inter alia* the above explained principles, the Court found that the demonstrations in question were peaceful or, even if were they of violent nature, it was not established that the applicants had acted violently. Therefore, these proceedings were disproportionate to the legitimate aim pursued. The interferences in these cases

were mainly based on Sections 28, 32 and 33 of the Law no 2911, Article 169 of the former Criminal Code (Law no 765)[2], Article 220/6 of the Turkish Criminal Code[3] or Article 7/2 of the Anti-Terrorism Law[4] .

86. In some cases, the applicants were imposed administrative fines pursuant to Section 32 of the Misdemeanours Act, Law No. 5326 for having participated in unauthorized demonstrations or having organised these events in places other than those had been determined by the administration, in disregard of the orders given by the relevant authorities. The Court held in these cases that imposition of administrative fines on the applicants, for their participation in a demonstration was disproportionate and not necessary for maintaining public order.

87. The general measures adopted with a view to prevent similar violations are explained as follows.

b. Measures adopted to prevent unnecessary and/or disproportionate interferences with demonstrations (Article 11)

Legislative Framework

88. As noted above, the formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches is mainly regulated in the Law No. 2911. This Law has been further improved in the recent years despite the fact that the Court had not based its findings on the wording of the provisions Law no 2911. In addition, the relevant authorities have improved their practices in line with the Court's findings in the present cases as a major response to the Court's conclusions.

89. Sections 3, 6, 7, 10, 17, 22, 23 and 24 of the Law no 2911 stipulate the conditions for lawful demonstrations. In the present cases, the domestic authorities relied on these provisions in considering the demonstrations were not lawful and intervening these events.

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[2] The issue of –unjustified convictions, including because of having participated demonstrations, for aiding and abetting a terrorist organisation under Article 220/7 of the current Criminal Code (Law no 5237) corresponding Article 169 of the former Code- is being examined under the *Işıkırık* group of cases.

[3] The issue of –unjustified convictions, including because of having participated demonstrations, for committing a crime on behalf of an illegal organisation under Article 220/6 of the current Criminal Code (Law no 5237) - is being examined under the *Işıkırık* group of cases.

[4] The issue of –unjustified convictions, including because of having participated demonstrations, for propaganda in favour of an illegal organisation under Article 7/2 of the Anti-Terrorism Act (Law no 3713) - is being examined under the *Öner and Türk* group of cases.

- ***Section 3 of the Law no 2911***

90. First of all, under **Section 3** of the Law no 2911 there is no obligation to obtain prior permission for meetings and demonstrations. It reads as follows:

Section 3 of the Assemblies and Marches Act (Law no. 2911)
No prior authorisation is required for the organisation of a peaceful and unarmed meeting or demonstration in accordance with the law.

- ***Section 6 of the Law no 2911***

91. **Section 6** of the Law No. 2911 empowers the most senior local governors to make and announce necessary regulations on the places and routes of the demonstrations.
92. Section 6 was amended in 2014 introducing significant safeguards in the Law. First, in the determination process of the places and routes of public gatherings, a more participatory approach has been adopted. The relevant stakeholders including, among others, the political parties and trade unions are included in the process. Second, in the determination of the places and routes of public gatherings, unlike the previous version, a further safeguard was adopted. Namely, the possible effects of the demonstrations on the public order shall be taken account of in this process. This prevents arbitrary and abusive restrictions.
93. The authorities would further note that, in its previous version, in the decision making process of the places and routes of public gatherings, it was taken into account whether holding meetings in some places had a potential risk to "complicate daily life of the citizens". This phrase found unconstitutional by the Turkish Constitutional Court on 27 December 2017[5] and thereby was abrogated as of that date. In reaching its conclusion, the Constitutional Court made particular reference to the European Court's judgment of ***Disk and Kesk v. Türkiye, which is a clone of the present group (no. 38676/08),*** and considered that although a demonstration in a public place may cause some disruption to ordinary life it is important for the public authorities to show a certain degree of tolerance towards gatherings if the freedom of assembly is not to be deprived of its substance.
94. In line with the Constitutional Court's above decision, Section 6 was further amended by the Law no 7145 in 2018, and the phrase "complicate daily life of the citizens" was replaced by "the daily life of the citizens is not excessively and unbearably

[5] https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2017/142?EsasNo=2014%2F101

complicated". In so doing, in the determination of the places and routes of public gatherings, a further safeguard has been adopted.

95. The amendments in Section 6 can be seen in the below table.

Section 6 of the Assemblies and Marches Act (Law No. 2911)			
Before 2014 amendments	**With the amendments by the Law No. 6529 on the Improvement of Fundamental Rights and Freedoms dated 2 March 2014**	**The Annulment Decision of the Turkish Constitutional Court on 27 December 2017**	**As currently in force following the amendments made by the Law No. 7145 on 25 August 2018**
(…) the place and route of meetings and demonstration marches shall be determined by the highest local authority (…)	(…)the place and route of meetings and demonstration marches shall be determined by the highest local authority **by taking the opinions of the provincial and district representatives of the political parties having a group in the Grand National Assembly of Türkiye, the mayors of the districts and provinces where the route will pass, the provincial and district representatives of the three trade unions having the highest number of members and the provincial and district representatives of the professional organisations having the status of public institutions.** ***…provided that the restrictions listed in the first paragraph of Section 22 are complied with and that the public order is not disturbed (and the daily life of the citizens is not complicated.)***	The phrase **"complicate daily life of the citizens"** in Section 6 was found unconstitutional by the Turkish Constitutional Court thereby was abrogated.	…provided that the restrictions listed in the first paragraph of Section 22 are complied with and that the public order is not disturbed **and the daily life of the citizens is not excessively and unbearably complicated.**(…)

- ***Section 7 of the Law no 2911***

96. Section 7 of the Law no 2911 regulates the hours between which public gatherings will be held during the day.

97. At the material time, the public gatherings in open places could only take place until <u>*one hour before sunset*</u> and this was <u>*until 23.00*</u> meetings in closed places.

98. In March 2014, with the Law no 6529 "on the Improvement of Fundamental Rights and Freedoms", the wording of the said provision was amended with a view to further strengthen the right to freedom of assembly. With this amendment the time frames for public gatherings to be held during the day was extended.
99. The authorities would further note that the phrase "may be held until sunset" in Section 7 was found unconstitutional by the Turkish Constitutional Court on 27 December 2017[6] and thereby was abrogated. Referring to the European Court's case-law on the issue, the Constitutional Court underlined that any interference with the right to freedom of freedom of assembly should be proportionate. According to the High Court, imposing a blanket ban on this right, that is to say requiring the meetings to end before sunset, without allowing the authorities to take into account its possible effects on public order and the others' rights was not proportionate.
100. Following the Constitutional Court's above judgment, Section 7 was further amended in 2018 with the Law no 7145 in line with Constitutional Court's findings. The authorities consider that the 2018 amendments have further improved the right to freedom of assembly by allowing the public gatherings in open places to last until 24.00.
101. The amendments in Section 7 can be seen in the below table.

Section 7 of the Assemblies and Marches Act (Law No. 2911)			
Before 2014 amendments	**With the amendments by the Law No. 6529 on the Improvement of Fundamental Rights and Freedoms dated 2 March 2014**	**The Annulment Decision of the Turkish Constitutional Court on 27 December 2017**	**As currently in force following the amendments made by the Law No. 7145 on 25 August 2018**
Meetings and marches in open places may last until one hour before sunset and meetings in closed	Meetings and marches in open places may be held **until sunset**, and meetings in closed places may be held until	The phrase "***may be held until sunset***" in Section 7 was found unconstitutional and thereby was	**Meetings and demonstrations in open places may be held until the onset of night time**, and meetings in closed places may be held until 24.00. **If it is notified that the meeting and demonstration march will continue after the onset of night time by showing a valid reason, the finishing time of the meetings and demonstration marches**

[6] https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2017/142?EsasNo=2014%2F101

places may last until 23.00 hours.	**24.00 hours**.	abrogated.	**held in open places may be extended until 24.00 at the latest with the decision of the highest local authority, provided that it does not make it excessively and unbearably difficult for other citizens to rest in peace and does not cause disruption of public order.**

- ***Section 10 of the Law no 2911***

102. Section 10 of the Law no. 2911 requires prior notification of public gatherings which provides as follows.

Section 10 of the Assemblies and Marches Act (Law No. 2911)
In order for a meeting to take place, the governor's office or authorities of the district in which the demonstration is planned must be informed, during opening hours and at least forty-eight hours prior to the meeting, by a notice containing the signature of all the members of the organising board…

103. The notification obligation envisaged under Article 10 the Law no 2911 aims only to ensure the safety of the meeting and public in general.
104. It is also acknowledged the Court that prior notification serves not only the aim of reconciling the right of assembly with the rights and lawful interests (including the freedom of movement) of others, but also the aim of preventing disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures appears to be common practice in member States when a public demonstration is to be organised (see *Kudrevičius and Others v. Lithuania* no. 37553/05, § 148, 15 October 2015 and *Berladir and Others v. Russia*, no. 34202/06, § 42, 10 July 2012).
105. The prior notification obligation should not be considered as a permission. The Constitutional Court has explained this point in many of its judgments. It underlines to this end that failure of prior notification before the demonstration and/or gathering outside the areas determined by the administration *per se* would not render the demonstration or gathering non-peaceful (*Eylem Onuk,* no.2015/8018 15/11/2018, *Ömer Faruk Akyüz* no.2015/9247 4/4/2018). The case law samples submitted below illustrates this improved practice in judiciary. The Constitutional Court's approach is followed by the relevant authorities including the administrative bodies. The statistics

submitted in this action plan, (in the impact analysis part, illustrates this practice. Given the fact that the Court has not called the wording of this provision into question, the authorities consider that the Convention compliant practice of the relevant domestic authorities are conducive to preventing similar violations.

106. In addition to above, when we look at the laws of some other member states, it is seen that prior notification is sought as a requirement. Furthermore, it might be observed that there are various sanctions for not complying with the notification obligation. For example, some countries have an obligation of notification, and the authorised body shall make the decision to ban the peaceful assembly if: 1) it is not timely and properly reported; 2) it is reported to take place in the location where, according to this Act, it cannot be held; (…). This provision is similar to the one applied in Türkiye.

107. Beyond this, in some member states spontaneous demonstrations are explicitly prohibited by law and prior governmental consent is required to engage in protest in any event. In addition, the legislation applicable in certain member states provides for fines for not declaring gatherings at facilities that provide basic community services.

108. Similarly, it is very common in the CoE member states that the domestic law explicitly includes a legislative provision that grant security forces, the police or coastguard the discretion to dissolve banned assemblies even if they are conducted peacefully. Same is also valid for meetings where organizers do not fulfil notification requirements; or where participants breach restrictions imposed on the assembly such as moving beyond barriers or railings set up by the police.

109. In some member states, it is seen that notification is not required only for demonstrations involving people under a certain number or in certain places. Accordingly, there are regulations allowing spontaneous demonstrations in certain countries and prohibiting in certain others, or not provided in the legislation in some member states.

110. As can be seen, the Government notes that there is no a consensus among member states of the Council of Europe regarding the quality of legislative provisions on the obligation of notification. The Government would further like to highlight that in certain member states the legislative provisions involve stricter requirements compared to the ones in the Law No. 2911. In this respect, the authorities would like to indicate that the underlying reason for the violations at hand is the application of the law in practice rather than its substantive provisions.

111. On this basis, the general measures that are capable of improving the practice of the Law have been taken to prevent similar violations. In particular, the Government would like to note that in Türkiye, as stated in the statistics below, the mere lack of notification for a demonstration does not require direct intervention, and many demonstrations are carried out without intervention even though they do not meet the notification requirements (see, impact analysis part below). Considering the different member state regulations indicated above, it is not possible to indicate that there is a unity of practice in the member states of the Council of Europe. In this respect, the authorities are of the opinion that the requests calling for a legislative amendment are not in compliance with the principle of subsidiarity. According to the Convention system, the high contracting parties have a margin of appreciation to determine the measures when executing a judgment. On this basis, particularly considering that there is no deficiency in the Turkish legislation, the Government of Türkiye would like to note that insisting on a legislative amendment would lead to excess of power.

- ***Section 13 of the Law no 2911***

112. Section 13 of the Law no 2911 regulating the powers of the government commissioner was completely abolished in 2014 with the Law no 6529. Previously, the government commissioner had had, inter *alia,* the power to end the meetings should the circumstances so required. With this amendment, the concept of government commissioner has been totally removed from the legislation, and the duties of the government commissioner were assigned to the organisation committee. In this regard, the duties on ending the meetings and demonstration marches, stated in Sections 23 and 24, which had been performed by the government commissioner have been assigned to the organisation committee. Before the amendment in question, there was a confusion about the powers of the government commissioner and the regulatory board. This confusion has been eliminated with this amendment.

- ***Section 17 of the Law no 2911***

113. Section 17 (concerning the postponement or prohibition of meetings in certain situations, amended on 26 March 2002) provides that the most senior local governors may postpone a meeting for a period not exceeding one month for reasons of national security, public order, prevention of crime, to protect public health or public morals or to protect the freedom and rights of others; or may prohibit a meeting when there is a clear and imminent danger that a crime will be committed (açık ve yakın tehlike mevcut olması hâlinde). Such a decision however can be appealed before the

administrative court. Therefore, there exists a judicial review mechanism. Samples of judicial decisions to this end are provided in the case-law developments part of this submission.

114. Furthermore, the authorities would like to note that application of this provision is well clarified by the Constitutional Court samples of which are given below. The relevant administrative authorities including the administrative authorities follow this approach. Given the fact that the Court has not called into question the wording of this provision but criticized its implementation in practice, the improved practice in Türkiye should be taken account of by the Committee in its examination.

- ***Section 22 of the Law no 2911***

115. Section 22 regulates the places where holding demonstrations are prohibited. At the material time, it was not allowed to hold demonstrations on public streets and on highways, along with parks, places of worship and buildings in which public services are based. Demonstrations organised in public squares had to comply with security instructions and not to disrupt individuals' movements or public transport.

116. The authorities would like to note that the scope of the above provision has been significantly narrowed down in the recent years.

117. Namely, first, the phrase of "on public streets" in Section 22 was found unconstitutional by the Turkish Constitutional Court on 27 December 2017 and thereby was abrogated. In reaching its conclusion, the Constitutional Court made particular reference to the European Court's judgment of *Disk and Kesk v. Türkiye* (no. 38676/08) and considered that although a demonstration in a public place may cause some disruption to ordinary life, including disruption of the traffic, it is important for the public authorities to show a certain degree of tolerance towards gatherings if the freedom of assembly is not to be deprived of its substance. According to the High Court, restricting the meetings to be hold in public streets could be justified if it causes the daily life to become "extremely and intolerably" difficult. Imposing such a blanket ban, without allowing the authorities to take into account the event's possible effects on public order and the others' rights was not necessary and proportionate.

118. The authorities would further like to note that the phrase of "on highways" in Section 22 was also found unconstitutional by the Turkish Constitutional Court on 10

September 2020[7] following the same approach explained in the above paragraph, and thereby was abrogated.

119. Bearing in mind that in some cases examined under the present group, the interventions into the public gatherings were based on the fact that these meetings had been held on "public streets or highways", the authorities consider that the above explained decisions of the Constitutional Court are of paramount importance for the purposes of further guaranteeing the right to freedom of assembly enshrined in Article 11 of the Convention.

120. The amendments in Section 22 can be seen in the below table.

Section 22 of the Assemblies and Marches Act (Law No. 2911)		
Before 2017	**The Annulment Decision of the Turkish Constitutional Court on 27 December 2017**	**The Annulment Decision of the Turkish Constitutional Court on 10 September 2020**
Meetings may not be held on public streets, in parks, places of worship, buildings in which public services are based and within one kilometre of the Grand National Assembly of Türkiye, and demonstrations may not be held on highways. In assemblies in public squares, it is obligatory to comply with the arrangements to be made by the governorships and district governorships to ensure the passage of the public and transport vehicles.	The phrase of "***on public streets***" was found unconstitutional by the Turkish Constitutional Court	The phrase of "***on highways***" was found unconstitutional by the Turkish Constitutional Court on 10 September 2020.

[7] [7] https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2020/46?EsasNo=2020%2F12

- ***Section 23 of the Law no 2911***

121. Section 23 of the Law no 2911 sets out the circumstances in which meetings or demonstration marches are deemed to be unlawful. According to Section 23(a) a demonstration is deemed unlawful if no prior notification has been given or if the start or end time specified in the notification has not been observed. According to Section 23(b), meetings or demonstration marches during which the demonstrators or the participants bear, *inter alia*, firearms, explosives, cutting and perforating tools, stones, bats, iron or rubber bars, wires, chains, poisons, gas or fog materials; or they carry banners, placards, pictures, signs, tools and equipment that are criminalised by law, or they chant unlawful slogans; are considered to be unlawful. According to s Section 23(d), demonstrations held in places other than those specified under Articles 6 and 10 of the same Law are considered unlawful.

122. The authorities would like to note that application of this provision is well clarified and significantly narrowed down by the Constitutional Court samples of which are given below. The relevant administrative authorities including the administrative bodies follow this approach. Given the fact that the Court has not called into question the wording of this provision but criticized its implementation in practice, the improved practice in Türkiye should be taken account of by the Committee in its examination. The statistics submitted in this action plan, at the end of this section also illustrate this improved practice. Given the fact that the Court has not called the wording of this provision into question, the authorities consider that Convention compliant practice of the relevant domestic authorities are conducive to preventing similar violations.

123. <u>*Sections 24.28,32 and 33 of the Law no 2911 regulate the conditions to intervene demonstrations and the sanctions for failure to comply with the requirements of this Law.*</u>

- ***Section 24 of the Law no 2911***

124. Section 24 provides that demonstrations which do not comply with Section 23 of this law will be dispersed by force on the order of the governor’s office and after the demonstrators are warned.

125. The authorities would like to note that the interventions to demonstrations in a number of cases examined under the present group were based on Section 24 of the Law no 2911. This provision sets out the circumstances, leading a demonstration to be

deemed as unlawful, in a very detailed and foreseeable manner[8]. Indeed, the Court has not called into question the wording of this provision. To the contrary, it considered that the interferences were prescribed by law. It therefore remains to improve a Convention compliant practice in the implementation of this provision. The below explained practices of the Turkish judiciary followed by the administrative bodies, as will be seen in the statistics, represent their Convention compliant practice on the issue.

- ***Section 28 of the Law no 2911***

126. The criminal liability of the participants of unlawful demonstrations and organisers of such demonstrations is framed by Section 28. Under this provision, persons who organise and lead unlawful meetings and demonstrations and persons who participate in their acts shall be sanctioned. The authorities would like to note that in accordance with the case-law of the Court demonstrators participating peaceful gatherings shall not be *per se* sanctioned. Further, organizers of meetings cannot be hold criminally responsible for others' illegal activities during a demonstration, if they do not directly participate in these activities or encourage such acts (see among others, *Gün and Others, § 83*). In some of the cases examined under the present group, the Court found violations of Article 11 on account of disproportionate application of this provision. In reaching its conclusions in these cases, the Court found that the interference was prescribed by Law, however, in the circumstances of these cases the interferences were not necessary in a democratic society. The authorities would therefore consider that the required measures for prevention of similar violations in the application of this provision could be achieved by developing a Convention compliant practice coupled with raising awareness activities, details of which are given in a detailed manner below.

- ***Sections 32 and 33 of the Law no 2911 (Resistance)***

127. Section 32 provides persons taking part in unlawful meetings or demonstration marches who continue not to disperse despite warnings or use of force shall be liable to a term of imprisonment. Persons who resist the security forces by methods of violence or threats despite warnings or use of force shall also be punished for committing the crime proscribed by Article 265 of the Criminal Code (Law no. 5237). Under Section 33, persons who take part in meetings and demonstration marches carrying weapons or materials listed in section 23(b) shall be liable to a term of imprisonment.

[8] https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2911.pdf

128. In these cases, the Court mainly found that the demonstrations in question were peaceful or it was not established by the authorities that the applicants had acted violently. In reaching its conclusions, in these cases, the Court found that the interference was prescribed by Law, however, in the circumstances of these cases, the interferences were disproportionate to the legitimate aim pursued or were unnecessary. The authorities would therefore consider that the required measures for prevention of similar violations in the application of this provision could be achieved by developing a Convention compliant practice coupled with raising awareness activities, details of which are given in a detailed manner below.

- ***Section 32 of the Misdemeanours Act, Law No. 5326***

129. As noted above, in some cases, the applicants were imposed administrative fines pursuant to Section 32 of the Law No. 5326 for having participated unlawful demonstrations, such as having participated in unauthorised demonstrations or having organised these events in places other than those had been determined by the administration, in disregard of the orders given by the relevant authorities.
130. This provision reads "*Persons acting contrary to lawful orders given by the competent authorities ... for the protection of public safety, public order and public health shall receive an administrative fine*.
131. The Court noted in these cases that the imposition of a sanction for participation in an unauthorised demonstration may be compatible with the guarantees of Article 11 (see, among others, *Yıldız and Others,* § 42). The Court however considered that imposition of administrative fines on the applicants for their participation in a demonstration was disproportionate and not necessary for maintaining public order within the meaning of Article 11 of the Convention.
132. The relevant authorities have adopted a Convention compliant practice in the application of this provision in practice as well.

C. Violations of Article 2 or 3 of the Convention

a. Introduction

133. In some cases, the security forces used physical force to disperse the demonstrations. In some of these cases the Court found that the demonstrations were peaceful and use of force was not necessary. In some others, the Court considered that the demonstrations were not peaceful, nevertheless, it could not be established that the

applicants, individually, had acted violently nor had they resisted the police. Therefore, the force used against the applicants were not either necessary or proportionate. Along these lines, the Court found violations of Article 2 or 3 of the Convention on account of the applicants' injuries or death of their next of kin.

134. The authorities will explain the general measures taken/envisaged with a view to preventing excessive or unnecessary force during demonstrations. In doing so, the authorities will first mention the use of force in demonstrations in general. Second, in line with the Court's specific findings in relation to the use of tear gas, the authorities will explain the general measures on this issue.

b. Measures adopted to prevent unnecessary and/or disproportionate use of force during demonstrations

i. Measures adopted to prevent unnecessary and/or disproportionate use of force during demonstrations (In general)

- **Legislative Framework**

135. The authorities would like to underline that Türkiye has further strengthened its legislative framework concerning the use of force during demonstrations in line with the convention standards. As explained below, plans are made before the demonstrations with a view to ensure proper organisation of the interference in order to minimise the risk of bodily harms and where necessary to use force in a gradual and proportionate manner. Detailed instructions are also provided on how to apply these plans during the conduct of the interventions. Every single step has been clearly explained on the use of force where necessary. Furthermore, reports are drawn up to evaluate the conduct of the intervention to further improve practices. Details are given below.

❖ ***The Police Powers and Responsibilities Act (Law no. 2559)***

136. The Police Powers and Responsibilities Act (Law no. 2559) regulates the powers and responsibilities of the police, including the use of force, in its general context.

137. Section 16 regulates the powers of the police to use force. In this context, if the police encounter resistance while performing their duties, they are authorised to use force in order to break such resistance and to the extent necessary to break it. The use of force means recourse to physical and material force and weaponry in order to immobilise offenders, in a gradual and proportionate manner to [their] characteristics and degree of resistance and aggressiveness. In cases of intervention by group forces,

such as demonstrations, the extent of the use of force and the equipment and instruments to be used are determined by the commander of the intervening force.

138. As is seen, Section 16 requires the police to use force where necessary, in a gradual and proportionate manner in line with the Convention standards. Further, in cases of interventions to demonstrations, the police shall not react individually.

❖ ***The Directive on the rapid reaction forces (Polis Çevik Kuvvet Yönetmeliği)***

139. The Directive on the rapid reaction forces (Polis Çevik Kuvvet Yönetmeliği, 30 December 1982) lays down the principles governing surveillance, monitoring and intervention of the rapid reaction forces in the event of demonstrations. Section 25 stipulates:

In cases of unlawful gatherings or demonstrations necessitating the intervention of the rapid reaction forces, the local civilian authority, the highest-ranking police officer or another senior police officer entrusted with this task must first of all address the crowd by means of a loudhailer or other means of communication. He must then warn the crowd that "that it must disperse in accordance with the law and that should it fail to do so, force will be used." This order must be repeated two or three times and a report drawn up to confirm that the warning could be heard from the furthest point in the crowd. The warning is not necessary in the case of an actual assault on and resistance to the police or in the case of an actual attack on the property which the police are protecting.

Should the crowd fail to disperse despite the warning given, use is to be made, in a gradual manner, of physical force, material force and weapons, depending on the nature of the crowd's movements, the degree of violence, threats or assaults, or of the resistance put up by the offenders.

Where dispersal has been planned and is being carried out by use of force, several exit routes must be left for the crowd so that it can disperse. No attempt must be made to disperse the crowd until such exit routes are available.

140. As is seen, the Directive on the rapid reaction forces provides clear instructions concerning the use of force in demonstrations ensuring gradual and proportionate use of it.

❖ ***The Directive on the Procedures and Principles of the Conduct of the Personnel Tasked in Public Incidents***

141. The Turkish authorities would like to note that on 2 April 2020 several amendments were made in the "*Directive on the Procedures and Principles of the Conduct of the Personnel Tasked in Public Incidents*" dated 2011. In this connection, information will be provided about the Directive in question and the amendments made therein.

142. The purpose of this Directive is to set out the procedures and principles of the conduct of the personnel tasked in public incidents prior to, in the course of and the aftermath of a meeting or demonstration marches.

143. In line with the requirements of the directive, plans are prepared every year in December in provinces and districts as regards the public incidents that are likely to occur, and are put into practice in the first week of January after the approval of the Civilian Authority. It is regulated in the Directive that the issues concerning the issuance of a report as to how, by which vehicles and to where the suspects apprehended in the course of the public incidents would be transferred, to which unit they would be handed over, the identification of the witnesses of the incident, the establishment and preservation of the pieces of evidence concerning the offence at the incident scene shall be included in the plan. It is also prescribed that in addition to the vehicle, equipment and weapon status of the personnel, the requirements such as other units that might assist, the fire department, the ambulance to be used in the transfer of the injured personnel or citizens, the hospital and the municipality shall be included in these plans.

144. Article 6/ç of the Directive in question read as follows:

"As regards the public incidents; (...)

ç) The state of personnel, vehicle, equipment and weapon of the rapid reaction forces, other units that may assist, the cooperation and communication principles with fire station, ***ambulance to be used in the transfer of wounded personnel or citizen, hospital****, municipality and other units, the deploy of forces and dispatch to the incident scenes, the force shift when necessary, the measures to be taken in the incident scene, the procedures and principles of dispersing the community by using force, the order of command, the area of responsibility and coordination principles in cases where the duty is performed together with gendarmerie (...) shall be included in the plan to be drawn up."*

145. The authorities would like to underline one important point in the above provision. As is seen, in order to prevent health problems that may arise in the meetings and demonstration marches and if so required to provide medical assistance, necessary measures are taken in the plans, which have already been prepared, by taking into account the issues such as ambulance, fire station, hospital to which the wounded persons will be referred. ***This provision ensures that people who are injured during the interventions have immediate access to medical attention.***
146. The Directive also sets out the measures to be taken prior to, in the course of and aftermath of a meeting and demonstration marches.
147. It is required that prior to a meeting and demonstration march, an informative meeting shall be held by the unit superiors. In this respect, explosive materials in the demonstration area shall be controlled and the vehicles belonging to the security forces might be located in a suitable place outside the demonstration area, and appropriate directions shall be determined in order not to damage the surrounding buildings, shopping centres and vehicles during the dispersal of the demonstration if need be.
148. The cases in which a meeting is deemed illegal in the Law no. 2911 are explicitly listed in Article 23. These include non-compliance with the notification obligation; carrying firearms, fireworks, molotov-like weapons or all kinds of cutting tools, sticks, iron bars etc.; covering faces partially or completely etc.; conducting the meeting outside the time period determined in the law; or in a forbidden area. As explained above the mentioned provisions are in parallel with the provisions in the legislation of many CoE Member States.
149. Article 24 of the Law no 2911 also regulates the circumstances in which a demonstration march could be dispersed. In this article, the cases where a meeting that has started in accordance with the law subsequently becomes illegal are prescribed. However, there is no provision for immediate dispersal. In such a case, it has been stated that the organising committee will announce the end of the meeting, and if the organising committee fails to do so, the police chief will notify the highest administrative authority of the location and it will be decided by him/her whether to terminate the meeting or not. If a termination decision has been issued, there is no direct intervention, but a warning is given to the group first and then it is dispersed by force. As can be seen, even if a meeting is against the law, it is not automatically dispersed by direct intervention. Moreover, in the same article, it is stated that if there are people carrying weapons, tools etc., those people will be removed and the meeting

and demonstration march will continue. Furthermore, as established by the Constitutional Court, even if a demonstration is not lawful, it does not mean that the event shall be ended in any event. The Constitutional has established the authorities shall show a certain degree of tolerance to such events as long as they are peaceful and do not pose a risk for public order.

150. In addition, it is regulated in the Directive that use of force in dispersing unlawful meetings shall be the last resort, and that the necessary sensitivity shall be displayed by the line superiors to prioritize their dispersal by convincing means and methods. In unlawful meetings and demonstration marches, the security forces who intervene in the incident announce to the crowd that the meeting is unlawful and make at least three "disperse" warnings, audible from the very rear of the assembled group, and allow reasonable time for the group to disperse. The reasonable time depends on the circumstances of the meeting such as the number of participants and the place of the demonstration.

151. The statistics provided in the impact analysis part below demonstrates that communication methods are used effectively and most of the unlawful meetings are shown tolerance and are not dispersed.

152. During the process of dispersing a group, in accordance with the principles of "proportionality", a gradually increasing amount of force shall be used according to the degree of force, violence, resistance or attack demonstrated by the group.

153. With the amendment made in 2020, the stages of the use of force were listed in a gradual and proportionate manner in five stages. Accordingly, it is stated that first of all, a warning shall be made at least three times for their dispersal, that after the lapse of reasonable time and there was still no dispersal, physical force, intervention by pushing with riot shields, intervention with tear gas spray, gas and defence launchers, and finally batons could be used respectively. The security forces shall comply with the orders of the responsible superiors in applying force and they shell not act individually.

154. The warning about the dispersal shall be recorded in a report; the timing, manner of the warning, the addressees and the fact that the warning has been made in such a manner as audible by the group shall be indicated in the report. In the event that a public incident is detected with technical devices, the warning and the time granted for the dispersal of the group shall be recorded. During the intervention, all the personnel shall act collectively in line with the orders of their line superiors and avoid individual actions.

155. With the amendment made in 2020, it is specified in the Directive that the interventions during the dispersal of unlawful demonstrations shall be carried out in line with the purposes of dispersing the group, preventing those dispersed from convening again, and apprehending the suspects, that measures shall be taken against the group participating in the meeting and demonstration march and against the attacks that might come from outside. Moreover, it is regulated that in the interventions to be carried out against crowded groups in open areas, the group shall be divided into small parts and their dispersal shall be ensured by cutting off their contact with other groups.
156. With the 2020 amendments, it is clearly provided that force shall not be used against anyone who do not put up resistance and against demonstrators whose resistance has already been broken.
157. As regards the measures to be taken after the demonstration marches, it is regulated that an incident assessment report shall be prepared following each incident and submitted to the relevant authorities.
158. Article 11 of the Directive clearly sets out to this end as follows:

"(6) As a result of any incident where the rapid reaction forces used force, a report for the assessment of incident is drawn up and sent to the administrative authority as well as the Directorate General. The report for assessment of incident includes the following information: Whether an informative meeting was held for the personnel assigned during the incident prior to the duty, reason of the assembly, number of demonstrators and structure of the group, content of the banners opened and the slogans chanted by the group, course of the incident and reason of the intervention, the rank and duty -at the incident scene- of the person who gave the order for intervention, tactics and orders used before and after intervention, number of demonstrators arrested upon the intervention, number of injured personnel and other points deemed necessary with regard to the incident.

(7) With a view to establishing shortcomings in the course of duty and preventing them to be repeated during a further incident, an assessment meeting is held for the Rapid Response Force personnel with the participation of the relevant chief officer.

(8) With regard to the matters discussed during informative meeting held prior to the incident and assessment meeting held following the incident, the rapid response force personnel draw up a report and keep it in the archives in order to use it when necessary."

159. In this regard, "rapid response force intervention reports" are filled and these reports include certain information such as place, date and time that the incident occurred, reason and manner of the intervention, the authority ordering the intervention etc. Thereupon, the intervention assessment meeting is held, and a report is drawn up by considering the intervention's method, compatibility with the legislation, proportionality etc. The examples of reports drawn up after the post-intervention evaluation meetings provided for by the 2016 directive is annexed (see Annex 7)

160. The Turkish Government considers that these measures are also capable of establishing an ex-post facto review mechanism for meetings and demonstrations.

161. Furthermore, with the amendment made in 2020, it is stated that the necessary judicial and administrative acts shall be immediately carried out against the personnel who are established to have exceeded the limit of power while using force.

ii. Measures adopted to prevent unnecessary and/or disproportionate use of tear gas during demonstrations

162. In some cases, the Court found violations of Article 2 or 3 of the Convention with particular focus on the use of tear gas by the security forces in intervening the demonstrations.

- **The time period of the events that gave rise to the present violations**

163. At the outset, the authorities would like to note that the events that gave rise to the violations examined under this head took place before 2008. According to the authorities, in order for the Committee to make a better assessment of the general measures adopted, details of which are given herein, this time period should be taken account of. Namely, at the material time, there existed no clear provisions on the use of tear gas. Nevertheless, Türkiye has adopted a Convention compliant regulatory framework since then which should be taken account. In their present submission, the authorities will first provide information on the legislative arrangements on the issue and then will make an analysis of this framework in connection with the findings of the Court.

- **Legislative framework**

❖ ***The 2008 Directive on "Tear Gas, Gas and Defence Rifles and Use and Storage of Equipment and Ammunitions belonging to them"***

164. As noted above, at the material time, there existed no clear provisions on the use of tear gas. The Court criticized this lacuna in its judgments.

165. Nevertheless, on 15 February 2008 a circular setting out the conditions for using tear gas (E.G.M. Genelge No. 19) was sent by the Director General of Security (Emniyet Genel Müdürü) to all national security services. This circular referred to a directive concerning the use of tear-gas weapons and munitions (Göz Yaşartıcı Gaz Silahları ve Mühimmatları Kullanım Talimatı) issued in February 2008.

166. This directive explains the characteristics of tear-gas weapons and the physiological effects of the gas used (For the details of this circular see: *Abdullah Yaşa and Others* Application no. 44827/08, 16 July 2013, § 28).

❖ ***The 2016 Directive on "Tear Gas, Gas and Defence Rifles and Use and Storage of Equipment and Ammunitions belonging to them and Training of the User Personnel"***

167. In 2016, the 2008 Directive was replaced by the current Directive introducing further safeguards on its proper use.

168. With this directive, the stages of use of force by the security forces in controlling of the events and the stages of interventions with tear gas in public events are determined with a view to clearly establishing the tactics to be used by them, the orders and equipment for use of force, attaining a standard around the country and ensuring proportionate use of force by the police officers.

169. According to the directive;

It is mandatory that only the trained personnel shall use tear gas. Moreover, only 4 departments namely; riot force, collective force, anti-terror and security department personnel shall use tear gas equipment. Personnel names that are on duty to use this equipment shall be listed before the event.

170. **Where interference with public events is necessary, before using gas cartridges, attention is paid on whether there are any institutions and organisations such as schools, hospitals, nurseries and old-age asylums within the impact area of the tear gas.** Maximum diligence is paid in order to ensure that citizens who are not involved in unlawful public events are not affected by tear gases (Article 6/3).

171. Interference with tear gas is avoided unless there are serious risks of the public order being disturbed and physical attacks against the environment or security forces. **Tear gas cannot be used by any means against persons or groups that ceased to resist and attack. Tear gas cartridges cannot be fired by any means by targeting human body** (Article 6).

172. Furthermore, in the Usage directive annexed to the Directive dated 2016, how each defence tool is to be used is listed in detail unlike the previous version. It has also been stated that gas weapons should not be used in closed areas due to gas density. It has been specifically stated that gas grenades and smoke grenades cannot be used indoors. Regarding gas sprays, it is stated that it should be aimed one span above the head and used by drawing a circle, which was not explicitly included in the old regulation. It is also stated that the sprays should never be sprayed on the face and from not less than a distance of one metre.

173. **Prior to interference, a special risk analysis of possible events is made in the meeting held before deployment. In this respect, necessary measures should be taken to secure individuals' immediate access to medical attention if need be. Therefore, ambulances and medical personnel could be made available if the risk assessment requires so.**

174. The personnel are informed of the material and ammunition to be used in the interference and the stages of interference under the responsibility of the competent superior.

175. Where interference is necessary and compulsory, assignment of a negotiator, granting time for dispersal, warning and announcement are the priority. In the event that the demonstrators nevertheless have an offensive attitude, it is necessary to interfere in a manner proportionate to their attack. Such interference shall be carried out gradually. Use of gas weapons during interference is the last resort.

176. Subsequent to interferences with public events, an "Interference Assessment Meeting" is held under the chairmanship of the branch chief of the relevant department with the participation of the superiors of the departments that performed during the interference. During this meeting, the type, amount and usage duration of the ammunition is assessed within the framework of the principle of use of proportionate force. Furthermore, the information obtained is added to the relevant interference form to provide the basis for subsequent interferences.

177. A mechanism is established by way of designing official forms within the directive, with a view to making assessments following the demonstration. The interference form includes information such as the department giving the order, reason for interference, number of the protestors interfered with, number of the personnel taking part in the interference, type of the interference, number of the injured personnel and protestors and the material used by the protestors to attack and the ammunition used by the personnel. Furthermore, high resolution cameras are mounted on the vehicles used in interferences with public events and on the helmets of the personnel, and the footages are examined during and after interferences within the framework of the principle of proportionality.

178. Pursuant to the directive, it is compulsory to provide training to the personnel on interferences with public events and the ammunition to be used during interferences. Moreover, the instruction manual describing in detail the gases and their equipment has been made available for the personnel under the "restricted" category simultaneously with the directive.

179. The Turkish authorities would like to note that these arrangements brought about its positive consequences since the Directive was put in force. Accordingly, the "interference assessment meetings" provided under the directive are capable of reviewing the necessity and reasonableness of any use of force. Furthermore, the Turkish authorities would like to highlight that this Directive is the sole secondary legislative instrument on the use of tear gas and related equipment and ammunition by police officers. Therefore, it is noteworthy that diverse legislation on this issue has been harmonised under this new Directive.

- ***Analysis of the legislative and regulatory framework on tear gas in connection with the findings of the Court***

180. *In* ***Ali Güneş v. Türkiye*** (9829/07, 10 April 2012), **in June 2004**, the applicant was sprayed with tear gas during a demonstration by the Security forces. The Court noted in this case, in particular, that there could be no justification for the use of such gases against an individual who has already been taken under the control of the law enforcement authorities. *In* ***Disk and Kesk*** (38676/08, 27 November 2012): **in May 2008,** the applicant was sprayed with tear gas during the police intervention to a demonstration. The Court underlined in this case that, even if it was used while chasing the demonstrators showing violent acts, the use of a gas bomb in hospital premises could not be considered necessary or proportionate in the circumstances of the case. ***In***

Abdullah Yaşa and Others (44827/08, 16 July 2013), **in March 2006**, the applicant was injured in the nose by a tear-gas grenade fired by the police during their intervention to a demonstration while he was allegedly on his way to his aunt's house. The Court noted under its Article 46 examination that*, at* the time of the events, the Turkish law lacked any specific provisions governing the use of tear-gas grenades during demonstrations and did not lay down any instructions for their utilisation by the police forces. The Court underlined to this end, in particular, that firing a tear-gas grenade along a direct, flat trajectory by means of a launcher cannot be regarded as an appropriate police action as it could potentially cause serious injuries, whereas a high-angle shot would generally constitute the appropriate approach, since it prevents people from being injured or killed in the event of an impact.

181. In İzci (42606/05, 23 July 2013), **in March 2005**, the applicant took part in a demonstration in Istanbul and alleged that she had been sprayed with gas by the police officers. The Court noted that, at the time of the events, there existed no clear and adequate instructions regulating the use of tear gas and that the police officers who attacked the applicant and other demonstrators acted in accordance with those instructions. ***The Court highlighted that the 2008 directive was not issued until some three years after the incident giving rise to the present application*** The Court noted under its Article 46 examination that *"To that end, and without prejudice to any other measures that Türkiye might envisage and without prejudice to the directive issued by the Ministry of the Interior on 15 February 2008,, the Court considers that the taking of steps to ensure that law enforcement personnel act in accordance with the requirements of Articles 3 and 11 of the Convention and in compliance with the CPT's recommendations referred to above (see paragraphs* ***40 and 41****) when resorting to use of forceful means.*

182. The referred paragraphs 40 and 41 reads as follows:

40. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") has expressed its concerns over the use of such gases in law enforcement. The CPT considers that:

"... [P]epper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a

medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control. (CPT/Inf (2009) 25)"

41. In its reports pertaining to its visits carried out in a number of Member States of the Council of Europe the CPT has made the following recommendations:

"... [A] clear directive governing the use of pepper spray to be drawn up, which should include, as a minimum:

- clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;

- the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered measures of relief;

- information regarding the qualifications, training and skills of staff members authorised to use pepper spray;

- an adequate reporting and inspection mechanism with respect to the use of pepper spray..." (See, inter alia, CPT/Inf (2009) 8)".

183. In *Ataykaya (50275/08, 22 July 2014, the facts of the case took place in 2008) and in Süleyman Çelebi and Others* (37273/10, 24 May 2016, the facts in this case took place in 2008) the Court mainly referred to its above findings in respect of the use of tear gas in demonstrations.

184. Having summarised the Court's findings in the above cases, the authorities would first like to note that at the time of the events the current legislative/regulatory framework was not in force. In 2008, as explained above, clear instructions were put in force which is also acknowledged by the Court. The 2016 directive further improved these safeguards.

185. To be more specific, in *Ali Güneş*, the Court criticized the use of tear gas spray from a close distance and even after the applicant's apprehension. The authorities note that under the provisions of the current regulatory framework, it is clearly stipulated that tear gas shall not be used against those apprehended or not showing resistance. Further, it is ensured in the relevant Directive that gas spray shall not be used directly in the face and not closer than one-meter distance.

186. In *Disk and Kesk,* the Court criticized the use of tear gas in hospital premises. As explained above, the current legislation clearly addresses this point underlining that attention is paid on whether there are any institutions and organisations such as schools, hospitals, nurseries and old-age asylums within the impact area of the tear gas.

187. ***In Abdullah Yaşa and Others,*** the Court criticized firing a tear-gas grenade along a direct and flat trajectory manner. As noted by the Court, a high-angle shot would generally constitute the appropriate approach, since it prevents people from being injured or killed in the event of an impact. The current framework addresses this issue in the lines underlined by the Court.

188. As concerns the CPT recommendations which were referred to by the Court in these judgments, it is ensured with the current regulatory framework that;

- Tear gas is used only when necessary, in a proportionate manner and depending on the instructions of the superiors,
- only trained and certified personnel can use gas equipment,
- tear gas weapons are not used in confined areas,
- tear gas is not used against persons apprehended and not showing resistance of violence
- persons exposed to gas are provided first aid,
- an adequate reporting and inspection mechanism with respect to the use of pepper spray has been put in force.

189. In the light of the above explanations, the authorities consider that the concerns raised by the Court have been eliminated. The low number of the demonstrations, as indicated in the impact analysis part, where gas is used supports the effective implementation of the current legislative-regulatory framework.

D. Case-law Developments

- ***The Turkish Constitutional Court***

190. As indicated above, the Constitutional Court has developed a coherent and convention compliant practice concerning the right to freedom of assembly. The Constitutional Court's stance on the issue has been welcomed by the Committee in their examination of the group at their previous CM-DH meetings. Its approach is followed and complied with by the Turkish judiciary and as well as the administrative authorities.

191. The authorities would like to indicate that the flaws highlighted by the Court in the present cases have been overcome owing to the improvements attained in the practice

of the Turkish Judiciary. As repeatedly underlined by the European Court "the law" is the provision in force as the competent courts have interpreted it (see *Leyla Şahin v. Türkiye* [GC], no. 44774/98, § 88, ECHR 2005-XI).

192. The below samples illustrate the Constitutional Court's continuing positive practice on the issues at hand.

193. In its judgment of ***Adnan Vural and Others*** (Application no: no. 2017/36237, 10 March 2022)[9] the Plenary of the Constitutional Court found a violation of the right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution.

194. The case concerned administrative fines imposed on the applicants under Article 32 of the Misdemeanour Law no. 5326 for having breached of an order issued by the relevant authority as they had participated meetings at various dates within the period from the end of 2016 to the midst of 2018. The administrative fines were based on the Ankara Governor's Office's decisions whereby it was decided, as a measure of the state of emergency, to ban gatherings or to make them subject to permission. The Ankara Governor's Office's decisions had been mainly taken pursuant to Article 11 (m) of the Law no. 2935 on State of Emergency[10] and Section 17 of the Meetings and Demonstrations Act (Law No. 2911).

195. The Constitutional Court examined whether these measures were necessary in a democratic society. It observed, to this end, that despite the less restrictive measures embodied in the said Law, such as the adjournment of the meetings, making them contingent upon permission, or designation by the relevant authority of a certain place and time for the meetings, the administration had opted for imposing a blanket ban with respect to all meetings and demonstrations for a long period of time during the state of emergency.

196. Further, one of these decisions, that is to say the decision of the Ankara Governor's Office dated 21 January 2018, whereby holding meetings and demonstration marches was made contingent upon its permission, no specific time-period was indicated, as different from the other impugned decisions to ban. The period during which the decision would remain in force and the date when it would expire were predicated on a military operation conducted abroad that was an issue completely at the administration's discretion and could not be foreseeable by individuals. It was evident

[9] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/36237?Dil=tr
[10] The State of Emergency ended in 19 July 2018.

that such a determination, which was quite far from ensuring certainty and foreseeability, would bring into question arbitrariness on the part of the administration.

197. According to the Constitutional Court, through its impugned decisions, the Ankara Governor's Office had imposed categorical bans with respect to the right to hold meetings and demonstration marches. In doing so, the Governor's Office, however, had failed to demonstrate that this burden imposed on the applicants who had aimed to make their voices heard by the authorities or had tried to find supporters for their views, was overridden by the threat posed to the public order. Besides, the administration resorted to the severest measure prescribed in the relevant Law, without demonstrating that taking more lenient measures, for striking a fair balance between the conflicting interests in the present case, would be insufficient. Nor was it found established that any acts of violence had taken place during these peaceful meetings. The High Court thus considered that the impugned decisions were not strictly required by the exigencies of the state of emergency.

198. Finding a violation in the case, the Constitutional Court remitted the case to the first instance courts for reopening of the proceedings to remedy the negative consequences of the violation at hand.

199. In ***Fevzi Ayber*** (Application no. 2018/5493, 2 November 2022)[11], the Constitutional Court examined a similar case.

200. In this case, the applicants gathered to hold a press meeting. Nevertheless, security forces warned the group to disperse indicating that holding meetings had been banned by the Ankara Governor's Office pursuant to the Law no. 2935 on State of Emergency. The group did not comply with and the security forces intervened to disperse them.

201. The Constitutional Court observed that the reason for not allowing the press release was that the decision of the Governor's Office but not the incidents took place during the event. In these circumstances, it had to establish whether the interference was necessary. On this basis, referring to its judgment of *Adnan Vural and Others*, the High Court considered that it had not been established by the administration that the event in question caused any risk for public disorder nor did it pose a threat for the security measures taken within the exigencies of the state of emergency. Therefore, the interference was not necessary in a democratic society and the applicant's right to hold

[11] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/5493

meetings and demonstration marches safeguarded by Article 34 of the Constitution was violated.

202. Likewise, in ***Cihan Tüzün and Others*** (Application no: 2019/13258, 10 November 2022)[12] the Plenary of the Constitutional Court found a violation of the right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution.

203. In this case, the applicants, executives of a trade union, organised an event to send petitions to the Ombudsman Institution and, as part of the event, a press statement was made. Due to this event, the applicants were ordered to pay administrative fines pursuant to Article 32 (disobeying the orders) of the Misdemeanours Act. The basis of this sanction was that the Batman Governor's Office's decision of 7 November 2018. In the impugned decision, meetings and demonstration marches to be held in the city centre were subject to the permission of the local authorities for a period of fourteen days. This decision was taken because of the terrorist attacks took place in the city. It was aimed to ensure public security, to protect public order, to prevent crime, to protect fundamental rights and freedoms, to protect the rights and freedoms of others, and to prevent the spread of violence.

204. The Constitutional Court considered that such a blanket restriction, necessitating prior permission for holding public gatherings, was against the wording of Article 34 of the Constitution which provides: "*Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission*".

205. Finding a violation in the case, the Constitutional Court remitted the case to the first instance court for reopening of the proceedings to remedy the negative consequences of the violation at hand.

206. Similarly, in ***Ramazan Sümer*** (Application no: 2018/15924, 11 May 2022)[13]) the Constitutional Court found a violation of the right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution.

207. The case concerned the administrative fine imposed on the applicant under Article 32 of the Misdemeanour Law no. 5326 for having breached of an order issued by the relevant authority, as he had participated a press statement event, in 2016. The administrative fine was based on the Diyarbakır Governor's Office's decisions whereby it was decided, as a measure of the state of emergency, to ban gatherings. The Diyarbakır Governor's Office's decision had been taken mainly pursuant to Article 11

[12] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/13258?Dil=tr
[13] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/15924

(m) of the Law no. 2935 on State of Emergency and Section 17 of the Meetings and Demonstrations Act (Law No. 2911).

208. The High Court considered that it had not been established by the administration that the event in question caused any risk for public disorder. Further, the event in question was peaceful and ended without any violent act. The administrative fine imposed on the applicant could not be justified on the mere ground that the event was not authorised. The interference in question constituted a chilling effect on the applicant's right to freedom of assembly and did not respond to a "pressing social need" nor was it necessary in a democratic society.

209. In reaching its above conclusions the Constitutional Court referred to the European Court's findings in the case of *Akarsubaşı* (70396/11)[14] whereby a similar complaint had been examined by the European Court.

210. Finding a violation in the case, the Constitutional Court remitted the case to the first instance court for reopening of the proceedings to remedy the negative consequences of the violation at hand.

211. In the case of ***Figen Yüksekdağ Şenoğlu (5)*** (Application no: 2017/24556, 14 September 2022)[15] the Constitutional Court held, referring to the Venice Commission's opinions on the issue, that the fact that holding a demonstration along an unauthorised route could not render the event in question *per se* unlawful.

212. In this case a notification was made to the relevant local authorities to hold a public meeting in Istanbul. The administration did not authorise the meeting on the grounds that the place of the meeting was not among those had been listed by the authorities previously. Despite this, the meeting was held and the security forces intervened considering that the event was unlawful pursuant to Articles 6 and 23 of the Law no 2911.

213. The High Court underlined that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly is not to be deprived of its substance. Nevertheless, instead of taking measures to minimise the risk of disorder in the course of daily life, the authorities had opted to disperse the group. Therefore, since the demonstration was not violent, the interference in question was not necessary in a democratic society. Accordingly, the applicant's

[14] This case continues to be examined under the present group.
[15] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/24556

right to hold meetings and demonstration marches enshrined by Article 34 of the Constitution was breached.

214. Finding a violation in the case, the Constitutional Court sent a copy of its decision to the relevant governor's office.

215. In ***Belkıs Yurtsever and Others*** (Application no: 2016/7537, 11 may 2022)[16], the Constitutional Court held that the applicants' right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution had been violated. It further found a violation of Article 17 of the Constitution on account of the inhuman and degrading treatment to which the applicants were subjected.

216. In this case, the applicants attended a demonstration in 2015. The security forces warned the group that the event was unlawful since it was taking place along an unauthorised route. The police thus asked the group to disperse. The group did not comply with and the police intervened. During the intervention, the security forces sprayed tear gas and some of the applicants were effected.

217. Concerning the applicants' allegations of ill-treatment, the High Court first referred to the European Court's case law on the use of tear gas during demonstrations. In this respect it made particular reference to *Oya Ataman v. Türkiye* (74552/01, 5/12/2006) *Ali Güneş/Türkiye* (9829/07). Having applied a similar approach, the Constitutional Court considered that the investigation conducted by the authorities had not shown that the use of force by the police was proportionate or that the applicants had provoked a forceful intervention by behaving violently. It further found that the investigation into the incident was not effective since the precise conduct of the law-enforcement officers, the conduct of the applicants as individuals and the circumstances in which they had suffered the injuries could not be ascertained.

218. As to the applicants' complaints about the alleged violation of Article 34 of the Constitution, the Constitutional Court observed that the reason for not allowing the demonstration was that it was taking place along an unauthorised route. The High Court reiterated that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly is not to be deprived of all substance. That being

[16] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/7537

the case, in the instant case, the intervention of the security forces into a peaceful demonstration was not necessary in a democratic society.

219. Finding a violation in the case, the Constitutional Court remitted the case to the prosecution office for reopening of the investigation to remedy the negative consequences of the violation at hand.

220. In ***Ferhat Aşan*** (Application no: 2017/22230, 16 June 2022)[17] the Constitutional Court examined the applicant's , minor at the material time, complaint about his alleged unjustified conviction.

221. In this case, the applicant was convicted under Articles 7/2 of the Law no. 3713 and Articles 32 and 33 of the Law no 2911 for having chanted slogans and thrown stones to the police during a funeral of a terrorist.

222. In reaching its conclusion, the High Court referred to the European Court's findings in the cases of *Gülcü* (17526/10) and *Agit Demir* (36475/10)[18] and underlined that the mere act of participating an unlawful demonstration could not justify a conviction in itself. In the particular circumstances of the case, it was established that the demonstration in question subsequently became illegal and violent acts took place. Nevertheless, it was not established, by concrete evidence, by the domestic courts that the applicant had actively taken part in these violent acts. They further failed to explain the interference in question had responded to a "pressing social need". Therefore, the Constitutional Court found a violation of the right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution.

223. Finding a violation in the case, the Constitutional Court remitted the case to the first instance court for reopening of the proceedings to remedy the negative consequences of the violation at hand.

224. In ***Mahir Engin Çelik and Sakine Esen*** (Application no: 2016/8776, 7 September 2021)[19] the Constitutional Court held that the applicants' right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution had been violated.

225. In this case, the Mersin Governor's Office decided the Nevroz events to be held on 21 March 2022, relying on a circular issued by the Ministry of Interior. The applicants, however, wanted to organize a meeting 20 March 2022. To this end, they distributed

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[17] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/22230?Dil=tr
[18] These two cases are clones of the Ataman as well.
[19] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/8776

leaflets to call the people to attend the meeting to be held on 20 March 2022. The security forces interfered and seized the leaflets. A criminal investigation was also initiated against the applicants for inciting others to participate in an unlawful meeting. In the ensuing proceedings they were convicted under the Law no 2911.

226. The Constitutional Court considered that the Ministry of Interior's and the Governor's decisions had been taken as a security measure for terror concerns in the region. Nevertheless, it could not have been established that by distributing the leaflets, the applicants incited violence, or any violent incident had been triggered in relation to these leaflets. Therefore, the interference in question was not necessary.

227. Finding a violation in the case, the Constitutional Court remitted the case to the first instance court for reopening of the proceedings to remedy the negative consequences of the violation at hand.

228. In ***Erol Usta and Others*** (Application no: 2016/10291, 13 April 2021)[20] the Constitutional Court held that the applicants' right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution had been violated.

229. In this case, in 2014, the applicants, members of a trade union, organised a demonstration and a press release event. The group than intended to enter the building of Bursa Directorate of Education. The security forces asked the group to disperse but the group did not comply with and force was used. Criminal proceedings were initiated against the applicants under the Law no 2911 for not having complied with the security force's dispersal warnings and therefore having participated an unlawful meeting. The applicants were convicted as charged. However, pronouncement of this decision was suspended in accordance with Article 231 of the CCP.

230. The Constitutional Court observed that the applicants had been convicted for having participated an unlawful meeting. However, according to the Constitutional Court, first, the judicial authorities failed to explain why the demonstration was unlawful. Further, it was not established that the applicants had actively resisted the police or had they acted violently. Under these circumstances, having also taken note of the fact that the group had dispersed willingly after the police intervention, the Constitutional Court held that the applicants' convictions were not necessary in a democratic society.

[20] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/10291?Dil=tr

231. Finding a violation in the case, the Constitutional Court remitted the case to the first instance court for reopening of the proceedings to remedy the negative consequences of the violation at hand.

232. In ***Veli Saçılık* (2)** (Application no: 2018/24614, 18 October 2022)[21] the Constitutional Court held that the applicant's right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution had been violated. It further found a violation of Article 17 of the Constitution on account of the inhuman and degrading treatment to which the applicant was subjected.

233. In this case, the applicant attended a press conference. The security forces warned the group that the event was unlawful and asked them to disperse. The group did not comply with and the police intervened. The applicant was arrested.

234. Concerning the applicant's allegation of ill-treatment, the High Court observed that the police had sprayed pepper gas to the applicant from a close distance in the police car and despite in the absence of the applicant's resistance. Therefore, the force used could not be considered to be proportionate. Furthermore, the investigation into the incident was ineffective since the prosecution had failed to establish why the interference in question was justified, necessary and proportionate.

235. As to the applicant's complaints about the alleged violation of Article 34 of the Constitution, the Constitutional Court observed that the reason for not allowing the press release was that the decision of the Governor's Office banning the demonstration for a period of time during the state of emergency. Referring to its judgment of *Adnan Vural and Others*, the High Court considered that it had not been established by the administration that the event in question caused any risk for public disorder nor did it pose a threat for the security measures taken within the exigencies of the state of emergency. Therefore, the interference was not necessary in a democratic society and the applicant's right to hold meetings and demonstration marches safeguarded by Article 34 of the Constitution was violated.

236. Finding a violation in the case, the Constitutional Court remitted the case to the prosecution office for reopening of the investigation to remedy the negative consequences of the violation at hand.

237. In ***Nuray Zencir*** (Application no: 2018/3087, 2 February 2022)[22] the Constitutional Court found a violation of Article 17 of the Constitution on account of the inhuman and

[21] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/24614
[22] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/3087

degrading treatment to which the applicant was subjected. In 2015 the applicant attended a demonstration. The security forces intervened considering that the meeting was unlawful. The applicant was injured during the intervention. The applicant's complaint was dismissed by the prosecution office on the grounds that the force used against her was proportionate.

238. The Constitutional Court observed that it had not been established by the investigating authorities that the applicant had behaved violently nor had she resisted the police. Indeed, no criminal investigation was initiated against the applicant into the incident. Under these circumstances, it could not be established that the force used against the applicant was indispensable and proportionate. There had therefore been substantial and procedural violations of Article 17 of the Constitution.

239. Finding a violation in the case, the Constitutional Court remitted the case to the prosecution office for reopening of the investigation to remedy the negative consequences of the violation at hand.

240. In ***Mert Arslan and Özgür Tezer*** (Application no: 2018/2830, 13 April 2022)[23] the Constitutional Court found a violation of Article 17 of the Constitution on account of the inhuman and degrading treatment to which the applicants were subjected.

241. In 2013 the applicants attended a demonstration. During the demonstration, security forces asked dispersal of the group. The group did not comply with, blocked the traffic and attacked the police. Subsequently, the security forces forcefully dispersed the group and the applicants were injured during the intervention. The applicants complained before the prosecution office about their injuries. Nevertheless, the prosecution office dismissed their complaint considering that the applicants had not dispersed despite the warnings of the police and that they had resisted the security forces in breach of Article 32 of the Law no 2911. Therefore, the force used was proportionate.

242. The Constitutional Court observed that it had not been established by the investigating authorities that the applicants had behaved violently nor had they resisted the police. Indeed, no criminal investigation was initiated against one of the applicants into the incident. Concerning the other applicant, a criminal investigation was initiated under Article 32 of the Law no 2911. However, there was nothing in the case, file to argue that the second applicant had resisted or attacked the police. Under these

[23] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/2830?Dil=tr

circumstances, it could not be established that the force used against the applicants were indispensable and proportionate. The investigation into the incident was not capable of establishing the necessity and proportionality of the interference either. There had therefore been substantial and procedural violations of Article 17 of the Constitution.

243. Finding a violation in the case, the Constitutional Court remitted the case to the prosecution office for reopening of the investigation to remedy the negative consequences of the violation at hand.

244. In ***Erdal Sarıkaya*** (Application no: 2017/37237, 17 March 2021)[24] the Constitutional Court found a violation of Article 17 of the Constitution on account of the inhuman and degrading treatment to which the applicants was subjected.

245. In 2013 the applicant attended a demonstration. He was injured as a result of a hard object hitting his eyes during the intervention of the security forces. The applicant complained before the prosecution office about his injuries. Nevertheless, in 2017, the applicant's complaint was dismissed by the prosecution office on the grounds that prior authorisation had not been granted.

246. The Constitutional Court first held that having failed to take requisite precautions, the security forces had caused the applicant's injury by firing gas cartridges in an uncontrolled manner. The Constitutional Court further observed that the investigation authorities had failed to collect the necessary evidence without delay and to identify those responsible. There had therefore been substantial and procedural violations of Article 17 of the Constitution.

247. Finding a violation in the case, the Constitutional Court remitted the case to the prosecution office for reopening of the investigation in order for the latter to remedy the negative consequences of the violation at hand.

248. In ***İbrahim Akan (2)*** (Application no: 2017/32078, 25 February 2021)[25] the Constitutional Court found a violation of Article 17 of the Constitution on account of the ill-treatment to which the applicant was subjected.

249. The applicant claimed that he was hit and injured by a gas canister fired by the law enforcement officers during their intervention of a demonstration in 2013. He claimed that he did not participate the demonstration but only was passing by. The applicant

[24] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/37237

[25] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/32078

complained before the prosecution office about his injuries. In 2017, the prosecution office ordered a permanent search notice into the incident.

250. The Constitutional Court first held that having failed to take requisite precautions, the security forces had caused the applicant's injury by firing gas cartridges in an uncontrolled manner. The Constitutional Court further observed that the investigation authorities had failed to collect the necessary evidence without delay and to identify those responsible. There had therefore been substantial and procedural violations of Article 17 of the Constitution.

251. Finding a violation in the case, the Constitutional Court remitted the case to the prosecution office for reopening of the investigation to remedy the negative consequences of the violation at hand.

252. In ***Eda Ayşegül Kılıç*** (Application no: 2015/12263, 16 January 2020)[26] the Constitutional Court found a violation of Article 17 of the Constitution on account of the ill-treatment to which the applicant was subjected. The High Court further found a violation of Article 34 of the Constitution.

253. In 2013 the applicant attended a demonstration. According to the applicant's claims, the security forces hit the applicant during their intervention to the group. The applicant complained before the prosecution office about her injuries. Nevertheless, in 2016, the applicant's complaint was dismissed by the prosecution office on the grounds that the force used against her was proportionate.

254. In its examination of the case, referring to the European Court's judgments of *Kop v. Türkiye* (12728/05), *Timtik v. Türkiye* (12503/06) and *Najafli v. Azerbaijan* (2594/07) the High Court stressed that it had to establish whether the force used against the applicant was proportionate and necessary. In so doing, it had to ascertain whether the applicant had acted violently or had he resisted the security forces. Having applied this principles, the Constitutional Court established that these conditions had been met in the applicant's case. Accordingly, the force used against the applicant was not necessary. Furthermore, the investigation into the incident was not effective. There had therefore been substantial and procedural violations of Article 17 of the Constitution.

255. The Constitutional court further observed that there was no evidence in the case that the applicant had resisted security forces, nor had he displayed an aggressive attitude towards them or had taken part in acts of violence in any way. Further, no criminal

[26] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/12263

proceedings were initiated against the applicant in relation to the demonstration in question. Under these circumstances it considered that the applicant had exercised his rights in a peaceful manner. The interference was thus not necessary in a democratic society for the purposes of Article 34 of the Constitution.

256. Finding a violation in the case, the Constitutional Court remitted the case to the prosecution office for reopening of the investigation to remedy the negative consequences of the violation at hand.

The Court of Cassation, regional courts of appeal, criminal courts of first instance and administrative courts.

257. The Constitutional Court's above approach is also followed by the Court of Cassation, regional courts of appeal, criminal courts of first instance and the administrative courts. Examples to this end are provided below.

258. **In its judgment dated 3 June 2021**, the 16th Criminal Chamber of the Court of Cassation (Docket No. 2019/3186, see Annex 8) quashed the lower court's conviction decision and decided the accused's acquittal.

259. In this case, the accused was convicted under Article 28 of the Law no 2911 for having organised an unlawful demonstration. Applying the principles set forth by the Constitutional Court's and European Court's case-law –with particular reference to the findings of the Court in *Ataman* v. *Türkiye* (74552/01), *Disk/Kesk v. Türkiye* (38676/08) and *Nurettin Aldemir v. Türkiye* (32124/02), *Gün v. Türkiye* (8029/07) and *Ollinger v. Austria* (76900/01) on the issue, the Court of Cassation underlined the importance of the right to freedom of assembly in a democratic society. It noted to this end that peaceful demonstrations have to be shown tolerance by the authorities and that shall not be sanctioned. In the particular circumstances of the case, the Appeal Court observed that the group dispersed after a press statement and without any sign of violence. Some of the demonstrators, indeed, chanted unlawful slogans. Nevertheless, it could not be established that the accused had acted with that group or had he encouraged the group to chant as such. Under these circumstances, the accused's acts fell within the scope of the right to freedom of assembly and did not constitute the imputed offence.

260. In its judgment of 22 September 2022 (Docket no 2021/5481, see annex 9) the 3rd Criminal Chamber of the Court of Cassation quashed the lower court's decision whereby the accused had been convicted under Article 28 of the Law no 2911. In this

case, the accused, as organisers of the event, were convicted for having organised and participated an unlawful demonstration on the grounds that the demonstrators used an unauthorised route. The Court of Cassation observed that the group did not act violently nor had they resisted the security forces. Therefore, the demonstration in question was peaceful. Under these circumstances the accused's conviction *per se* for using an unauthorised route could not be justified in a democratic society.

261. A similar approach has been followed in many cases in the application of Article 28 of the Law no 2911 (see further examples; the decision of the 16th Criminal Chamber of the Court of Cassation dated 23 November 2020, Docket no 2018/2330, see annex 10 ; the decision of the 16th Criminal Chamber of the Court of Cassation dated 2 June 2021, Docket no 2019/3185, see annex 11; the decision of the 18th Criminal Chamber of the Gaziantep Regional Court of Appeal dated 11 October 2021, Docket no 2010/506, see annex 12)

262. In its judgment of 5 April 2022 (Docket no 2021/14526, see annex 13), the 3rd Criminal Chamber of the Court of Cassation upheld the lower court's judgment of acquittal. In this case, criminal proceedings were initiated against the accused under Article 32 of the Law no 2911. The Court of Cassation held that it was established in the case that the accused had participated in an unlawful demonstration. However, according to the case file it could not be ascertained that the accused had insisted on not to disperse nor he resisted the security forces. That being the case, the accused's mere participation in an unlawful meeting did not constitute the imputed offence.

263. **In its judgment dated 12 March 2020**, the Adana 2nd Criminal Chamber of the Regional Court of Appeal (Docket No. 2020/304, see Annex 14) quashed the judgment of Adana 11th Criminal Court of First Instance and decided the accused's acquittal.

264. In this case, the accused were convicted under Article 32 of the Law no 2911 for having participated an unlawful demonstration. Applying the principles set forth by the Constitutional Court's and European Court's case-law –with particular reference to the findings of the Court in *Disk/Kesk v. Türkiye* (38676/08) and *Nurettin Aldemir v. Türkiye* (32124/02) on the issue, the Appeal Court held that the rights of individuals who do not engage in violence and express their opinions peacefully must be protected. It further noted that the fact that the procedures stipulated in the laws are not fully complied *per se* would not eliminate the peaceful character of the meeting and demonstration. Considering the particular circumstance of the case, it was evident that the demonstration was peaceful and the group dispersed without any violent attitude,

the Appeal Court held that the event was peaceful and the accused's conviction could not be justified. In the light of these findings the accused's acquittal was decided.

265. In its decision dated 5 April 2017, the Istanbul 3rd Criminal Chamber of the Regional Court of Appeal (Docket No. 2017/505, see Annex 15) quashed the judgment of the Luleburgaz 2nd Criminal Court of First Instance and held the defendant's acquittal.

266. In this case, the accused was convicted under Article 32 of the Law no 2911 for having participated an unlawful demonstration. Applying the principles set forth by the Constitutional Court's and European Court's case-law –with particular reference to the findings of the Court in *Ataman* v. *Türkiye* (74552/01), *İzci v. Türkiye (*42606/05) and, *Bukta and Others v. Hungary* (25691/04) and *Djavit An v. Türkiye* (20652/92) on the issue, the Appeal Court held that the fact that the demonstration in question had been held without prior notification could not *per se* leave the meeting unlawful. According to the case file it had not been established that the accused had acted violently nor had he resisted the police. The group had also dispersed without causing any public disorder. Therefore, the demonstration in question was peaceful and the applicant's acts fell within the scope of his right to freedom of assembly. In the light of this, it decided the accused's acquittal.

267. In its judgment dated 12 June 2019, the Joint Administrative Law Chambers of the Supreme Administrative Court (Docket no 2017/852, see annex 16) quashed the judgment of the Kocaeli 1st Administrative Court. In this case Kocaeli Governor' s office decided not to authorise a conference, under Article 17 of the Law no 2911, considering that the event could lead provocative incidents. The Supreme Court held that the event in question fell within the scope of freedom of expression. It underlined that a demonstration could only be banned if there is clear and imminent danger that crime will be committed. In the instance case however this could not be established by the authorities with concrete evidence. Therefore, the administration's decision was not lawful.

268. In its judgment dated 07 April 2022, the Bursa 3rd Administrative Court of Appeal (Docket no 2021/218, see annex 17) quashed the judgment of the Bursa 1st Administrative Court. In this case the Bursa Governor's office decided to postpone all the meetings to be held in the region for two weeks under Article 17 of the Law no 2911 for public security reasons. Referring to the Constitutional Court's case-law on the issue and the wording of the said provision, the Appeal Court held that under this

provision only *a meeting* and for only a certain period of time, a meeting could be suspended on the condition that there exists an imminent and clear risk for public disorder. Nevertheless, in the instant case, the administration's decision constituted a blanket ban concerning all events to be held in the region and in the absence of an examination on each particular event on whether the meeting to be held was peaceful or its was to cause any danger to public order. Along these lines, the Appeal Court held that the decision in question was not lawful.

269. In its judgment dated 14 March 2022, the 7th Criminal Chamber of the Court of the Cassation (Docket no 2021/12373, see annex 18) examined an appeal concerning imposition of the administrative fine under Article 32 of the Law no 5326 within the context of the appeal in the interest of law. In this case the complainant was ordered to pay an administrative fine for having participated an unauthorised demonstration. The Düzce 2nd Magistrate Judgeship quashed this decision holding that the event in question was peaceful and had not caused public disorder. Imposition of a sanction for having participated a peaceful meeting could not be justified. The above conclusions of the First Instance Court were endorsed by the Court of Cassation and it was decided the annul the administrative fine imposed on the applicant.

E. Working Groups, Raising Awareness and Training Activities

1. Informal Working Group

270. The Government would like to express some details about the informal working group consisted of the experts from the COE and the ECHR and of the experts from Ministry of Justice and Ministry of Interior each.

271. Within the scope of "the Action Plan on Prevention of ECHR Violations", an Unofficial Working Group ("Working Group") was formed by the mutual will of Thorbjørn Jagland, the Council of Europe Secretary General, and Minister of Justice of the Republic of Türkiye at expert level. Within the scope of the Working Group, the freedoms of expression, assembly and association were handled in particular the application of the provisions of the Law on Meetings and Demonstrations, the Turkish Criminal Code and the Anti-Terror Law.

272. With the Working Group, it was aimed to determine the problematic areas in the field of human rights arising from both legislation and practice through close cooperation and contact of the authorities of the Ministry of Justice with the authorities of Council of Europe and ECtHR and to move the human rights in Türkiye to a higher

place in the international platform by promoting appropriate solution proposals, projects, activities raising awareness.

273. In this scope, the relevant Working Group held 14 meetings at regular intervals on different dates in Ankara and Strasbourg. Lastly, the 15th meeting was held in June 2021.

274. The issues discussed and evaluated in these meetings, which also concern the *Ataman* group of cases, can be listed as follows:

-The structural issues leading to lodge an application with the European Court against Türkiye

-Effective investigation

-The issues regarding freedom of expression and press and also freedom to hold meetings and demonstration marches.

2. Working Group on Social Incidents

275. A working group on social incidents was established within the Ministry of Interior in November 2022. The main duties of the said working group are as follows:

-To carry out and supervise scenario works and procedures (writing, analysing and implementing scenarios), through the committee formed, in order to guide law enforcement officers in the management of social incidents,

- To make risk analysis regarding social events that may occur and affect our country, to report them and to forward them to the relevant units,

- To examine national and international experiences and practices regarding social incident management in security and security-related emergencies, to share them with relevant institutions and organisations when necessary, and to monitor the social impact of the incidents that occur,

- To carry out surveys, research, analyses, etc. on the subjects needed,

- To follow up the workshops, congresses, conferences, all kinds of publications, etc. of the Ministry of Interior on social incident management and report them to the GAMER (Security and Emergency Coordination Centre),

- To carry out coordination and follow-up activities in the provision of psycho-social, moral and social support, food, housing, emergency health services and other services for the relatives of martyrs, veterans and affected citizens as a result of social events and terrorist attacks, and to report monthly to the GAMER.

3. Training Activities

a. Law Enforcement

276. A total of 105,285 personnel were trained on "Human Rights", "Negotiation in Social Events", "Group Dynamics", "Psychology of the Masses", "Principles of Intervention in Social Events and Proportional Use of Force" by the Security Training Academy between 2017-2022.

277. In addition, between 2017 and 2022, a total of 258,897 personnel were trained on "Proportional Use of Force" and 492,969 workers on "Human Rights" by the Police Academy.

278. As for educational training toward gendarmerie personnel between 2017 and 2022, 506 personnel received intervention training in public events, 228 personnel received negotiation courses in public events, 294 personnel received negotiation techniques at basic level, 38 personnel received negotiation techniques at advanced level and 204 personnel received the course on the use of tear gas and defence guns.

279. The numbers of the personnel who received training are as follows: In 2017, 4,905 personnel; in 2018, 5,616 personnel; in 2019, 4,827 personnel, in 2020, 5,883 personnel, in 2021, 6.746 personnel and in 2022, 3.700 personnel received the course on "Gendarmerie Professional Knowledge".

280. In 2017, 1,091 personnel; in 2018, 1,568 personnel; in 2019, 1,356 personnel, in 2020, 1,482 personnel and in 2021, 1.099 personnel received the course on "the use of tear gases and defence guns".

281. As for "Social incident response training", 38,049 personnel were trained in 2017; 37,689 workers in 2018; 33,147 workers in 2019; 21,235 workers in 2020, 16,815 workers in 2021 and 6,156 workers in 2022.

282. Besides, with a view to training the personnel who will intervene against the public events in line with the case-law of the European Union, the Gendarmerie General Command initiated the project of "Strengthening the Capacity of Gendarmerie General Command at Public Events", which took place in the 2003 programme of Instrument for Pre-Accession Assistance (IPA-1), on 1 March 2017 and this project was completed in 2019. Within the scope of the project, 40 personnel received "crisis management and specialized training (educational training) on the intervention against public events", 1,100 personnel received "basic education on the intervention against public events", 300 personnel received "advanced level education on the intervention against public events", 100 personnel received "crisis management training", 50 personnel received

"negotiator training", 16 personnel underwent a training course in Romania and Italy and additionally about 2,000 personnel received on-site support training.

283. In addition, the Brochure on the Enforcement Forces' Powers to Use Force were drawn up and published. Moreover, an application video on "Use of Telescopic Baton and Double Locking Handcuffs" published together with the presentations of educational materials.

b. Judges and Prosecutors

Role of Justice Academy

284. The Justice Academy of Türkiye is the sole institution for pre-service and in-service training of judges and prosecutors. The Academy has been providing candidate judges and public prosecutors with compulsory pre-service trainings on human rights.

285. Within the scope of pre-service training activities, the courses on practices of public prosecutor's offices during the investigation and prosecution stages, special investigation procedures (investigations regarding public officials, lawyers, judge-public prosecutor, civil administrators etc.), investigation procedures concerning the offences committed against the security of the State and the constitutional order, European Convention on Human Rights and Türkiye, general provisions of Turkish Criminal Code, the offence of reckless injury and murder, the offence of intentional injury and applications, the offence of intentional killing and applications have been regularly provided.

286. In this scope, between 2020 and 2022 courses on the protection of human rights were provided for approximately 9 hours to 2,511 trainee judges and public prosecutors. Courses on constitutional jurisdiction were provided for approximately 9 hours to 2,464 trainee judges and public prosecutors Courses on freedom of expression were provided for approximately 6 hours to 2,069 trainee judges and public prosecutors. Courses on investigation procedures were provided for approximately 30 hours to 2,327 trainee judges and public prosecutors. Courses on prosecution practices were provided for approximately 120 hours to 1,067 trainee judges and public prosecutors.

287. Within the scope of in-service training activities, the following training activities were provided between 2020 and 2022:

288. 286 judges and prosecutors attended in-service training seminar on the effective investigation and statement-taking techniques, 71 judges and prosecutors attended in-service training seminar on the right to fair trial, 88 judges and prosecutors attended in-

service training seminar on the offence of intentional murder, 88 judges and prosecutors attended in-service training seminar on the offence of intentional murder, 108 judges and prosecutors attended in-service training seminar on the compensation claims resulting from the offences of intentional and reckless murder and measures of protection, 100 judges and prosecutors attended in-service training seminar on the effective investigation and statement-taking techniques in organised crimes, 102 judges and prosecutors attended in-service training seminar on the protection of the measure practices in the light of the case law of the Constitutional Court and the European Court of Human Rights.

F. Impact analysis

289. The Government would be pleased to inform the Committee that the amendments mentioned above and the activities carried out have had a significant impact regarding the intervention made by the security forces to the gatherings and demonstrations which is showed below.
290. First of all, even if the demonstrations are considered to be unlawful under the provisions of the Law no 2911, they are not intervened without a certain degree of tolerance. This is one of the most important points criticized by the Court. To elaborate, in such cases, the security forces, by specialised personnel, use negotiation methods instead of intervening the events. For instance, 68 %, 51 %, 59 %, 43 %, 64 %, 52 % of the unlawful events were concluded with negotiation without any interference by the security forces in 2017,2018,2019,2020,2021 and 2022 respectively. This is a very important positive trend to be taken account of.
291. The Turkish authorities would further like to note that the use of force is applied were necessary and in a proportionate manner owing to the above explained general measures. The below table illustrates this practice. As is seen, although there is no decrease in the numbers of the meeting and demonstration marches held following the year of 2015 (it decreased only in 2020 due to Covid-19), the number of interventions visibly decreased. In Türkiye, an average of 40,000 demonstrations/events are held annually with the participation of approximately 30 million people, and more than 99% of them are carried out in a democratic and free environment without any intervention. The table also illustrates that force is used, when necessary in a gradual manner. The low number of the use of gas is a very clear sign of this practice.

YEARS	DEMONSTRATION/ EVENTS	NO. OF PARTICIPANTS	DEMONSTRATIONS/ EVENTS THAT ARE DEEMED UNLAWFUL FOR VARIOUS REASONS	NO. OF MEETINGS FOR WHICH FORCE WAS USED	NO. OF MEETINGS FOR WHICH TEAR GAS WAS USED	NO. OF MEETINGS FOR WHICH WATER CANNON VEHICLES WERE USED	NO. OF MEETINGS FOR WHICH TRUNCHEON WERE USED
2017	38.976	25.277.339	997	319	40	36	6
2018	46.389	31.036.329	771	378	62	23	19
2019	53.118	32.553.402	875	358	26	12	6
2020	34.079	5.477.382	449	258	11	4	5
2021	46.555	10.016.895	774	278	24	8	2
2022-December	61.026	21.664.009	663	316	15	7	2

292. The table below represents the statistics linked to the breaches of the Law no. 2911. This table illustrates that even if a meeting is considered to be unlawful, when the number of participants in demonstrators in the above table are taken into account, there exists a practice that criminal investigations are initiated only where necessary. This addresses one of the most important points, that is to say initiation of criminal investigations in breach of Article 11 of the Convention.

Years	Number of Cases Initiated Before the Prosecutor's Office	Decisions of Non-prosecution	Criminal Proceedings Initiated	Other
2016	5.278	1.592	2.696	954
2017	2.462	1.114	1.269	558
2018	2.090	664	1.033	578
2019	1.947	667	913	504
2020	1.671	755	503	468
2021	1.679	966	549	370
2022	2.099	1.233	630	493

293. Considering the statistics above it is seen that even if a criminal investigation is initiated, the prosecution offices serves as a filtering mechanism and a considerable number of cases are not brought before the courts. To illustrate, 51% of the cases initiated by the prosecutor's offices in 2016 resulted in criminal proceedings, 51% in 2017, 49% in 2018, 46% in 2019, 30% in 2020, 32% in 2021 and 30% in 2022.

Years	Conviction	Acquittal	Suspension of pronouncement of the judgment[27]	Other
2016	654	1.340	698	492
2017	489	1.084	513	440
2018	458	977	506	373
2019	473	833	355	307
2020	291	509	236	220
2021	391	551	277	514
2022	328	554	248	451

294. Furthermore, even if a bill of indictment is filed, most of these cases are concluded without conviction. The decreased numbers of convictions can be seen in the above table.

G. Human Rights Mechanisms

295. Türkiye has undertaken a series of initiatives to establish mechanisms at the domestic level to uphold human rights. These measures may potentially lead to stronger protection of the rights set out in the Convention. To this end, the Turkish Government has set up a number of human rights institutions such as Ombudsman Institution, Human Rights and Equality Institution etc.

Human Rights and Equality Institution

296. On 20 April 2016 with the Law no 6781 Human Rights and Equality Institution was established in Türkiye. This is an impartial and independent national prevention mechanism. Within the context of its mission, this institution investigates human rights violations. In this regard it conducts visits to the all types of detention facilities with or without prior notice. This institution can also interview the detained persons. Depending on its findings it prepares reports and submits these reports to the relevant authorities in order for reparation of the deficiencies in the human rights field. Human Rights and Equality Institution has also power to request all necessary documents within the context of their examination and the relevant public authorities are obliged to do so. Depending on its reports administrative investigations have been initiated against 13 security members so far. Followings its establishment the Institution has organised several national and international workshops in the field of human rights in order to raise awareness. The institution shares its reports with public through its

[27] Hükmün Açıklanmasının Geri Bırakılması (Suspension of pronouncement of the judgment)

website. The institution is working on several projects in order for further improvement of human rights standards in Türkiye. The other practice of the Institution can be followed via its website https://www.tihek.gov.tr/.

Ombudsman Institution

297. Ombudsman Institution has been established with the adoption of the Law no 6328 and published at Official Gazette in 29/6/2012. The Ombudsman Institution, which is attached to the Turkish Grand National Assembly, has legal personality and has a separate budget. The purpose of the Institution is to establish an independent and efficient complaint mechanism regarding the delivery of public services and investigate, research and make recommendations about the conformity of all kinds of actions, acts, attitudes and behaviours including allegations of torture and ill-treatment of the administration with law and fairness under the respect for human rights. Individuals may lodge complaints to the Institution. The Ombudsman Institution prepared a special report on 2016 regarding Turkish Judiciary System. This report comprises of identification of shortcomings, including effective investigation of torture and ill treatment allegations in the judicial system and recommendations on possible solutions in this regard. The other works of the Institution can be followed via its website https://www.ombudsman.gov.tr.

H. Strategy Papers and Human Rights Action Plan

Judicial Reform Strategy 2019

298. Preparation of The Judicial Reform Strategies started as of 2009 when the first Judicial Reform Strategy was announced. The second reform document was prepared in 2015.

299. The new Strategy Document, covering the years 2019-2023, was updated and the Judicial Reform Strategy was disclosed by the President of Türkiye in May 2019. The Turkish authorities would like to note that the major objectives of the judicial reform strategy are to strengthen the rule of law, protect and promote rights and freedoms and form an effective and efficient criminal system. The new Judicial Reform Strategy is also prepared to observe the new needs that emerge within the framework of the same aim.

300. The main objectives set out in the document can be listed as follows: strengthening the rule of law, protecting and promoting rights and freedoms more effectively, strengthening the independence of the judiciary and improving impartiality, increasing

the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial in a reasonable time.

301. In general, the activities concerning the human rights were referred with the following expressions of "the issues handled in the Document have two fundamental aspects. Whereas one of them is related to the legislative infrastructure, the other one is related to the practice. In practice, it was planned to conduct studies in relation to the promotion of the human rights sensitivity. These studies are particularly for the freedom of expression and press, the right to hold meeting and demonstration marches and proportionately application of the measure of detention.

302. On the other hand, by being conducted extensive scanning study in relation to the legislative infrastructure, the steps for strengthening of legal framework were determined to protect and promote the rights of individuals. In this scope, the legislation, mainly on counter-terrorism, affecting the freedom of expression will be taken into consideration in this process. As regards the provisions concerning the measure of detention, the procedures regarding the blocking of access over internet and the legislation on the meeting and demonstration marches are within this scope."

303. One of the main aims of the strategy document is to prepare a new Human Rights Action Plan. The preparation of this plan has come to an end.

Human Rights Action Plan

304. On 2 March 2021, the new Human Rights Action Plan was announced by the President of the Republic. The Human Rights Action Plan includes 9 goals, 50 objectives and 393 activities[28]. The plan will be implemented over the course of the next two years and will focus on many issues including improving the standards of freedom of speech and right to meeting and assembly.

305. The vision of the Action Plan is "Free individual, strong society; a more democratic Türkiye" and starts with 11 fundamental principles. In the Action Plan, there are many activities regarding the relevant group of cases.

- ✓ The relevant legislation and the practice will be revised in the light of international standards in order to strengthen the right to hold assemblies and demonstration marches

[28] https://inhak.adalet.gov.tr/Resimler/SayfaDokuman/532021194956161496244158O_insan-haklari-EP-v2_eng.pdf

✓ The secondary legislation concerning interventions in unlawful meetings or demonstration marches will be revised in consideration of international standards.

✓ Awareness-raising activities will be organised for civil administrators and law enforcement officers in the light of international standards with regard to the practices of banning or intervening in the exercise of the right to hold meetings and demonstration marches.

✓ The awareness of law enforcement officers will be raised with a view to ensuring that the arrest and custody practices are conducted without prejudice to the human dignity.

✓ Regular trainings will be offered to the law enforcement officers and neighbourhood guards on the use of force and weapons and situations and behaviour which might amount to ill-treatment

✓ An analysis will be carried out, in consideration of international standards, on the practice of use of force and weapons, especially in the provisions of the Law on Duties and Powers of the Police.

✓ Guides will be prepared in order to ensure that the legislation on the use of force and weapons be applied in compliance with international standards.

306. Within a short period of time after the announcement of the Action Plan, in May 2021, the schedule for its implementation was also announced. A report to be issued for the monitoring and assessment of the Action Plan will be submitted to the Ombudsman Institution and the Human Rights and Equality Institution of Türkiye (TİHEK) and will also be monitored by a committee set up by many State officials under the presidency of the President.

I. High Level Political Messages on Human Rights

307. The President and the Minister of Justice attach particular importance on human rights in general.

308. In this regard, the President's speech of 10 December 2022 that he delivered on Human Rights Day might be brought an example.[29] The President stated that "*Respect towards humans and protecting human rights are among the basic principles of our deep-rooted state tradition and culture of co-existence dating back centuries. Guided by these principles, we have carried out a silent revolution so-to-speak by removing the*

[29] https://www.iletisim.gov.tr/english/haberler/detay/president-erdogans-message-on-human-rights-day22

obstacles to the exercise of rights and freedoms through the comprehensive reforms we have introduced over the past two decades." The President further stated that: "*We have replaced the Jacobin mentality, which had cast a shadow over our democracy for long years, with an egalitarian, embracive and libertarian understanding of administration that is human-oriented particularly in the citizen-state relations."*

309. On 1 September 2022, the President attended the Opening Ceremony of the Judicial Year 2022-2023 and stated following in his speech: *"In the past 20 years, we have made significant reforms to strengthen our country's characteristic as a state of law. People's rights and freedoms, women's rights, children's rights and improving our justice system have been the most important elements of our reforms."*[30]

310. Bekir Bozdağ, the Minister of Justice attended "The First Regional Meeting of the Province and District Human Rights Boards" held by Human Rights and Equality Institution of Türkiye on 28 November 2022.[31] He stated that important constitutional reforms have been made in order to further strengthen human rights.

311. The Minister of Justice's speech of 8 December 2022 that he delivered at the opening remarks of the panel "Enhanced Protection of Fundamental Rights and Freedoms" can be brought as another example.[32] He stressed that many regulations have been implemented and many institutions and boards have been established in order to use fundamental rights and freedoms more effectively. He underlined that Türkiye had stood behind every signature that has been signed in the international arena and Turkish Constitution includes every right that included in the European Convention on Human Rights. He stressed to this end that Türkiye has established the Personal Data Protection Authority, the Ombudsman's Office, the Human Rights and Equality Institution, the Information Acquisition and Evaluation Institution. Minister of Justice counted the introduction of the right of individual application to Constitutional Court as the most important step taken in order to ensuring the effective protection of fundamental rights and freedoms.

312. These high-level political messages clearly demonstrate that the Government attaches importance to the human rights.

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[30] https://www.iletisim.gov.tr/english/haberler/detay/president-erdogan-attends-opening-ceremony-of-the-judicial-year-2022-2023
[31] Adalet Bakanı Bozdağ, Türkiye İnsan Hakları ve Eşitlik Kurumunca düzenlenen 'İnsan Hakları Kurulları Birinci Bölgesel Toplantısı'na katıldı | Türkiye Cumhuriyeti | İletişim Başkanlığı (iletisim.gov.tr)
[32] https://adalet.gov.tr/bakan-bozdag-temel-hak-ve-ozgurluklerin-daha-etkin-korunmasi-panelinde-konustu

J. Publication and Dissemination of the Judgments

313. The judgments in question were translated into Turkish and published at the website HUDOC.

314. The judgments have been circulated together with an explanatory note on the European Court's findings to the relevant authorities, such as Constitutional Court, the Court of Cassation, the Turkish Institution of Human Rights and Equality and the Ombudsman Institution as well as relevant courts.

IV. CONCLUSION

315. As a conclusion, the Turkish Authorities would like to note that necessary individual measures have been taken in the cases of *Kemal Çetin* (3704/13), *Şenşafak* (5999/13), *İzci* (42606/05) *Süleyman Çelebi and Others* (37273/10), *Eğitim ve Bilim Emekçileri Sendikası and Others* (2389/10), *Abdullah Yaşa and Others* (44827/08), *Akarsubaşı* (70396/11), *Ataykaya* (50275/08) and *Ataman* (74552/10). The authorities would like to invite the Committee to close these cases.

316. In other cases, the process is still on-going. The Committee will be informed in due course.

317. As regards general measures, the Turkish authorities will keep the Committee updated.

January, 2023

List of Cases

No	Title	App Number	Judgment Date	Final Judgment Date
1	EGITIM VE BILIM EMEKÇILERI SENDIKASI AND OTHERS v. Türkiye	2389/10	20/09/2022	20/09/2022
2	EKREM CAN AND OTHERS v. Türkiye	10613/10	08/03/2022	05/09/2022
3	SILGIR v. Türkiye	60389/10	03/05/2022	03/08/2022
4	KEMAL CETIN v. Türkiye	3704/13	26/05/2020	26/08/2020
5	SENSAFAK v. Türkiye	5999/13	07/07/2020	07/07/2020
6	SULEYMAN CELEBI AND OTHERS v. Türkiye	37273/10	24/05/2016	24/08/2016
7	ABDULLAH YASA AND OTHERS v. Türkiye	44827/08	16/07/2013	16/10/2013
8	ATAYKAYA v. Türkiye	50275/08	22/07/2014	22/10/2014
9	AKARSUBASI v. Türkiye	70396/11	21/07/2015	14/12/2015
10	IZCI v. Türkiye	42606/05	23/07/2013	23/10/2013
11	ATAMAN v. Türkiye	74552/01	05/12/2006	05/03/2007

January, 2023

Informative Table as to the Payment of Just Satisfaction

No	Title	Pecuniary Damage Awarded	Non-Pecuniary Damage Awarded	Costs and Expenses Awarded
1	EGITIM VE BILIM EMEKÇILERI SENDIKASI AND OTHERS v. Türkiye	x	x	x
2	EKREM CAN AND OTHERS v. Türkiye		x	
3	SILGIR v. Türkiye	The applicant did not file a request for just satisfaction within the deadline. The Court considered that there was no need to award the applicant any sum for damages.		
4	KEMAL CETIN v. Türkiye		x	
5	SENSAFAK v. Türkiye		x	x
6	SULEYMAN CELEBI AND OTHERS v. Türkiye		x	
7	ABDULLAH YASA AND OTHERS v. Türkiye	x	x	x
8	ATAYKAYA v. Türkiye		x	x
9	AKARSUBASI v. Türkiye	The applicant did not file a request for just satisfaction. The Court considered that there was no need to award the applicant any sum for damages.		
10	IZCI v. Türkiye		x	
11	ATAMAN v. Türkiye			x