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Communication from Türkiye concerning the case of BATI AND OTHERS v. Turkey (Application No. 33097/96) - *The appendices inTurkish are available upon request to the Secretariat.*

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Réunion : 1475e réunion (septembre 2023) (DH)

Référence du point : Plan d'action (04/07/2023)

Communication de la Türkiye concernant l'affaire BATI ET AUTRES c. Turquie (requête n° 33097/96) ***(anglais uniquement)*** - *Les annexes en turques sont disponibles sur demande au Secrétariat.*

July, 2023

ACTION PLAN

Batı and Others v. Türkiye (33097/96)

Group of Cases

I. CASE DESCRIPTION

1. This group mainly concerns the ineffectiveness of investigations, criminal prosecutions and disciplinary proceedings in relation to killing, ill-treatment and the excessive use of force by the police and security forces (hereafter "state agents") including in the course of arrests, during police custody and interrogation and while dispersing peaceful demonstrations (procedural violations of Articles 2 and 3 of the Convention).

2. The Court identified a number of shortcomings which created an atmosphere of impunity, including:

a. Failure to initiate investigations against state agents despite well-founded allegations, including following the denial of the authorisation needed from regional authorities to commence such investigations ("administrative authorisation");

b. Lack of thoroughness in investigations; failure to identify and question witnesses and to collect evidence;

c. Lack of sufficient and relevant reasoning in decisions of non-prosecution;

d. Excessive length of investigations, often leading to the dropping of charges due to prescription;

e. The lenient attitude of the domestic courts towards state agents (acts classified as less serious offences at trial; mitigation of sentences on discretionary grounds; suspension of sentence or of the pronouncement of the judgment (suspension of the pronouncement of judgment has the consequence under Turkish law that the conviction does not become final unless triggered by subsequent criminal proceedings);

f. Failure to suspend state agents during criminal proceedings, or to bring disciplinary proceedings or impose disciplinary sanctions following allegations of ill-treatment.

II. INDIVIDUAL MEASURES

- ***Batı and Others* (33097/96, final on 3 September 2004)**

3. *Batı and Others* concerns a substantive violation of Article 3 of the Convention on account of the applicants' ill-treatment in police custody. Having taken account of the fact that the

criminal proceedings against the accused officers were still pending before the Court of Cassation, the Court also found that the proceedings into the event had not been conducted in a prompt and diligent manner in violation of Article 13. The European Court further found a violation of 5 § 3 on account of the excessive length of pre-trial detention of the applicants. Under the same Article the Court, in addition, concluded that the applicants were held between eleven to thirteen days in custody without judicial intervention which was excessive.

4. As concerns the violations of Articles 3 and 13, on 21 April 2004, the Court of Cassation dropped the charges against the accused on account of prescription and thereby the proceedings became final. In any event, the authorities would like to note that the prosecution office reviewed the case on 10 December 2020 and decided that it was no longer possible to reopen the investigation which had become time-barred on 19 August 2003 (Annex 1). In the light of this, the authorities consider that no further individual measures are possible under this head.

5. As concerns the violation of Article 5, the authorities would like to note that the applicants' custody and pre-trial detention had already been ended when the Court rendered its judgment. Accordingly, the authorities consider that no further individual measures are required under this head.

6. The case could therefore be closed.

- ***Hasan Köse*** **(15014/11, final on 6 May 2019)**

7. The case concerns a violation of Article 2 of the Convention on account of the applicant's injury caused by security forces in 2007.

8. The authorities would like to note that at the material time a criminal investigation was initiated into the incident and a police officer was charged for having used excessive force. In 2010, the criminal court convicted the accused as charged and sentenced him to five months' imprisonment, but suspended pronouncement of this conviction under Article 231 of the Code of Criminal Procedure. The proceedings became final in the same year. The Court held that the procedure permitting suspension of the pronouncement of judgments concerning agents of the State resulted in the impunity of the perpetrator.

9. The authorities would like to note that following the European Court's judgment, the prosecution office reviewed the case on 5 November 2020 and decided that it was no longer possible to reopen the investigation which had become time-barred on 8 January 2016 (Annex 2).

10. In the light of the above explanations, the authorities regrettably note that no further individual measures are possible due to prescription in this case. The case could therefore be closed.

- ***Ceyhan Demir and Others*** **(34491/97, final on 13 April 2005)**

11. In *Ceyhan Demir and Others* the applicants' next of kin had been found dead in a prison vehicle during his transfer following a riot in prison in 1996. The Court first held that Article 2 of the Convention had been violated on its substantial limb. Having taken account of the fact that the criminal proceedings against the accused were still pending before the first instance courts, the Court also held that the proceedings into the event had not been conducted in a prompt and diligent manner in violation of Article 2. The further found a violation of Article 13 on account of its conclusions under Article 2.

12. The authorities would like to note that following the European Court's judgment, the Diyarbakır Assize court sentenced some of the perpetrators to 5 years' imprisonment and acquitted some others on 9 June 2014. However, this decision was quashed by the Court of Cassation on 11 May 2016 on account of procedural shortcomings in the proceedings. Following this judgment, the Diyarbakır Assize Court dropped the charges against the accused on account of prescription on 23 May 2019. This decision was upheld for the accused -except Y.Ö.- by the Court of Cassation on 17 November 2022. In respect of the accused Y.Ö., the Court of Cassation observed that he had died before the first instance court's judgment and therefore the charges against him should have been dropped on this account. The Diyarbakır Assize Court complied with this decision and dropped the charges against Y.Ö. because of his death.

13. In the light of the above explanations, the authorities regrettably note that no further individual measures are possible due to prescription in this case. Accordingly, the case could be closed.

- ***Başbilen*** **(35872/08, final on 26 July 2016)**

14. The case concerns the suspicious death of the applicants' next of kin in 2006. The Court found a violation of Article 2 of the Convention on account of the failure of the authorities to conduct an effective investigation into the incident.

15. The authorities would like to recall that two criminal investigations were carried out into the incident. The first investigation was closed with a non-prosecution decision in 2006. Nevertheless, a second investigation was opened in 2010 and this investigation is currently pending. The authorities indicate that in reaching the conclusion that the criminal investigation into the incident was ineffective, the Court mainly criticized the omissions in collecting evidence pertaining to the first investigation (§ § 72-76). As concerns the second investigation, the Court itself noted that the Ankara Public Prosecutor's Office had not only attempted to

remedy the shortcomings of the first investigation; but it had also carried out further enquiries into the circumstances surrounding the death. The Court therefore considered that the efforts of the investigating authorities in the framework of the second investigation was commendable. (§ § 78-80).

16. In line with these considerations, as welcomed by the Court, the omissions in the first investigation has been remedied in the second investigation. Recalling the Court's case law that the obligation to conduct an effective investigation is an obligation not of result but of means, the authorities consider that no further individual measures are required in this case. Accordingly, the case could be closed.

- ***Mustafa Aldemir*** **(53087/07, 4 November 2013)**

17. In *Mustafa Aldemir,* the Court found substantive and procedural violations of Article 3 of the Convention on account of the applicant's injury caused by the security forces in 2005.

18. The authorities would like to note that the criminal investigation into the incident had been concluded with a non-prosecution decision in 2006 (before the European Court's judgment). Following the Court's judgment, the investigation was re-opened and the Kulp Public Prosecution Office filed a bill of indictment against a law enforcement officer before the criminal court in 2017. However, the charges against the accused were dropped by that court on account of prescription on 22 January 2019. The applicant's appeal against this judgment was also rejected by the Gaziantep 2nd Regional Court of Appeal on 17 November 2022 and the proceedings became final on 22 December 2022 (Annex 3).

19. In the light of the above explanations, the authorities regrettably note that no further individual measures are possible due to prescription in this case. Accordingly, the case could be closed.

- ***Özçelik*** **(73346/11, final on 15 March 2022)**

20. The case concerns a violation of Article 2 of the Convention on account of the death of the applicants' next-of-kin in 2008.

21. The authorities would like to note that at the material time a criminal investigation was initiated into the incident and a bill of indictment was filed against a police officer. In 2011, the assize court convicted the accused as charged and sentenced him to a term of imprisonment, but suspended pronouncement of this conviction under Article 231 of the CCP. The proceedings became final in the same year. The accused officer did not commit a further crime during the 5 years' suspension period and the charges against him were subsequently dropped in 2017.The

Court held that the procedure permitting suspension of the pronouncement of judgments concerning agents of the State resulted in the impunity of the perpetrator.

22. As concerns the possibility for reopening of the criminal proceedings in the present case, the authorities would like to submit the following explanation:

23. In accordance with Article 311§1-f of the CCP; if the European Court finds a violation on the grounds that the applicant/s had been convicted in breach of the requirements of the Convention, the applicants may request re-trial in one year once the judgment of the Court becomes final. As clearly stipulated under the said provision, this procedure can only be applied in favour of the applicants who had been convicted in the domestic proceedings. Accordingly, this remedy is not applicable in the present case. At this point, the authorities note that the applicants' representative sought reopening of the proceedings in this case. Nevertheless, on 7 October 2022, this request was dismissed by the trial court applying the above explained approach.

24. The authorities further note that under Turkish law, a trial which ends in a final judgment can be reopened to the detriment of the person convicted or acquitted in the previous proceedings if at least one of the conditions set out in Article 314 of the CCPis satisfied, namely: if a document which is submitted during the trial in defence of the defendant or the convicted person and which has a bearing on the conclusion reached by the trial court was forged; if any of the judges who participated in the decision committed a fault while performing their duty, provided that the fault was in favour of the accused or the convicted person and that it was of a nature necessitating a criminal prosecution or a conviction; or if the defendant, after being acquitted, makes a reliable confession before a judge in relation to the offence. The authorities observe that there is no indication in the instant case to suggest that any of these provisions is applicable to the accused officer in the present application. It is therefore *de jure* impossible to bring new criminal proceedings against the accused in the present case.

25. The authorities note that the fact that it may be *de jure* impossible to reopen proceedings in cases concerning complaints under Articles 2 and 3 of the Convention is not, in principle, an impediment to the closure by the Committee of Ministers of its examination of the case under Article 46 of the Convention. For example, following the Grand Chamber's finding of a violation of the procedural aspect of Article 3 of the Convention in the case of *Jeronovičs v. Latvia* (44898/10) the applicant requested the national prosecutor to reopen the investigation into his allegations. His request was rejected on account of the expiry of the limitation period. In its Resolution concerning the Grand Chamber's judgment, the Committee of Ministers

considered that all the measures required by Article 46 § 1 of the Convention had been adopted, and decided to close its supervision (see Resolution CM/ResDH (2017)312).

26. Similarly, following the Court's finding of a violation of the procedural aspect of Article 2 of the Convention in the case of *Patsaki and Others v. Greece* (20444/14), in their Action Report the authorities submitted the information that the accused had been acquitted by a final judgment and domestic law did not allow for reopening of a case following a defendant's acquittal, save under very specific circumstances, notably, when it is established that the judgment was based on falsified evidence or breach of duty by a judge took place, which was not the case in the instant case. The Committee of Ministers closed its examination depending on the above information (see Resolution CM/ResDH (2020)260).

27. In the same vein, in the case of *Vazagashvili and Shanava v. Georgia* (no. 50375/07), which concerns the death of the applicants' son in a police operation, the Court had found a procedural violation of Article 2 of the Convention on account of, *inter alia*, the lenient sentences imposed on the accused officers. In their action report the authorities noted that the accused had already been convicted and no further individual measures were required. The Committee of Ministers closed examination of this case indicating that "While regretting the shortcomings in view of the low penalties imposed by the domestic courts in these cases, noted that no further individual measure can be envisaged in the light of the *res judicata* force of the convictions" (see Resolution CM/ResDH (2020)358).

28. The authorities would further like to refer to the case-law of the European Court. In the cases of *Karaca v. Türkiye* (5809/13, 12 March 2019) and *Taşdemir v. Türkiye* (52538/09, 12 March 2019) the European Court acknowledged the above considerations. In these cases, the applicants alleged that their relatives had been unlawfully killed by State agents. In *Karaca*, the accused village guards had been acquitted on the grounds that they had acted in self-defence, using proportionate force. In *Taşdemir* the criminal proceedings had been discontinued at the appeal stage as they had become time-barred. In these cases, the Turkish Government submitted unilateral declarations acknowledging that there had been a breach of Article 2, proposed a certain amount of compensation without a specific undertaking as to reopening of investigation. In these two applications, amending its well established case-law, the Court accepted the unilateral declarations submitted by the Government. Previously, the Court had rejected unilateral declarations submitted by respondent Governments in cases in which there was no such undertaking to reopen the investigation, on the ground that respect for human rights required that the examination of the case be continued pursuant to the final sentence of Article 37 § 1 of the Convention (see *Mishina v. Russia*, no. 30204/08, §§ 23-30, 3 October 2017, and

the cases cited therein; see also, mutatis mutandis, *Toğcu v. Türkiye*, no. 27601/95,§§ 10-14, 31 May 2005) (§12 of *Karaca*). However, in the latter two cases the European Court explicitly indicated that there might be situations where it is *de jure* or *de facto* impossible to reopen criminal investigations. The Court considered that such situations might arise, for example, when the alleged perpetrators had been acquitted and could not be put on trial for the same offence, or when the criminal proceedings had become time-barred on account of the statute of limitations in the national legislation. For the Court, a reopening of criminal proceedings which had been terminated on account of the expiry of the statute of limitations could raise issues concerning legal certainty and thus have a bearing on a defendant's rights under Article 7. In a similar vein, putting the same defendant on trial for an offence for which he or she had already been finally acquitted or convicted could raise issues concerning that defendant's right not to be tried or punished twice within the meaning of Article 4 of Protocol No. 7. Consequently, the Court considered, in these cases, that it was *de jure* impossible, under Turkish law, to reopen a criminal investigation into the death of the applicants' relatives. The Court accordingly decided to strike out the cases upon the unilateral declarations submitted by the Government acknowledging that there had been a breach of Article 2 and proposing compensation, but containing no undertaking to reopen or to continue the investigations.

29. In the light of the above considerations, the authorities would like to note that it is *de jure* impossible, under Turkish law, to reopen a criminal investigation into the death of the applicants' next of kin in the instant case since the domestic courts had already rendered a final decision. At that point, it should also be underlined that in the circumstances of the present case, the identity of the accused is not in dispute. Namely, the accused was identified but pronouncement of the judgment was suspended. Moreover, it was not alleged that other individuals had also been involved in the incident.

30. The authorities would finally like to underline that the above arguments of the authorities were acknowledged by the Committee of Ministers and supervision of similar cases were closed accordingly (*see* Resolution CM/ResDH (2021)197 in the cases of: *Makbule Kaymaz and Others v. Türkiye*, 651/10; *Kasap and Others v. Türkiye* (8656/10); *Kalkan v. Türkiye* (37158/09)).

31. In the light of the above explanations, the authorities note that no further individual measures are possible in this case. Accordingly, the case could be closed.

- ***Canan* (29443/14, final on 14 December 2021)**

32. The case concerns substantive and procedural violations of Article 3 of the Convention on account of the applicant's alleged ill-treatment while he was in prison in 2012.

33. The authorities would like to note that at the material time a criminal investigation was initiated into the incident and a prison guard was charged for the offences of insult and attempted injury. In 2012, the criminal court convicted the accused as charged and sentenced him to a term of imprisonment and a sum of judicial fine, but suspended pronouncement of this conviction under Article 231 of the Code of Criminal Procedure (Law no 5271, "the CCP"). The proceedings became final in the same year. The Court held that the procedure permitting suspension of the pronouncement of judgments concerning agents of the State resulted in the impunity of the perpetrator.

34. As concerns the possibility for reopening of the criminal proceedings in the present case, the authorities would like to submit the following explanation:

35. In accordance with Article 311§1-f of the CCP, if the European Court finds a violation on the grounds that the applicant/s had been convicted in breach of the requirements of the Convention, the applicants may request re-trial in one year once the judgment of the Court becomes final. As clearly stipulated under the said provision, this procedure can only be applied in favour of the applicants who had been convicted in the domestic proceedings. Accordingly, this remedy is not applicable in the present case.

36. The authorities further note that under Turkish law, a trial which ends in a final judgment can be reopened to the detriment of the person convicted or acquitted in the previous proceedings if at least one of the conditions set out in Article 314 of the CCP is satisfied, namely: if a document which is submitted during the trial in defence of the defendant or the convicted person and which has a bearing on the conclusion reached by the trial court was forged; if any of the judges who participated in the decision committed a fault while performing their duty, provided that the fault was in favour of the accused or the convicted person and that it was of a nature necessitating a criminal prosecution or a conviction; or if the defendant, after being acquitted, makes a reliable confession before a judge in relation to the offence. The authorities observe that there is no indication in the instant case to suggest that any of these provisions is applicable to the accused officer in the present application. It is therefore *de jure* impossible to bring new criminal proceedings against the accused in the present case.

37. The authorities note that the fact that it may be *de jure* impossible to reopen proceedings in cases concerning complaints under Articles 2 and 3 of the Convention is not, in principle, an

impediment to the closure by the Committee of Ministers of its examination of the case under Article 46 of the Convention. For example, following the Grand Chamber's finding of a violation of the procedural aspect of Article 3 of the Convention in the case of *Jeronovičs v. Latvia* (44898/10) the applicant requested the national prosecutor to reopen the investigation into his allegations. His request was rejected on account of the expiry of the limitation period. In its Resolution concerning the Grand Chamber's judgment, the Committee of Ministers considered that all the measures required by Article 46 § 1 of the Convention had been adopted, and decided to close its supervision (see Resolution CM/ResDH (2017)312).

38. Similarly, following the Court's finding of a violation of the procedural aspect of Article 2 of the Convention in the case of *Patsaki and Others v. Greece* (20444/14), in their Action Report the authorities submitted the information that the accused had been acquitted by a final judgment and domestic law did not allow for reopening of a case following a defendant's acquittal, save under very specific circumstances, notably, when it is established that the judgment was based on falsified evidence or breach of duty by a judge took place, which was not the case in the instant case. The Committee of Ministers closed its examination depending on the above information (see Resolution CM/ResDH (2020)260).

39. In the same vein, in the case of *Vazagashvili and Shanava v. Georgia* (no. 50375/07), which concerns the death of the applicants' son in a police operation, the Court had found a procedural violation of Article 2 of the Convention on account of, *inter alia*, the lenient sentences imposed on the accused officers. In their action report the authorities noted that the accused had already been convicted and no further individual measures were required. The Committee of Ministers closed examination of this case indicating that "While regretting the shortcomings in view of the low penalties imposed by the domestic courts in these cases, noted that no further individual measure can be envisaged in the light of the *res judicata* force of the convictions" (see Resolution CM/ResDH (2020)358).

40. The authorities would further like to refer to the case-law of the European Court. In the cases of *Karaca v. Türkiye* (5809/13, 12 March 2019) and *Taşdemir v. Türkiye* (52538/09, 12 March 2019) the European Court acknowledged the above considerations. In these cases, the applicants alleged that their relatives had been unlawfully killed by State agents. In *Karaca*, the accused village guards had been acquitted on the grounds that they had acted in self-defence, using proportionate force. In *Taşdemir* the criminal proceedings had been discontinued at the appeal stage as they had become time-barred. In these cases, the Turkish Government submitted unilateral declarations acknowledging that there had been a breach of Article 2 proposed a certain amount of compensation without a specific undertaking as to reopening of investigation.

In these two applications, amending its well established case-law, the Court accepted the unilateral declarations submitted by the Government. Previously, the Court had rejected unilateral declarations submitted by respondent Governments in cases in which there was no such undertaking to reopen the investigation, on the ground that respect for human rights required that the examination of the case be continued pursuant to the final sentence of Article 37 § 1 of the Convention (see *Mishina v. Russia*, no. 30204/08, §§ 23-30, 3 October 2017, and the cases cited therein; see also, mutatis mutandis, *Toğcu v. Türkiye*, no. 27601/95,§§ 10-14, 31 May 2005) (§12 of *Karaca*). However, in the latter two cases the European Court explicitly indicated that there might be situations where it is *de jure* or *de facto* impossible to reopen criminal investigations. The Court considered that such situations might arise, for example, when the alleged perpetrators had been acquitted and could not be put on trial for the same offence, or when the criminal proceedings had become time-barred on account of the statute of limitations in the national legislation. For the Court, a reopening of criminal proceedings which had been terminated on account of the expiry of the statute of limitations could raise issues concerning legal certainty and thus have a bearing on a defendant's rights under Article 7. In a similar vein, putting the same defendant on trial for an offence for which he or she had already been finally acquitted or convicted could raise issues concerning that defendant's right not to be tried or punished twice within the meaning of Article 4 of Protocol No. 7. Consequently, the Court considered, in these cases, that it was *de jure* impossible, under Turkish law, to reopen a criminal investigation into the death of the applicants' relatives. The Court accordingly decided to strike out the cases upon the unilateral declarations submitted by the Government acknowledging that there had been a breach of Article 2 and proposing compensation, but containing no undertaking to reopen or to continue the investigations.

41. In the light of the above considerations, the authorities would like to note that it is *de jure* impossible, under Turkish law, to reopen a criminal investigation into the applicant's injury in the instant case since the domestic courts had already rendered a final decision. At that point, it should also be underlined that in the circumstances of the present case, the identity of the accused is not in dispute. Namely, the accused was identified but pronouncement of the judgment was suspended. Moreover, it was not alleged that other individuals had also been involved in the alleged ill-treatment.

42. The authorities would finally like to underline that the above arguments of the authorities were acknowledged by the Committee of Ministers and supervision of similar cases were closed accordingly (*see* Resolution CM/ResDH (2021)197 in the cases of: *Makbule Kaymaz and*

Others v. Türkiye, 651/10; *Kasap and Others v. Türkiye* (8656/10); *Kalkan v. Türkiye* (37158/09)).

43. In the light of the above explanations, the authorities note that no further individual measures are possible in this case. Accordingly, the case could be closed.

- ***Amine Güzel* (41844/09, final on 17 December 2013)**

44. The case concerns a procedural violation of Article 3 of the Convention on account of the ineffective investigation of the applicant's injury during a police intervention to a demonstration in 2008.

45. The authorities would like to note that in 2008 a criminal investigation (the first investigation) was initiated into the incident. On 24 September 2008, the Diyarbakır Prosecution Office issued a decision not to prosecute considering that the injuries on the applicant's body seemed to have been caused by force lawfully employed by the officers during her arrest, which had been within the scope of their duties.

46. Nevertheless, following the Court's communication of the applicant's case to the Government, upon the request of the Diyarbakır Prosecution Office to that effect, on 24 March 2011, the Siverek Assize Court annulled the decision not to prosecute and held that criminal proceedings should be initiated against the police officers concerned. Accordingly, the Diyarbakır Prosecution Office initiated a second investigation into the incident. Within the context of this investigation, a bill of indictment was filed against police officers. The trial court delivered its judgment and the proceedings are still pending before the regional court of appeal.

47. The authorities would like to underline that in finding the present violation the Court only examined the effectiveness of the first investigation which was initiated in 2008. In reaching its conclusions to this end, the Court explicitly excluded to examine the second investigation initiated in 2011 which is currently under appeal review (§ 36, 43).

48. In the light of the above explanations, having taken note of the fact that the Court's examination in the present case solely concerns the first investigation initiated in 2008 but excludes the second investigation initiated in 2011, the authorities consider that no further individual measures are required in this case. Accordingly, the case could be closed.

- ***Sorli* (78727/16, final on 5 April 2022)**

49. The case concerns substantive and procedural violations of Article 3 of the Convention on account of the applicants' alleged ill-treatment in police custody in 2013.

50. The authorities recall that in reaching its conclusions in the present case, the Court mainly criticized that no official criminal investigation had been initiated into the incident at the material time.

51. The authorities would like to note that following the Court's judgment, the Bakırköy Public Prosecution Office reviewed the case on 24 June 2022 and decided that it was no longer possible to reopen the investigation which had become time-barred on 30 January 2022 (Annex 4).

52. In the light of this, the authorities regrettably note that no further individual measures are possible due to prescription in this case. Accordingly, the case could be closed.

- ***Güngör* (3824/17, final on 15 February 2023)**

53. In *Güngör*, the applicant complained that he had been subjected to ill treatment by the police during his transfer to hospital in 2013. The Court first held that Article 3 of the Convention had been violated on its substantial limb. The Court further found a procedural violation of the same right on the grounds that no official criminal investigation had been initiated into the applicant's allegations at the material time.

54. The authorities would like to note that following the Court's judgment, the İstanbul Public Prosecution Office reviewed the case on 21 June 2023 and decided that it was no longer possible open an investigation into the incident since the offence concerned had become time-barred on 19 June 2021 (Annex 5).

55. In the light of this, the authorities regrettably note that no further individual measures are possible due to prescription in this case. Accordingly, the case could be closed.

- ***Mızrak and Atay (65146/12, final on 18 January 2017)***

56. The case concerns substantive and procedural violations of Article 2 of the Convention on account of the death of the applicants' relative during the security forces' intervention to a demonstration in 2006.

57. The authorities would like to note that at the material time a criminal investigation was initiated into the incident and three police officers were charged. At the time the Court rendered its judgment, the case was pending before the Diyarbakır Assize Court. Following the Court's judgment, on 26 April 2018, the trial court acquitted the accused officers on the grounds that there was not sufficient evidence in the case file to establish that they had committed the imputed offence. The trial court further requested the prosecution office to investigate the perpetrators of the incident in the same decision. This decision was appealed and on 26 February 2019, the Gaziantep Regional Court of Appeal quashed the first instance court's judgment on account of procedural shortcomings. The Diyarbakır Assize Court fulfilled these procedural issues and in its judgment dated 10 October 2019 acquitted the accused officers again. The Diyarbakır Regional Court of Appeal upheld that decision on 15 October 2020. The case is currently under appeal review before the Court of Cassation. The authorities will keep the Committee updated on the outcome of the criminal proceedings.

58. The authorities would further like to note that the applicants also sought compensation from administration due to the incident. The Diyarbakır Administrative Court granted this request in 5 November 2009 and awarded the applicants pecuniary and non-pecuniary compensation. When the Court rendered its judgment the proceedings were under appeal review before the Supreme Administrative Court. Following the Court's judgment, the first instance court's judgment was subsequently confirmed by the Joint Administrative Chambers of the Supreme Administrative Court on 27 March 2019. The administration's rectification request was also dismissed by the Supreme Administrative Court on 6 July 2020 and thereby the proceedings became final.

- ***Tutakbala (38059/12, final on 17 May 2022)***

59. The case concerns a violation of Article 2 of the Convention on account of the death of the applicants' relative in 2006. The Court found that the authorities had failed to conduct an effective investigation into the incident capable of establishing the exact circumstances of the case.

60. Pursuant to Article 172§3 of the CCP, the applicants were entitled to request reopening of the investigation within three months following the final judgment of the Court. However, they did not avail themselves of this opportunity. The authorities therefore consider that no further individual measures are required and thus the case could be closed.

- ***Şimşek and Others*** **(35072/97, final on 26 October 2005)**

61. The case mainly concerns death of the applicants' relatives during the Gazi and Ümraniye events (demonstrations) which took place in the İstanbul province 1995. The Court found a violation of Article 2 of the Convention under its substantive aspect on the grounds that the force used to disperse the demonstrators had been excessive. It further held that there had been a violation of Article 2 of the Convention under its procedural aspect on account of the ineffectiveness of the investigations.

62. The authorities would like to note that the proceedings against certain accused persons are still pending (before the Anadolu 2nd Assize Court in İstanbul, docket no. 2018/279).

63. The Committee will be kept updated as to the ongoing proceedings.

- ***Gasyak and Others (27872/03, final on 13 October 2009)***

64. The case concerns a violation of Article 2 of the Convention in its procedural aspect on account of the failure of the authorities to conduct an effective investigation into the death of the applicants's next of kin in 1994.

65. The authorities would like to note that before the European Court's judgment, the Şırnak Assize Court had acquitted the accused who were private individuals and requested further investigation from the prosecution office to identify the perpetrator/s. This decision had become final in 2006. Following the Court's judgment, in 2009 the Diyarbakır Public Prosecution Office filed a bill of indictment before the Assize Court and the case file was transferred to the Eskişehir for security reasons. The Eskişehir Assize Court acquitted the accused on 5 November 2015. The Assize Court also requested the prosecution office to conduct a further investigation to find the perpetrators. This decision was upheld by the Court of Cassation 24 November 2021 and the proceedings thereby became final. The criminal investigation is still pending before the Cizre prosecution office. The Committee will be informed on further developments in this case.

- ***Hasan Yaşar and Others (27872/03, final on 13 October 2009)***

66. The case concerns a violation of Article 2 of the Convention in its procedural aspect on account of the failure of the authorities to conduct an effective investigation into the death of the applicants's next of kin in 1994.

67. The authorities would like to note that at the time the Court rendered its judgment the criminal investigation into the incident was pending before the Yüksekova Prosecution Office. The investigation authorities continue their efforts to find out the perpetrator/s. The Committee will be informed on further developments in this case.

III. GENERAL MEASURES

A. INTRODUCTION

68. In the recent years, Türkiye has taken a number of measures aimed at prevention and effective investigation of all forms of torture and ill- treatment. These measures include legislative and regulatory amendments and as well as various raising awareness and training activities. In addition to these, a new global remedy that is to say the individual application procedure before the Constitutional Court has been introduced.

B. ADDITIONAL SAFEGUARDS TO PREVENT TORTURE AND ILL-TREATMENT AND ENHANCED ACCOUNTABILITY OF THE SECURITY FORCES UNDER THE CURRENT TURKISH LEGISLATION (ARTICLES 2 AND 3)

69. At the outset, the authorities would like to indicate that the Turkish Government adopted a zero-tolerance policy in order to combat torture and all forms of ill-treatment.

70. The substantive reforms put in place to this end were examined within the context of the *Aksoy* (21987/93) group of cases in a very broad perspective. The Committee welcomed these measures under *Aksoy* group by adopting interim measures. The Turkish authorities would like to recall the Committee's conclusions in these interim resolutions.

71. In its interim resolution of ResDH(2005)43 the Committee - among others*; i)welcomed the determination of the Turkish authorities to ensure that the actions of the security forces fully comply with the requirements of the Convention and noted with satisfaction the substantial reforms adopted since 2002 to that effect, including most recently the new Penal Code and Code of Criminal Procedure, which came into force on 1 June 2005;ii) welcomed the Turkish authorities' "zero-tolerance" policy with regard to torture and ill-treatment by the security forces as well as the ongoing efforts to ensure that existing laws and regulations are implemented, in particular through the issue of circulars calling for the total eradication of human rights violations, so that the right to life is effectively guaranteed and that torture and ill-treatment are prohibited in practice; iii) welcomed the additional safeguards introduced for persons held in police custody, in particular the right of all persons to see a lawyer of their own choosing from the outset of the custody period, the right to free legal assistance, the right of the suspect's representative to have access to the investigation file and the right to a medical examination without the presence of members of security forces; iv) welcomed the enhanced accountability of the security forces in the new Criminal Code as a result of the introduction of minimum prison sentences for crimes of ill-treatment and torture which may no longer be converted into fines or suspended; v) welcomed the fact that the administrative authorisation required for criminal investigation in cases of alleged ill-treatment and torture by the security forces was abolished on 10 January 2003 by an amendment to Law No. 4483.*

72. In its interim resolution of CM/ResDH (2008)69, welcoming the positive developments on certain issues, the Committee closed, *inter alia*, its examination on the issue of procedural safeguards in police custody.

73. Finally in its final resolution of the *Aksoy* group CM/ResDH (2019)51*; welcoming the extensive general measures adopted including: - the giving of direct effect to the Convention requirements; - the introduction of the right of individual application to the Constitutional Court; - the removal of any prescription period or requirement for administrative authorisation for investigations and prosecutions of crimes of torture and ill-treatment; - the improvement of procedural safeguards in police custody, including the right to access to a lawyer; - the alignment of the detention periods and regulations with the Convention standards; - the prompt*

and efficient implementation of the "Law on Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorists"; - the improvement of professional training for members of the security forces; - the training of judges and prosecutors; the Committee closed examination of the above issues.

74. The authorities would like to stress that the above measures which were found to be satisfactory by the Committee are still in force and further measures have been put in place since then.

75. Furthermore, within the context of efforts to combat impunity for torture and ill-treatment, being party to the Convention against Torture since 1988, Türkiye signed the Optional Protocol to the Convention against Torture (OPCAT) in September 2005 and ratified it in 2011. In doing so, Türkiye reaffirmed its commitment to pursue the policy of "zero tolerance" in the prevention and punishment of torture and ill treatment.

1. Improvement of procedural safeguards in custody

76. As highlighted by the European Court in many cases; in order for prevention of torture and ill-treatment and protection of persons in custody, adequate safeguards shall be provided. In this regard, the safeguards with respect to police and gendarmerie custody have been considerably improved in Türkiye. The current CCP which was introduced in 2005 adopted a more effective legal framework compared to the former Code. Furthermore, "The Regulation on Arrest, Custody and Questioning" of June 2005 (Hereinafter; Detention Regulation) further clarified the procedural safeguards in custody. These safeguards might be summarised as follows:

- Registration of persons in custody

77. All detainees shall be registered in. Information in this register shall include, in particular, all information concerning the identity of the detainee, the date, time and other details of the detainee's apprehension and custody, the references and summary of the medical report, the name of the next-of-kin informed, the statement containing a request for a lawyer and details concerning the extension of custody, etc. (Detention Regulation, Article 12).

- Medical reporting

78. When persons are taken into custody or apprehended, their state of health shall be checked by a doctor; when they are transferred to a new place of detention, released or brought before the courts, or when the period of custody is extended, their state of health shall again be established. The doctor who is in charge of the medical legal report shall examine the person

apprehended in private, except when this is not possible because of the restrictions due to the investigation or for security reasons. Medical reports shall be drawn up in quadruplicate: the first copy shall be kept at the detention centre, the second shall be delivered to the detainee, the third added to the case file and the fourth kept by the health service. If the doctor who carried out the suspect's medical check finds indications that the person had suffered from an act of torture, torment or ill-treatment, he or she shall immediately inform the public prosecutor of the situation (Detention Regulation, Article 9).

79. Furthermore, in 2005 the Ministry of Health issued a Circular (2005/143). This circular gives detailed information regarding the steps to be followed during the medication. The instructions in this circular completely follows the basic principles set forth in the Istanbul Protocol. Furthermore, a sample forensic medicine report is annexed to the circular.

80. In addition to legislative amendments, the quality and the quantity of the experts have been improved. Namely, in all cities in Türkiye Forensic Medical Institutions have been established. The number of the forensic experts has considerably increased in the recent years.

81. Expeditious medical examination and transfer of detained persons to the health institutions are also of great importance in order to prevent torture and ill- treatment. Within this context a protocol has been signed between Ministry of Justice and Ministry of Health and prisoners are being examined by the doctors appointed in prisons speedily.

- Informing the next-of-kin

82. According to Article 95 of the CCP and Article 8 of the Detention Regulation, the suspect's next-of-kin shall be informed by the police without delay when he/she is apprehended, taken into police custody or detained. If the suspect is a foreigner, the consulate general's office of his/her country shall be informed unless the suspect requests otherwise.

- Contact with a lawyer

83. The authorities would like to recall that in some cases examined under the present group of cases the Court found that the right of a detainee to have access to legal advice is a fundamental safeguard against torture and ill-treatment (for example in *Salduz* app. no. 36391/02). Accordingly, the right of access to a lawyer is critically important to prevent torture and ill-treatment during police custody. The authorities would like to indicate that the scope of this right was substantially broadened by the current CCP. Today, any suspect can request a lawyer at the very beginning of the investigation. If the crime in question calls for a penalty of prison sentence for a term of five years or more, appointment of a lawyer is obligatory. If the suspect

is a minor, regardless of the severity of the crime, she/he shall be appointed a lawyer without need to a request (the CCP Art. 150). The costs are paid by the public treasury, so that the suspect can benefit from a legal assistance free of charge. Moreover, if the suspect is appointed a lawyer, his/her statements cannot be taken without the presence of the lawyer. The suspect can see his/her lawyer at any time. Exceptionally, if the suspect is charged with a crime concerning terrorism or organised crime his/her access to lawyer can be suspended by a judge for 24 hours. However, during the suspension, his/her statements cannot be taken. The authorities would like to recall that this procedure is in line with the Court's jurisprudence as established in its *Ibrahim and others v. UK* judgment and that the Committee closed the *Salduz* group of cases in June 2018, finding that the measures taken to provide the suspects with legal assistance were effective (Resolution CM/ResDH (2018)219).

- Use of statements obtained

84. Numerous measures have been adopted, including training and awareness raising measures for the police, prosecutors and judges, to ensure respect for the prohibition of torture or ill-treatment in Turkish law, including during police custody, and the prohibition of the use of any statement obtained under such duress as evidence in criminal proceedings. To this end, statements taken by the police in the absence of a lawyer cannot be considered as a basis for a judgment, unless it is confirmed by the suspect before the trial court (Article 148 of the CCP). In *Harun Gürbüz* (68556/10), the Court noted that Turkish law set out a very strong procedural safeguard in Article 148 § 4 of the Code of Criminal Procedure (§ 83).

- Physical conditions of the custodies

85. According to the by-law "Apprehension, Detention and Interrogation", a place of detention shall be at least 7m², 2.5 metres high and 2 metres between two walls; sufficient natural light and air circulation shall be ensured. The suspects' needs such as suitable places for sitting and sleeping, shower, toilet etc. must be met.

86. Monitoring of custodies by CCTV camera systems is also of great assistance. In this respect, the law enforcement has installed cameras in their custodies.

87. Places of detention shall be monitored by public prosecutors as well. Public prosecutors are obliged to oversee detention premises, recordings and places of questioning. Public prosecutors can exercise their duty of inspection any time (Detention Regulation, Article 26).

88. These facilities are also being monitored by Inspection bodies of Security General Directorate and Gendarmerie General Command, Human Rights Institutions and CPT regularly.

2. Amendments in the Law on the Duties and Legal Powers of the Police (Law No. 2559)

89. In an effort to prevent unlawful acts of the security forces, several pieces of primary and secondary legislation were adopted. The Law on the Duties and Legal Powers of the Police was amended in 2007. In its amended Article 16, it provides that the police cannot use force unless confronted with resistance. The use of force shall be proportionate, be directed to break the resistance, and be increased gradually. The police shall first warn the person(s) and may use proportionate force if they continue resisting.

C. REQUIREMENT FOR ADMINISTRATIVE AUTHORISATION

90. In some cases, the European Court found that the public prosecutors sought administrative authorisation in an attempt to conduct investigations regarding torture and ill-treatment allegations. In these cases, the Court concluded that the relevant local administrative councils and investigators appointed by these councils were not impartial. Additionally, in some of these cases the Court also stressed that investigations conducted by these councils were ineffective and caused delays in the proceedings.

91. The authorities would like to underline that the aim of the Law on the Prosecution of Civil Servants and Public Officials (Law no. 4483) is to determine the competent authority and the procedure to be followed for trial of the public officers due to the offences they committed during their service (Article 1). This Law involves all the public officers such as police officers, prison guards, gendarmerie personnel as well as doctors and teachers etc. As regulated in the Article 2 of this Law, these provisions are applied for the offences committed by any public officer on account of his/her service.

92. The authorities would like to highlight that with the amendment made in the Law no. 4483 in 2003, the acts of torture, ill-treatment and excessive use of force was explicitly excluded from administrative authorisation. With this amendment the Law reads *"Cases of in flagrante delicto falling within* ***the jurisdiction of assize courts*** *shall be subject to general provisions. (...) Paragraph added by Article 33 of the Law no. 4778 dated 2 January 2003) The provisions of this law shall not be applied in the investigations and proceedings to be initiated* ***under***

Articles 243 and 245 of the Turkish Criminal Code no. 765 as well as Article 154 of the Code of Criminal Procedure no. 1412."

93. As mentioned previously, Law No. 765 was abolished and the current Turkish Criminal Code (Law No. 5237) came into force in 2005. It has been envisaged that the references to the Law no. 765 shall be considered to be made to Articles corresponding to these provisions in the Law no. 5237. The exceptions in the relevant article of the Law no. 4483 correspond to acts constituted the offence of torture prescribed by Articles 94 and 95 of the Law no. 5237 and the act of exceeding the limits of the power to use force prescribed by Article 256 and intentional injury on account of a public officer misusing his influence by Article 86/3(d).

94. The authorities note that the above amendment is properly applied in practice by relevant domestic authorities including judiciary and no prior administrative authorisation is sought for such offences. In this regard, the authorities would like to note that the impugned violations stemming from the application of administrative authorisation had occurred before the legal amendment in Law no 4483 in 2003 and introduction of the new TCC and CCP in 2005. This amendment is applicable for the investigations regarding all forms of ill-treatment. There is no violation examined in *Batı* Group of cases under this heading occurred after the said legislative improvements.

95. The Government would like to reiterate that no prior administrative authorisation will be required in the event of torture or ill-treatment allegations including the offence of excessive use of force, pursuant to Article 2 of the Law no 4483 (with the amendment in 2003). Therefore, it is crystal clear that public prosecutors shall *ex officio* initiate and conduct the investigations of ill-treatment or torture.

96. The authorities would also like to note that at their 1243rd meeting (8-9 December 2015) the Committee of Ministers welcomed the measures taken in particular that: - *administrative authorisation is no longer required for the prosecution of crimes of torture, aggravated torture and causing intentional bodily harm.*

97. In accordance with the current Turkish legislation the public prosecutors shall initiate and conduct investigations of ill-treatment and torture allegations without prior administrative authorisation.

98. The previous action plan submitted by the authorities dated 5 July 2022 (DH-DD2022(704)) and the appended table therein clearly illustrate that following the amendments made to Law

no. 4483 the prosecution offices do not seek prior administrative authorisation for the offences of intentional injury, insult or excessive use of force.

99. In its judgment of *Ümit Gül v. Türkiye*, which is a clone under *Batı* group, (Application no. 7880/02, paragraph 55) the Court specifically noted that the requirement for prosecutors to obtain authorisation under Law No. 4483 before they can bring a prosecution against civil servants accused of offences related to ill-treatment was abolished in 2003 with the entry into force of Law No. 4778.

100. In the light of the above, the authorities underline that for the offences of torture, ill-treatment or excessive use of force or any intentional act of injury or insult committed by the security forces, prior administrative authorisation is certainly not required and the practice of the Turkish Judiciary is completely in line with Convention standards.

101. The prior administrative authorisation mechanism is only applied for negligent actions of public officials pursuant to Article 257 of the TCC.

102. To better clarify the current practice of Turkish judiciary on the issue of prior administrative authorisation, the authorities would like to submit the following decisions.

103. In its judgment of *Ümmühan Seçil Sucu*[1] (app. No 2017/15128 19/11/2020), the Constitutional Court made assessments on the administrative authorisation mechanism under the Law no. 4483. In its decision, referring to the Court of Cassation's case-law on the issue the Constitutional Court first indicated that the offence of exceeding the limits of the power to use force corresponding the offence in Article 245 of the Law no. 765 and prescribed under Article 256 of the Law no. 5237 is not subject to authorisation pursuant to the Law no. 4483.

104. The Constitutional Court followed:

"By paragraph added to Article 2 of the Law no. 4483 in 2003, it has been regulated that the administrative authorisastion system shall not be applied in investigations and prosecutions to be brought under Article 243 and 245 of the Law no. 765. The Law no. 765 was repealed and it has been envisaged that the references to the Law no. 765 shall be considered to be made to Articles corresponding to these provisions in the Law no. 5237. The exceptions in the relevant Article of the Law no. 4483 correspond to acts constituted the offence of torture prescribed by Articles 94 and 95 of the Law no. 5237 and the act of exceeding the limits of the power to use force prescribed by Article 256. In conclusion, by including the statement of "even if the

[1] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/15128

offences prescribed by Article 94, 95 and 256 of the Law no. 5237 are committed on account of administrative duty, the investigation shall be conducted in line with the general provisions" it has been indicated that no prior authorisation is required, as these offences are subject to general investigation procedure.

105. The Constitutional Court has rendered similar judgments applying the same approach. In these cases, the Constitituonal Court established that the domestic authorities had sought administrative authorisation into the ill-treatment allegations despite the fact that the above explained legislative framework did not require so (see: *Mehmet Dönmez*[2] 2019/7902, 15/06/2022; *İbrahim Akan (2)*[3] 2017/32078, 25/2/2021; *Erdal Sarıkaya*[4] 2017/37237, 17/3/2021 etc.).

106. In the Constitutional Court's judgment of *Elif Güneş Yıldırım*[5] (app. no 2014/12391 5/4/2017), the issue as regards the responsibility of high-ranking public officials (the Governor and Police Chief) was examined. In this case, the applicant was unjured during a demonstration. She lodged a criminal complaint against the governor and the police chief. The prosecution office sought administrative authorisation, this request was rejected and the case was thereby concluded with a non-prosecution decision. In its decision, the Constitutional Court observed that there was no information or document that the relevant persons had given instruction for interference with the meeting and demonstration held. On the other hand, even if the existence of such instruction was acknowledged, it was not sufficient, in itself, for the establishment of causal link between the impugned instruction and the act complained of. Therefore, the Constituonal Court concluded that the allegations that the failure to grant permission for investigation against the Istanbul Governor and Provincial Police Chief had violated the obligation to conduct an effective investigation under Article 17 of the Constitution were comprised of abstract and unproven complaints.

107. Similarly, in its judgment of *Alper Merdoğlu*[6] (app. No 2015/11702 8/1/2020), the Constitutional Court did not consider the failure to grant permission for the investigation against the Governor and Police Chief as a reason for violation and stated that the applicant had not adduced any information or document to substantiate any causal link under criminal law

[2] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/7902
[3] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/32078
[4] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/37237
[5] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/12391
[6] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/11702

between the instructions of high level public officials and that of the intervention by the security forces.

108. The authorities would further like to underline that in cases where administrative authorisation mechanism is applied in disregard of the above explained safeguards, such decisions are subject to judicial review before the administrative courts. The administrative courts shall make a through analysis and provide sufficient reasoning in such cases. The Constitutional Court clarified their duties in this respect in *Binali Camgöz and Others*[7] (App. No. 2019/36978, 26/05/2022). In this case, the Constitutional Court emphasised that the examination made by the Regional Administrative Courts concerning rejection of administrative authorisation requests shall be conducted in a reasoned, impartial and objective manner by considering the individual circumstances of each case. It noted, in particular, the following:

"It is necessary to take into account that both the administrative preliminary examination and the examinations and evaluations to be made by the administrative judicial bodies that evaluate the objections against the decision not to grant permission for investigation should be carried out in a way that does not allow the application of the prior administrative authorisation in a way that delays the functioning of the criminal proceedings and prevents the investigation from being carried out effectively, or that does not allow the impression that public officials are exempted from criminal investigation.

In the decision of the Regional Administrative Court, it was stated that there was not sufficient and reasonable suspicion to require an investigation against law enforcement officers and the objection to the decision not to grant a permission for investigation was rejected. In the aforementioned decision, it has been observed that the reasons for the rejection of the objection were not explained and a conclusion was reached only in line with the opinion of the administration. It is understood that the decision of the Regional Administrative Court does not meet the requirement of being based on a comprehensive, objective and impartial analysis of all the findings obtained in the investigation, does not include an assessment as to whether the interference with the right to life is a proportionate interference, and prevents an investigation and, if necessary, prosecution in which these evaluations can be included."

109. The Government would like to note that following the above decision of the Constitutional Court, the investigation into the incident was re-opened and, on 30 April 2023, a bill of indictment was filed against the alleged perpetrators without seeking prior administrative authorisation (Annex 6)

110. The Government would like to stress that the above approach of the Constitutional Court is also followed by other judicial authorities including the prosecution offices. The bill of

[7] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/36978

indictments issued by prosecutors prove that they do not seek administrative authorisation procedure under Law No. 4483 in relation to the ill-treatment cases. In this context, the authorities would like to submit the following sample indictments to illustrate this Convention compliant practice.

111. The İstanbul Public Prosecution Office issued a bill of indictment against a police officer on 19 April 2023. In this case, the Prosecution Office accused the suspect officer for inflicting torture on the complainant during the latter's police custody. According to the Prosecution Office, the acts of pressing down the complainant's neck, squeezing his throat, slapping his neck, kicking complainant in the head, etc. which were applied in a continuous manner and continued despite the other officers' interventions, exceeded the limits of intentional injury and therefore constituted the offence of torture. Having reached the above conclusion, depending on the nature of the alleged act the Prosecution Office did not seek prior administrative authorisation and filed the bill of indictment applying the general provisions of the Criminal Code (Annex 7).

112. The İstanbul Public Prosecution Office issued a bill of indictment against two police officers on 28 February 2023. In this case, while travelling on his motorbike, the complainant did not comply with the police offficers' stop warning and tried to escape. He could only stop by hitting a police officer. The other officers then laid him to the ground and he was injured. The Prosecution Office considered that the officers used force despite the fact that the complaninat had stopped resisting. Therefore, the force used was excessive. Having reached the above conclusion, depending on the nature of the alleged act, the Prosecution Office did not seek prior administrative authorisation and filed the bill of indictment applying the general provisions of the Criminal Code (Annex 8).

113. In a similar complaint the Samsun Public Prosecution Office issued a bill of indictment against three neighbourhood guards on 21 March 2022. In this case, an arguement took place between the complainant and the neighbourhood guards when the latter was conducting an identity check. The Prosecution Office accused the officers for punching and kicking the complainant. According to the Prosecution Office the alleged act constituted the offence of excessive use of force. Having reached the above conclusion, depending on the nature of the alleged act, the Prosecution Office did not seek prior administrative authorisation and filed a bill of indictment applying the general provisions of the Criminal Code (Annex 9).

114. The authorites note that the same approach can be seen in a number of bill of indictments issued by the prosecution offices, examples of which are annexed to the action plan (see the bill

of indictments issued by the; Bakırköy Public Prosecution Office dated 14 February 2023, Ankara Public Prosecution Office dated 30 June 2020, Bakırköy Public Prosecution Office dated 2 April 2018, Ankara Public Prosecution Office dated 18 March 2022, Bakırköy Public Prosecution Office dated 4 November 2022, Ankara Public Prosecution Office dated 24 June 2022, İzmir Public Prosecution Office dated 22 May 2023, Annex-10).

115. As is seen in the above sample decisions of the Constitutional Court and that of the sample bill of indictments issued by the prosecution offices, there is no need to seek prior administrative authorisation in respect of the offences examined under the present group of cases allegedly committed by law enforcement officers. The statistical data provided by the Law Enforcement Monitoring Commission concerning the cases where administrative authorisation is sought under the Law no. 4483 (see detailed information below for the functioning of the Commission) also demonstrates this Convention compliant practice.

116. In their last examination of the group at the 1443rd DH meeting, the Committee of Ministers requested information about statistical information indicating the overall number of administrative authorisations with a break-down by the type of criminal conduct concerned covered by the scope of this group;(…)"

117. In this respect, the Government would like to reiterate that administrative authorisation requests for all types of offences are gathered in a central system established under the Law Enforcement Monitoring Commission. In this context, the authorities would like to present the following statistics.

118. In 2020, 3.878 cases were filed before the Law Enforcement Monitoring Commission for the offences of killing, intentional injury, excessive use of force, ill-treatment, torture and misconduct. The below table demonstrates the number of files, out of these cases, whereby administrative authorisation was sought.

2020	Killing	Intentional injury	Excessive use of force	Ill-treatment	Torture	Misconduct
Number of files whereby a decision to grant authoristation was rendered	0	0	1	0	0	135
Number of files whereby a decision not to						

grant authorisation was rendered	0	11	12	14	0	442
Number of files whereby a decision partially granting and partially not granting authorisation was rendered	2	0	0	0	0	15

119. In 2021, 4.759 cases were filed before the Law Enforcement Monitoring Commission for the offences of killing, intentional injury, excessive use of force, ill-treatment, torture and misconduct. The below table demonstrates the number of files, out of these cases, whereby administrative authorisation was sought.

2021	**Killing**	**Intentional injury**	**Excessive use of force**	**Ill-treatment**	**Torture**	**Misconduct**
Number of files whereby a decision to grant authoristation was rendered	1	2	0	0	0	106
Number of files whereby a decision not to grant authorisation was rendered	0	10	5	14	0	311
Number of files whereby a decision partially granting and partially not granting authorisation was rendered	0	0	0	0	0	14

120. In 2022, 4,958 cases cases were filed before the Law Enforcement Monitoring Commission for the offences of killing, intentional injury, excessive use of force, ill-treatment, torture and misconduct. The below table demonstrates the number of files, out of these cases, whereby administrative authorisation was sought.

2022	Killing	Intentional injury	Excessive use of force	Ill-treatment	Torture	Misconduct
Number of files whereby a decision to grant authoristation was rendered	1	3	0	2	0	73
Number of files whereby a decision not to grant authorisation was rendered	0	3	1	5	0	347
Number of files whereby a decision partially granting and partially not granting authorisation was rendered	0	0	0	0	0	1

121. Finally, the Government would like to provide the following information regarding he administrative authorisation procedure in respect of offences allegedly committed by state agents in the context of counter-terrorism operations.

122. First of all, as stated in the latest CM-DH notes, an amendment was made in the Article 11 of the Law No. 5442 on 23 June 2016. According to this provision, the activities of Turkish Armed Forces personnel within the scope of this paragraph shall be considered as military service and duties, and the offences alleged to have been committed due to these activities shall be considered as military offences. The activities of civil servants and other public officials other than Turkish Armed Forces personnel within the scope of this paragraph dated 2/12/1999 in relation to offences allegedly committed due to their duties and activities Law No. 4483 is applied. In this respect, the Government would like to emphasize that this provision will only apply if it is necessary to combat terrorism in situations that exceed the capabilities of the

general law enforcement forces or if terrorist acts seriously disturb public order. Furthermore, there is no violation regarding the implementation of Article 11 of Law No. 5442 in any judgment under the *Batı* group. In addition, the Court has rendered inadmissibility decisions in respect of application of this provision [8].

123. The Government would like to state that the implementation of Law No. 4483 is not different in terms of this Law, and that the same principles apply. Moreover, it is an exceptional situation, and the existence of an event taking place so far has not been found out. Neither there exists a specific data on the application of this provision.

124. Lastly, the authorities would like to note that there is no an issue with respect to application of Article 11 the Law no 5442 requiring its consideration under the *Batı* group of cases.

D. LACK OF EFFECTIVE INVESTIGATION AND JUDICIAL REVIEW

1. Introduction

125. At the outset, the authorities would like to highlight that most of the events under *Batı* group of cases took place before the introduction of the new TCC and the CCP on 1 June 2005. The current TCC and CCP provide significant safeguards to prevent similar procedural violations. The amendments made in domestic law aimed at ensuring prompt and effective investigations into the alleged offences of torture or ill-treatment. General measures ensuring effective investigation of ill-treatment allegations might be explained in detail as follows.

2. Measures Adopted to Ensure Effective Investigation by Prosecution Offices

a. Failure to initiate investigations against members of security forces despite well-founded allegations of ill-treatment

126. The European Court found in some cases that the authorities had failed to initiate criminal investigations despite well-founded allegations of ill-treatment. In most of these cases, the impugned violations occurred before the introduction of the new TCC and CCP. The current Turkish legislation provides adequate safeguards in this regard.

127. To this end, the public prosecutor shall initiate an *ex officio* investigation as soon as he/she becomes aware that a crime has been committed and he/she shall secure and collect all necessary evidence immediately (Article 160 of the CCP).

[8] Sedat Aydın and Others, inadmissibility decision (App.No.63130/15 and others, 12/03/2019); Elçi, inadmissibility decision (App.No.63129/15, 29/01/2019); Tunç and Yerbasan, inadmissibility decision (App.No.4133/16 and 31542/16, 29/01/2019); Yavuzel and others (App. No.5317/16 and others).

128. Additionally, according to the additional Article 1 of the CCP, which was introduced in 2016, the public prosecutor shall personally and primarily conduct investigation of certain crimes that are allegedly committed by the security forces, such as intentional killing, torture, ill-treatment and excessive use of force. These cases are deemed to be urgent cases. Priority is also given by the appeal courts to examination of these cases.

129. Moreover, the Ministry of Justice issued a circular pursuant to which investigations concerning allegations of torture and ill-treatment shall be conducted by the public prosecutors -not by law enforcement officers- in a prompt, effective and diligent manner respecting human rights and in accordance with not only domestic law but also international conventions and that of the ECtHR judgments (20 February 2015- Circular no.158).

130. In this regard, the Turkish authorities would like to indicate that if the prosecutors fail to do so; their performance will be assessed by the Regional Courts of Appeal, Court of Cassation and inspectors. Depending on their performance and in accordance with the Principle Decision on the Promotion Principles of Judges and Prosecutors Article 6 such failure would prevent their promotion. Accordingly, the prosecutors shall apply all legislative regulations in practice, and they shall take the higher courts' decisions, and suggestions of inspectors into consideration in order to promote.

131. Furthermore, the law enforcement officials shall inform the public prosecutor immediately when they become aware of a criminal incident. They are obliged to comply with the orders of the public prosecutor in accordance with Article 161/2 of the CCP.

132. Likewise, other public officers such as doctors are also obliged to inform the investigation authorities when they encounter a crime while performing their duty. If they fail to do so, or they cause any delays, the relevant public officers will be criminally responsible under Article 279 of the TCC. If a law enforcement official fails to report such an incident the sentence to be imposed will be aggravated.

b. Failure to collect necessary evidence or to reply allegations of ill-treatment

133. As noted above, the current CCP requires the public prosecutors to secure and collect all necessary evidence to establish the exact circumstances of any criminal offence including those concerning ill-treatment allegations. If the prosecution office issues a non-prosecution decision without collecting the necessary evidence, the parties may raise an objection against this decision before the magistrate's courts in accordance with Article 173 of the CCP. This mechanism provides an effective judicial review mechanism in respect of the investigations

carried out in ill-treatment complaints. Within the context of this objection process, if the magistrate's courts establish that necessary evidence have not been collected or allegations of ill-treatment have not been replied in the non-prosecution decision, they will set aside the prosecutor's decision in order for the shortcomings in the investigation to be redressed. In order to demonstrate effectiveness of this objection mechanism the authorities would like to submit the below sample decisions.

134. On 24 July 2020, the İstanbul Magistrate's Court set aside the Gaziosmanpaşa Public Prosecution Office's non-prosecution decision in relation to the complainant's ill-treatment allegations. The complainant objected against this decision. The Magistrate's Court observed that the video recordings into the incident had not been examined by the Prosecution Office. Therefore, it remitted the case back to the Prosecution Office in order for the latter to remedy this shortcoming (Annex 11).

135. In a similar case, on 1 April 2021, the Erzurum Magistrate's Court set aside the Erzurum Public Prosecution Office's decision not to prosecute. In this case, the applicant complained that the police had used excessive force in the course of his apprehension. The Prosecution Office nevertheless considered that the force used by the police had been necessary to break the complainant's resistance and had also been proportionate. The complainant challenged this decision. Having examined the whole content of the case, the Magistrate's Court observed that there had been differences between the medical reports of the complainant. It further considered that other relevant evidence such as witness statements and video recordings had not been investigated. Therefore, it remitted the case back to the Prosecution Office in order for the latter to remedy these omissions (Annex 12).

136. Likewise, on 10 October 2022 the İstanbul Magistrate's Court set aside the İstanbul Public Prosecution Office's decision not to prosecute. In this case, the complainant was hit and injured by a gas canister during the police intervention into a demonstration. The Prosecution Office issued a non-prosecution decision considering that the eight-year prescription period had been expired. The Magistrate's Court examined the whole content of the case and having taken account of the severity of the complainant's injury, decided that the prescription period should have been 15 years in accordance with the relevant provisions of the Law. Therefore, it remitted the case back to the Prosecution Office in order for the latter to continue its investigation until the end of the prescription period to identify the perpetrator/s (Annex 13).

137. In its decision dated 29 June 2022, the İzmir Magistrate's Court set aside the Karaburun Public Prosecution Office's decision not to prosecute. In this case, the applicant sent a petition

to the Prosecution Office complaining about the police officers' excessive use of force. The Prosecution Office decided not to prosecute without making an investigation and on the basis of the applicant's petition only. The Magistrate's Court quashed this decision on account of lack of effective investigation. It noted to this end that the Prosecution Office should have heard the complainant in person in order to hear his arguments and supportive evidence to this end. It further considered that the witnesses mentioned in the applicant's petition should have been heard. In addition, the identities of the suspects should have been established. Therefore, it remitted the case back to the Prosecution Office in order for the latter to remedy these omissions (Annex 14).

138. In its decision dated 4 July 2022, the İzmir Magistrate's Court set aside the İzmir Public Prosecution Office's decision not to prosecute concerning the complainant's alleged ill-treatment in custody. The Magistrate's Court observed in this case that the witnesses outlined by the complainant had not been heard during the investigation. Therefore, it remitted the case back to the Prosecution Office in order for the latter to remedy this omission (Annex 15).

139. The authorities would further like to note that the decisions of the magistrate's courts rendered within the context of objection –against non-prosecution decisions- procedures may also be subject to judicial review before the Court of Cassation within the "appeal in the interest of law" *("kanun yararına bozma")* procedure, provided for in section 309 of the CCP. If the Court of Cassation so decides, the magistrate's court decisions might be overturned. The Court of Cassation's decision dated 3 April 2023 could be given as an example to this end. In this case, the prosecution office issued a non-prosecution decision in relation to the complainant's ill-treatment allegations. The complainant's objection against this decision was also dismissed by the magistrate's court. However, within the context of the appeal in the interest of law procedure, the Court of Cassation decided that in order to establish the exact circumstances of the applicant's injury, the prosecution office should have examined the video recordings into the incident. Having failed to do so the prosecution office had failed to discharge its obligation to conduct an effective investigation into the complaint. Having reached this conclusion, the Court of Cassation remitted the case back to the Prosecution Office in order for the latter to remedy this omission (Annex 16).

140. Finally, the authorities would like to underline that the Constitutional Court has developed a Convention compliant practice in respect of effective investigation of ill-treatment allegations. The authorities would like to submit the below sample decisions with a view to demonstrate this practice.

141. In its judgment of *Aydın Aydoğan*[9] (app. no. 2019/22587, 1 February 2023) the Constitutional Court found a procedural violation of Article 17 (prohibition of ill-treatment) of the Constitution. In this case, the applicant complained that he had been subjected to ill-treatment during a police intervention into a demonstration in 2018. Upon the applicant's complaint a criminal investigation was initiated. However, the prosecution office decided to close the investigation considering that the applicant's allegations were unsubstantiated. The complainant's objection against this decision was also dismissed by the magistrate's court. In examining the case, the Constitutional Court first recalled the State's positive obligation to conduct an effective investigation into the allegations of ill-treatment. The Constitutional Court then observed that the prosecution office had failed to investigate whether there existed any video shootage or had it attempted to hear possible witnesses. Furthermore, despite the photographs submitted by the complainant, the magistrate's court dismissed the complainant's objection without providing sufficient reasoning capable of responding his arguments. Accordingly, the investigation could not be deemed to have been effective. Having reached this conclusion, the Constitutional Court remitted the case back to the prosecution office for reopening of the investigation.

142. In its judgment of *Ramazan Silahdar*[10] (app. no.2019/18249 3 May 2023), the Constitutional Court found a procedural violation of Article 17 (prohibition of ill-treatment) of the Constitution. In this case, the applicant complained that he had been subjected to ill-treatment during his police custody in 2017. Upon the applicant's complaint a criminal investigation was initiated. However, the prosecution office issued a non-prosecution decision considering that the applicant had been injured during his apprehension and that the force used against him to break his resistance had been proportionate. The complainant's objection against this decision was also dismissed by the magistrate's court. In examining the case, the Constitutional Court first recalled its case-law concerning the State's positive obligation to conduct an effective investigation into the allegations of ill-treatment. The Constitutional Court then observed that no medical report had been obtained following the applicant's apprehension which could have been capable of proving the authorities' argument that the applicant had been injured during his apprehension but not in police custody. Further, the judicial authorities had failed to examine the CCTV records of the police premises. Accordingly, the investigation could not be deemed to have been effective conducive to establishing the exact circumstances

[9] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/22587
[10] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/18249

of the incident. Having reached this conclusion, the Constitutional Court remitted the case back to the prosecution office for reopening of the investigation.

143. In its judgment of *Ahmet Aşık*[11] (app. no 2017/27330, 26 May 2021), the Constitutional Court found a violation both in procedural and substantive aspects of Article 17 (prohibition of ill-treatment) of the Constitution with regard to the applicant's allegations of ill-treatment during his stay in custody on the grounds that the applicant had not been examined by a doctor under the supervision of the State, that the investigation file had not included the reports, witness statements, that his statement taken in the presence of his lawyer was heard approximately 20 days after his placement in custody and that there was no video footage. It also decided to forward a copy of the judgment to the relevant prosecutor's office for reopening of the investigation in order to eliminate the negative consequences of the violation.

144. In its judgment of *İsmail Göktaş*[12] (app. no 2017/20204, 19 November 2020), the Constitutional Court considered the fact that the file did not include the records that the applicant had been taken to the police station prior to or following his arrest and that the investigation authorities had rendered a decision of non-prosecution without clarifying as to how the injuries of the applicant had occurred and collecting necessary evidence as a reason for violation in procedural aspect. It also decided to forward a copy of the judgement to the relevant prosecutor's office for re-investigation in order to eliminate the negative consequences of the violation of the prohibition of ill-treatment.

3. Measures Adopted to Ensure Effective Investigation by Criminal Courts

145. In accordance with the provisions of the CCP, the criminal courts have to collect all necessary evidence to reach the factual truth. For instance, the parties to the case may request that certain witnesses be heard in accordance with Article 177. The court cannot dismiss parties' request without providing a justifiable reasoning. Moreover, Article 178 of the CCP provides that if a party brings the witness before the court, the court must take his/her statement unless it aims to delay the proceedings.

146. Article 201/1 of the CCP stipulates that the public prosecutor, defence counsel or the lawyer who participates at the main hearing as a representative may ask direct questions to the accused, to the intervening party, to the witnesses, to experts, and to other summoned individuals. The accused and the intervening party may also ask questions.

[11] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/27330
[12] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/20204

147. Pursuant to Article 210/1 of the CCP, if the only evidence of the fact is a witness testimony, this witness shall be definitely heard in the main hearing. Reading of the record or written explanation, which is produced before the hearing, shall not substitute for a hearing.

148. If the courts give a decision without collecting necessary evidence this decision will be quashed by the higher courts.

149. In this regard, the Turkish authorities would like to indicate that if the judges fail to do so; their performance will be assessed by the Regional Courts of Appeal, Court of Cassation and inspectors. Depending on their performance and in accordance with the Principle Decision on the Promotion Principles of Judges and Prosecutors Article 6 such failure would prevent their promotion. Accordingly, the judges shall apply all legislative regulations in practice, and they shall take the higher courts' decisions, and suggestions of inspectors into consideration in order to promote.

150. To this end, the Court of Cassation's case-law is very important to ensure effective investigation of ill-treatment allegations. The below samples illustrate this practice.

151. For instance, on 2 June 2022 the 8th Criminal Chamber of the Court of Cassation quashed the lower court's decision whereby the accused had been acquitted for the offence of torture. In its decision, the Appeal Court observed several omissions in the collection of the evidence. To this end, it noted that the failure of the lower courts to hear relevant witnesses, to identify and hear possible suspects and to examine the CCTV records of the police premises. Having established these shortcomings, the Court of Cassation remitted the case back to the lower courts in order for these evidence to be collected (Annex 17)

152. Similarly, in its decision dated 19 February 2015 the 8th Criminal Chamber of the Court of Cassation quashed the lower court's acquittal decision on a torture allegation on account of the latter's failure to obtain an expertise report on video recording, failure to investigate possible CCTV cameras, failure to identify and hear possible witnesses (Annex 18). Likewise, on 18 September 2014 the 8th Criminal Chamber of the Court of Cassation quashed the lower court's decision on the grounds that the inconsistencies on the medical report had not been clarified. (Annex 19).

E. EXCESSIVE LENGTH OF INVESTIGATIONS AND CRIMINAL PROCEEDINGS

153. In some cases, the European Court found violations of Article 2 or 3 of the Convention on its procedural limb on account of the excessive length of investigations and/or criminal proceedings. In some of these cases the Court found that dropping of torture and ill-treatment charges against members of security forces due the application of prescription periods caused impunity.

154. At the outset, it should be highlighted that most the impugned violations under this heading occurred before the adoption of the current CCP and TCC in 2005.

155. **As concerns the issue of prescription periods**; the Turkish authorities would like to point out that prescription periods were considerably increased in the current Criminal Code. For instance; for the offence of torture in the previous Code, prescription period was ten years; in the current criminal code with the 2013 amendments statutes of limitations for torture have been completely lifted. In the previous Code, prescription period for excessive use of force and intentional injury was five years and for severe injuries this period was ten years' maximum. In the current Code the minimum prescription period for intentional injury (Articles 86 and 87) excessive use of force (Article 256) and insult (Article 125) is 8 years minimum. On the other hand, should aggravated circumstances exist, such as severity of the conduct or injury, these periods are extended up to 15 years to 30 years. Furthermore, should some certain procedural actions take place during the proceedings, such as if the accused is heard by the prosecutor or an indictment is filed, the above prescription periods are extended by half.

156. To sum up, in the previous code the shortest prescription period was five years and could have been extended seven years and six months in specific circumstances as explained in the previous paragraph. However, under the current legislative provisions, the ordinary prescription period is 8 years minimum and it might be extended to 12 years. The same rules apply to the aggravated types of conduct.

157. To conclude, the current criminal code considerably increased the terms of applicable sanctions and as well as prescription periods.

158. **As concerns the issue of excessive length of investigations and criminal proceedings,** significant measures have been taken in the recent years.

159. First of all, the Turkish authorities would like to indicate that one of the aims of the adoption of the new CCP is to accelerate the investigation and criminal proceedings.

160. Namely, in accordance with Article 160 of the CCP, once the public prosecutor is informed of fact a crime has been committed, he shall immediately start to investigate the factual truth, in order to reach a decision on whether to file public charges or not. To this end, necessary evidence shall be secured and collected in a prompt and diligent manner.

161. Moreover, pursuant to Additional Article 1 of the CCP entitled "Special provisions concerning law enforcement officers", which entered into force in 2016;

"The investigations into the allegations concerning the offences of killing, causing intentional injury, torture, exceeding the limits of the use of force, and establishing an organisation for the purpose of committing offences, as well as the offences committed within the framework of organisational activities shall be carried out as a priority by public prosecutors themselves. The proceedings initiated against law enforcement officers for these offences shall be considered as an urgent matter. The judicial review process concerning those proceedings shall also be conducted as a priority."

162. Article 174 of the CCP also pursues the aim of expediting the criminal proceedings. Pursuant to this provision, if the public prosecutor files an indictment without collecting the necessary evidence, the trial court may return the case file to the prosecution office in order for proper collection of the necessary evidence. This provision aims to conclude the criminal proceedings as soon as possible. In other words, the current CCP prescribes the completion of a trial in one hearing in principle.

163. Furthermore, as noted above, the Ministry of Justice issued the Circular No. 158 on investigations with respect to human rights violations, allegations of torture and ill-treatment in 2015. In this Circular, the Ministry of Justice has drawn the attention of the public prosecutors to the international standards to be followed in respect of ill-treatment allegations. In particular, with regard to the effectiveness of investigations concerning torture and ill-treatment, the Circular underlines that investigations into the allegations of torture and ill-treatment shall be carried out promptly and diligently by the public prosecutors themselves but not by the law enforcement officers. According to this Circular, cases of torture and ill-treatment are considered to be urgent cases.

164. Furthermore, "the target period in the judiciary" has been initiated by the Ministry of Justice and a Regulation has been adopted accordingly. Since the end of 2018, these periods

have been taken into account by the judicial authorities, including public prosecutors and judges, in practice. The aim pursued is to fasten investigations and criminal proceedings. Target periods were determined for each type of crime and for both investigation and trial periods. Within this context, the targeted periods for completion of investigations and criminal proceedings for the offence of torture are 180 days and 370 days' maximum respectively. These periods are 120 days and 370 days' maximum for the offence of excessive use of force. The parties of each case are informed about these target periods. It is expected that the judicial authorities comply with these periods. The performance of judges and public prosecutors in this regard is assessed by the appeal courts and inspectors for their promotion.

165. In addition to the aforementioned measures, if the prosecutors and judges cause excessive delays while performing their duty, their performance is assessed by the Inspection Board of Council of Judges and Prosecutors. According to the Principle Decision on the Promotion Principles of Judges and Prosecutors Article 6; the judges and prosecutors shall take into account the inspectors' suggestions in order to promote. Information provided by the Inspection Board suggests that in their reports the inspectors take the delays and length of the proceedings into account in their assessments.

166. The recent statistical information proves that investigations and criminal proceedings in relation to ill-treatment and torture allegations are concluded in a prompt manner owing to the above explained measures (See appendix 1 for the statistics).

167. In addition to the aforementioned measures, the Constitutional Court's case-law on the issue is of crucial importance. The Constitutional Court follows the European Court's jurisprudence on the issue and pays particular attention to ensure prompt and diligent investigation of all forms of ill-treatment. The below samples illustrate this practice.

168. In *Dilan Alp*[13] (app. No. 2018/32913 01 November 2018) the Constitutional Court found substantive and procedural violations of Article 17 (prohibition of ill-treatment) of the Constitution. In this case, the applicant complained that he had been hit and injured by a gas cartridge during a police intervention into a demonstration. Upon the applicant's complaint, a criminal investigation was initiated. However, the prosecution office could not identify the perpetrators and first issued a permanent search notice. Subsequently, the prosecution office issued a non-prosecution decision on account of prescription. In examining the case, the Constitutional Court first recalled its case-law concerning the State's positive obligation to

[13] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/32913

conduct an effective investigation into the allegations of ill-treatment. The Constitutional Court observed to this end that necessary evidence had not been collected. It further underlined that the investigation had not been conducted in a prompt manner which resulted with prescription and caused impunity for the perpetrators. The Constitutional Court therefore concluded that Article 17 of the Constitution was violated on its substantive and procedural aspects. The Constitutional Court further awarded the applicant a sum of compensation.

169. In the case of *Turgut Yokuş*[14] (app. No. 2016/1872, 19 October 2021), the Constitutional Court found substantive and procedural violations of Article 17 (prohibition of ill-treatment) of the Constitution. In this case, the applicant complained that he had been hit and injured by a gas cartridge during a police intervention into a demonstration. Upon the applicant's complaint, a criminal investigation was initiated. However, the prosecution office could not identify the perpetrators and first issued a permanent search notice. Subsequently, the prosecution office issued a non-prosecution decision on account of prescription. In examining the case, the Constitutional Court first recalled its case-law concerning the State's positive obligation to conduct an effective investigation into the allegations of ill-treatment. The Constitutional Court observed to this end that necessary evidence had not been collected. It further underlined that the investigation had not been conducted in a prompt manner which resulted with prescription and caused impunity for the perpetrators. The Constitutional Court therefore concluded that Article 17 of the Constitution was violated on its substantive and procedural aspects. The Constitutional Court further awarded the applicant a sum of compensation.

170. In *Yücel Çelik (2)*[15] (app. no. 2018/8830 9 June 2021), the Constitutional Court found substantive and procedural violations of Article 17 (prohibition of ill-treatment) of the Constitution. In this case, the applicant complained that he had been ill-treated during his apprehension by the police. Upon the applicant's complaint, a criminal investigation was initiated. However, the prosecution office issued a non-prosecution decision considering that the force used against him had been proportionate. In examining the case, the Constitutional Court first recalled its case-law concerning the State's positive obligation to conduct an effective investigation into the allegations of ill-treatment. The Constitutional Court observed to this end that necessary evidence had not been collected. It further underlined that the investigation had not been conducted in a prompt manner which lasted almost eight years. The Constitutional Court therefore concluded that Article 17 of the Constitution was violated on its

[14] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/1872
[15] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/8830

substantive and procedural aspects. The Constitutional Court further awarded the applicant a sum of compensation. It also remitted the case back to the prosecution office for reopening of the investigation.

171. In the case of *Feride Kaya (2)*[16] (app. no. 2016/13985, 9 June 2020), the criminal proceedings against the perpetrators of ill-treatment were discontinued on account of prescription. In examining the case, the Constitutional Court first recalled its case-law concerning the State's positive obligation to conduct an effective investigation into the allegations of ill-treatment. The Constitutional Court observed to this end that the judicial authorities had failed to conduct the proceedings in a in a prompt manner which resulted with prescription and caused impunity for the perpetrators. The Constitutional Court therefore concluded that Article 17 of the Constitution was violated on its substantive and procedural aspects. The Constitutional Court further awarded the applicant a sum of compensation.

172. Finally, in their last examination of the group at the 1443rd DH meeting, the Committee of Ministers noted –in the CM-Notes- the importance of allocating more resources to the relevant bodies in order to reduce the length of proceedings. The Government would like to provide the following statistics concerning the number of judges and prosecutors serving in Turkish judiciary.

NUMBER OF JUDGES/PROSECUTORS IN THE COURTS OF FIRST INSTANCE			
Years	Prosecutors	Criminal Judges	Civil Judges
2019	6098	4463	3721
2023	6848	4796	4266

[16] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/13985

NUMBER OF JUDGES/PROSECUTORS IN THE REGIONAL COURTS OF APPEAL			
Years	Prosecutors	Criminal Judges	Civil Judges
2019	235	815	833
2023	314	1118	1065

173. The authorities finally would like to recall that general measures regarding excessive length of criminal proceedings were examined within the context of the *Ormancı* group of cases (43647/98) and the CM closed its examination on this issue with its final resolution CM/ResDH (2014)298.

174. To conclude, the Turkish authorities are of the opinion that the abovementioned measures combined with the raising awareness and training activities (explained below) are capable of preventing similar violations under this heading.

F. THE LENIENT ATTITUDE OF THE DOMESTIC COURTS TOWARDS STATE AGENTS (ACTS CLASSIFIED AS LESS SERIOUS OFFENCES AT TRIAL; MITIGATION OF SENTENCES ON DISCRETIONARY GROUNDS; SUSPENSION OF SENTENCE OR OF THE PRONOUNCEMENT OF THE JUDGMENT)

1. The offences set out in the TCC

175. The authorities would like to indicate that deterrent punishments for the acts relating to the cases at hand have been adopted in the current TCC.

176. As regards the offence of torture, the relevant provisions are set out in Articles 94 and 95 of the Turkish Criminal Code. The offence of torture is punishable from 3 to 12 years' imprisonment and requires permanent disqualification from the public service. Article 95 in which the offence of aggravated torture is regulated, it is provided that the penalty determined in accordance with Article 94 can be increased by one half to double. Where an act of torture results in the breaking of a bone, the offender shall be sentenced to a penalty of imprisonment for a term of eight to fifteen years according to the effect of the broken bone on the victim's ability to function in life. If an act of torture causes the death of the victim, the penalty to be

imposed shall be aggravated life imprisonment. Moreover, no statute of limitation shall apply to the offence of torture as of 2013.

177. The authorities also find it useful to explain which acts could be classified as torture in Turkish Law. As understood from the wording of the Article 94, the Turkish legislation prohibits the infliction of torture in a broader manner than the international approach. Namely, regardless of the aim pursued -for instance to obtain confession- the systematic misconduct of law enforcement officials might be sufficient to define the perpetrator's act as torture. The wording of the said Article comprises torture, ill- treatment and degrading treatment. The reasoning of the said Article mentions the international standards for torture, ill- treatment or degrading treatment or punishment. Article 94 also emphasizes that the continuous nature or systematic infliction of the unjustified act is significant for determination of torture. In this respect, when we read Article 94 and its reasoning together, it is understood that in order to convict a person under this Article, the continuous nature of the act is of great importance. The relevant judicial authorities have to examine the case carefully and if they reach the conclusion that the unjustified act is conducted continuously or systematically, they will apply Article 94 regardless of the aim pursued. The courts than will qualify the nature and severity of the unjustified act and will decide whether it is torture, inhuman or degrading treatment within the meaning of Article 94 and finally they will conclude the length of imprisonment between 3 to 12 years depending on the classification of the conduct. On the other hand, if only, the unjustified act does not reach this threshold, other provisions of the TCC (intentional injury-Article 86, threat- Article 106, insult-Article 125, excessive use of force-Article 256) could be applicable.

178. Articles 86/1; 86/2, 86/3(d) and 87 of the TCC are the provisions concerning ill-treatment with its different aspects. The act of excessive use of force by security forces is sanctioned in Article 256 of the TCC. The penalties provided in the TCC for these offences provide a legal framework within which all sorts of abuse can be dealt with. The authorities would like to point out that the sentences set out for the abusing acts of state officials are dissuasive. According to Articles 86/2 and 86/3 (d) of the current TCC, the punishment for the offence of ill-treatment shall be minimum 6 months and can be extended up to 9 years' imprisonment under the conditions set out in Article 87 of the TCC. The length of period depends on the gravity of the acts and suffer sustained by victims. This application is in line with the case-law of the ECtHR which is mentioned in different judgments. According to Article 256 of the TCC the perpetrators will be punished under the provisions of intentional injury.

179. The authorities would like to recall that the above explained deterring punishments introduced in the current TCC were welcomed by the Committee – within the context of its supervision of the present group- at their 1243rd meeting (8-9 December 2015).

180. The authorities would finally like to indicate that the recent statistical data demonstrates that the above deterrent punishments are applied in an effective manner by Turkish judiciary in practice **(See appendix table 1 for the statistics).**

2. Application of mitigating provisions

181. In some cases, the European Court specifically stressed that application of provisions of the Criminal Code on discretionary mitigation such as good behaviour during trial or qualified confession, caused impunity for the perpetrators.

182. As is emphasized above, the authorities have adopted a zero-tolerance policy towards torture and ill-treatment; legislative measures have been adopted to limit the *de facto* impunity of the perpetrators of such offences. In certain offences set out in the current Criminal Code being a state officer and using the power stemming from the duty require an aggravated punishment.

183. Furthermore, as explained above, the discrepancy between the minimum and maximum rates of sentences are relatively high in the current TCC. Pursuant to Article 61 of the TCC, in a particular case, the judge shall determine the basic penalty, between the minimum and maximum limits of the offence as defined by law, by considering the manner in which the offence was committed, the means used to commit it, the time and place where the offence was committed, the importance and value of the subject of the offence, the gravity of the damage or danger, the degree of fault relating to the intent or recklessness, the object and motives of the offender. In other words, the specific conditions of each particular case have to be taken into consideration by the judge in determining the punishment.

184. The grounds for discretionary mitigation are regulated in Article 62 of the TCC. In the evaluation of discretionary mitigation; background, social relations, the behaviour of the offender after the commission of the offence and during the trial period, and the potential effects of the penalty on the future of the offender shall be taken into account. The reasons for any discretionary mitigation are to be stated in the judgement and the penalty to be imposed can be reduced by up to one-sixth

185. The Turkish authorities would like to note that the abovementioned mitigating provisions of the current TCC are not applied automatically. Nevertheless, they give margin of

appreciation to the judges since they are in the best position to assess the specific conditions of each particular case.

3. Suspension of Sentence or Suspension of Pronouncement of Judgments

186. In some cases, the European Court found that suspension of sentences or suspension of pronouncement of judgments had caused impunity.

187. In some of these cases, the legal basis for impunity was the Article 231 of the current CCP where the suspension of pronouncement of the judgment is set out. The Turkish authorities would like to indicate that according to article 231 of the CCP in cases where the final punishment is determined to be imprisonment of two years or less or a judicial fine, the court may decide to suspend the pronouncement of the judgment. It should be underlined that this provision is not applied automatically. In order to apply the said provision, the accused must not have been convicted for an intended crime before. The judge shall consider the characteristics of the personality of the accused and his behaviour during the main trial, the court has to reach the belief that the accused will not commit further crimes. The damage to the victim or the public, due to the committed crime has to be recovered to the full extent by giving back the same object, by restoring the circumstances as they were before the crime had been committed, or by paying the damages. Furthermore, the court may decide some undertakings during the suspension period and if the accused commit a crime during the 5-year suspension period the prior decision shall be announced.

188. In sum, the Turkish authorities would like state that Article 231 of the CCP is only applied if the trial court so decides after assessing the personality and the conduct of the accused and the nature of the crime and if the complainant is remedied for the negative consequences of the crime.

189. At that point, the authorities would like to underline that the current CCP and TCC provide sufficient safeguards in order to combat impunity in this regard. Namely, pursuant to Article 94 of the TCC, the minimum limit of punishment for offence of torture is 3 years. This means that Article 231 of the CCP is not applicable when the accused is convicted of torture.

190. The same also applies for convertion of imprisonment sentences into judicial fine and suspension or postponement of conviction. Namely, the payment of a fine according to Article 50 stipulates that only punishment of short-term imprisonment shall convertible into fine (The notion of ‘short term imprisonment’ stands for 1 year and less imprisonment in line with Article 49) will not be applicable. Furthermore, taking into consideration for the offence of torture, the

minimum limit of punishment could not be possible to suspend or postponement of the conviction inconformity with the Article 51 of the Law no. 5237.

191. **Lastly, the Government would like to mention the Constitutional Court's judgment dated 20 July 2022[17].** In this judgment, the Constitutional Court found the 12. sub-paragraph of Article 231 regulating the objection procedures concerning suspension of pronouncement of the judgment unconstitutional. In its judgment, the Constitutional Court first underlined that the suspension of pronouncement of the judgment causes problems related to, *inter alia*, the right to life and the prohibition of torture and ill-treatment since the way it is implemented in practice may result in the impunity of perpetrators. To this end, it underlined the importance of an effective objection procedure in cases where this provision is applied since it touches the very fundamental rights of citizens. Having said that the Constitutional Court observed that in the practice of the Turkish judiciary, there existed differences as to the scope of the objection examination. Namely, in some cases the objections were examined on points of law, however in the overwhelming majority of these cases, it was limited with *per se* a procedural examination. Accordingly, for the Constitutional Court, this legal remedy did not foresee a specific and effective way of control in taking into account the claims and evidence of the applicants, balancing the conflicting interests, determining the compatibility and proportionality of the interference with fundamental rights and freedoms with the requirements of the democratic social order.

192. The authorities would like to note that the above explained shortcoming identified by the Constitutional Court has been remedied with the amendment made in sub-paragraph 12 of Article 231 by the Law No. 7445 on 5 April 2023. The current version is as follows:

"The decision to suspend the pronouncement of the judgment may be objected. The objection authority examines the decision and judgement; if it finds a procedural or substantive violation of the law, it lifts the decision and judgement by showing its justification and sends the file to the court for the necessary action to be taken".

193. As is seen, the 2023 amendment made in Article 231 of the CCP has introduced a more effective objection mechanism since it now allows the higher courts to examine the objections not only under procedural grounds but also on the merits of the case. The authorities consider that this will enable the relevant courts to take into account the Court's findings in their examinations.

[17] https://normkararlarbilgibankasi.anayasa.gov.tr/ND/2022/88

4. Case-Law Samples

194. The authorities would like to note that the Turkish Constitutional Court has developed a Convention compliant practice in order to ensure that deterrent penalties are applied in response to all forms of ill-treatment. The Constitutional Court's case-law is followed by Turkish judiciary at all levels of jurisdiction. The authorities would like to submit the below samples to illustrate this positive approach.

195. In its decision of *A.Ö. and Others*[18] (app. No. 2018/37198, 27 July 2022) the Constitutional Court decided that the act of the police officer against the applicant had constituted a substantial violation of Article 17 of the Constitution. The Constitutional Court further found a procedural violation of the same right on the grounds that the domestic courts had suspended the pronunciation of the judgment under Article 231 of the CCP which caused impunity for the perpetrator. Having reached this conclusion, the Constitutional Court remitted the case back to the trial court for re-trial.

196. In its judgment of *Şahmeran Sadık Güler*[19] (app. no. 2019/21911 12 January 2023) the Constitutional Court found a violation of Article 17 of the Constitution on similar grounds. In this case, the applicant complained that he had been subjected to ill-treatment during his apprehension by the police. A criminal investigation was initiated and a bill of indictment was issued against a police officer for intentional injury. The criminal court sentenced the accused as charged however suspended pronouncement of the judgment applying Article 231 of the CCP. The Constitutional Court decided that the act of the police officer against the applicant had constituted a substantial violation of Article 17 of the Constitution. The Constitutional Court further found a procedural violation of the same right on the grounds that the domestic courts had suspended the pronunciation of the judgment under Article 231 of the CCP which caused impunity for the perpetrator. Having reached this conclusion, the Constitutional Court remitted the case back to the trial court for re-trial.

197. In the case of *Abdullah Süngü*[20] (app no. 2016/7039, 28 November 2019), the Constitutional Court, with reference to the judgments of the European Court of Human Rights, found a violation both from substantive and procedural aspects. Given the severity of the injury sustained by the applicant as established by medical reports, the Constitutional Court found that the ruling rendered in respect of the perpetrator -imposition of a reduced sentence of 1 year and

[18] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/37198
[19] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/21911
[20] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/7039

8 months' imprisonment due to the unjust provocation factor and the suspension of pronouncement of the judgment in respect of the accused, which meant that the perpetrator would face no legal consequences- was not capable of providing effective redress for the applicant's grievance. Having reached this conclusion, the Constitutional Court remitted the case back to the trial court for re-trial.

198. Similarly, in the case of *Edip Elma and Others*[21] (app. no. 2015/14826, 18 April 2019) concerning an alleged ill-treatment administered by police officers, where the trial court had imposed a judicial fine of TRY 1,500 on each of the police officers but suspended pronouncement of the judgment, the Constitutional Court found a violation from the procedural aspect on the grounds that the ruling in question might create the perception of tolerance or indifference towards such acts involving public officers and that might damage the confidence in justice and the rule of law. Having reached this conclusion, the Constitutional Court remitted the case back to the trial court for re-trial.

199. The authorities would like to reiterate that the above approach of the Constitutional Court is followed by other domestic courts at all levels of jurisdiction. The below sample decisions could be submitted to this end.

200. In its judgment dated 19 April 2022, the 8th Criminal Chamber of the Court of Cassation quashed the lower court's decisions on the grounds that the latter had misclassified the offence in question. In this case, the accused gendarmerie officer was convicted by the first instance court for having used excessive force. The Court of Cassation observed that since the accused was a public officer aggravating provision for intentional injury –that is to say Article 86/3-d- should have been applied. Nevertheless, having failed to do so, the first instance court applied a lenient sentence (Annex 20).

201. In its decision dated 16 April 2019, the İzmir Regional Court of Appeal quashed the decision of the court of first instance. In this case, the complainant alleged that he had been subjected to ill-treatment in police custody. A criminal investigation was initiated and the prosecution office charged a police officer for intentional injury. The first instance court convicted the accused as charged and sentenced him to a term of imprisonment. This decision was appealed. In its examination, having taken account of the severity of the injury (bone fracture) and type of conduct of the accused officer, the Regional Court of Appeal considered that the alleged acts might have constituted the offence of torture. Therefore, the first instance

[21] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/14826

courts were required to make an analysis in this respect in order to determine whether the act complained of had constituted the offence of torture. Having reached this conclusion, the Appeal Court remitted the case back to the trial court to remedy this shortcoming (Annex 21).

202. In its decision dated 24 February 2022, the Antalya Regional Court of Appeal quashed the decision of the court of first instance. In this case the complainant alleged that he had been subjected to ill-treatment in police custody. A criminal investigation was initiated and the prosecution office charged two police officers for intentional injury. The first instance court acquitted the accused officers. This decision was appealed. In its examination, having taken account of the continuous nature of the ill-treatment inflicted on the applicant during his police custody, the Regional Court of Appeal considered that the alleged acts might have constituted the offence of torture. Therefore, the first instance courts were required to make an analysis in this respect in order to determine whether the act complained of had constituted the offence of torture. Having reached this conclusion, the Appeal Court remitted the case back to the trial court to remedy this shortcoming (Annex 22).

203. In its decision dated 17 May 2023, the Bursa Regional Court of Appeal quashed the decision of the court of first instance. In this case, the complainant alleged that he had been subjected to ill-treatment after his apprehension by the police. A criminal investigation was initiated and the prosecution office charged a police officer for using excessive use of force in duty. The first instance court acquitted the accused officer considering that he had used proportionate force during arrest in order to break the complainant's resistance. This decision was appealed. In its examination, the Regional Court of Appeal reached the conclusion that the accused officer had kicked the complainant in the head and caused a bone fracture on his nose. The Appeal Court considered, unlike the trial court, that the complainant was not kicked during his resistance but was hit after he had stopped resisting. Therefore, the force used could not be justified; and accordingly the accused officer's acquittal was unlawful. Having reached this conclusion, the Appeal Court remitted the case back to the trial court to remedy this shortcoming (Annex 23).

204. In its decision dated 21 February 2023, the Bursa Regional Court of Appeal quashed the decision of the court of first instance. In this case, the complainant alleged that he had been subjected to ill-treatment after his apprehension by the police. A criminal investigation was initiated and the prosecution office charged three police officers for using excessive use of force in duty. The first instance court acquitted the accused officers considering that they had used proportionate force during arrest in order to break the complainant's resistance. This decision

was appealed. In its examination, the Regional Court of Appeal observed that the first instance court had failed to provide sufficient reasoning as to the complainant's arguments that he had been continued to be ill-treated despite the lack of any resistance from his side. For the Appeal Court, such an examination was necessary in order to establish whether the force used was justified or not. Accordingly, the accused officers' acquittal in the absence of such an examination was unlawful. Having reached this conclusion, the Appeal Court remitted the case back to the trial court to remedy this shortcoming (Annex 24).

205. In its decision dated 29 June 2022, the İzmir Regional Court of Appeal upheld the decision of the court of first instance whereby the latter court had convicted the accused officers for the offence of torture. In this case, the trial court established that the gendarmerie personnel had handcuffed the complainant behind his back, put him in a car and sat on him, beat the defendant both at the scene and at the police station, and that the medical reports showed that he had bone fractures. Accordingly, having taken account of the continuous nature of the alleged acts and that of the severity of the complainant's injuries, the trial court classified the offence as torture. This conclusion was endorsed by the Appeal Court (Annex 25).

G. DISCIPLINARY INVESTIGATIONS

1. Lack of independence of the authorities that conduct disciplinary investigations

206. In some cases, under this group, the European Court of Human Rights found violations of Articles 2 and 3 of the Convention under the procedural aspect on account of lack of independence of the authorities who conducted administrative investigations against members of security forces (i.e. hierarchical link between the investigators who are appointed by local governors and the accused members of security forces).

207. The authorities would like to note that according to the Ministry of Interior Circular no. 2011/74, if the investigation concerns torture or ill-treatment, it is an obligation for domestic and/or provincial authorities requesting an investigator to be appointed from the head of inspection board in order to carry out a disciplinary investigation about the alleged perpetrators of the security forces. Therefore, this procedure enables the inquest to be carried out by independent and impartial investigators appointed by the head of inspection board, not hierarchical superiors. With this Circular, the issue of the lack of independence and impartiality of the disciplinary investigations has been eliminated due to the fact that a hierarchical superior may not conduct the inquest. The authorities therefore consider that this measure is capable of preventing similar violations in the future.

2. Law Enforcement Monitoring Commission

208. The Law Enforcement Monitoring Commission was established on May 2016 with the Law no. 6713. With this law, a new law enforcement complaint system became operational. The Regulation on the Law no. 6713 was published in the Official Gazette dated 7 August 2019 and entered into force.

209. First of all, this system requires allegations against the law enforcement officers shall be recorded and monitored in a centralized system. With this mechanism, it is aimed to record and monitor the works and procedures carried out or required to be carried out by administrative authorities in a centralized system. Thus, the offences alleged to have been committed by the law enforcement and their acts, attitudes and behaviours requiring disciplinary sanctions could be monitored in a more transparent and rapid way. The credibility of the law enforcement complaint system has been improved with the more effective and rapid functioning of this mechanism.

210. It is also targeted that the Law Enforcement Monitoring Commission, as a central authority, provides unity of implementation between the Gendarmerie General Command, the General Police Department and the Coast Guard Command with regard to the issues on the law enforcement complaint system. This contributes to the development of prospective policies with the data base to be created, and increase the social confidence in the law enforcement by strengthening accountability, effectiveness and transparency of the law enforcement organisation.

211. The said system covers the works and procedures that are carried out or required to be carried out by the administrative authorities in connection with the alleged crimes committed by the law enforcement personnel serving at the General Police Department, the Gendarmerie General Command and the Coast Guard Command, or the actions, attitudes or behaviours that require disciplinary sanction.

212. A Central Registration System was planned and put into operation which would serve as a Permanent Committee within the Ministry of Interior in order to examine, monitor and conclude the complaints about the law enforcement in an effective and rapid manner, and ensure the monitoring of the procedures carried out and the sanctions imposed by an independent Law Enforcement Monitoring Commission under its own authority and responsibility in respect of all complaints and denunciations about the law enforcement officers.

213. The Commission which shall independently exercise the powers and the duties assigned by law, under its own responsibility consists of:

- The Deputy Minister of the Ministry of Interior to act as the chairperson,
- Head of the Human Rights and Equality Institution of Türkiye,
- Head of the Board of Civil Inspection,
- Director General of Legal Services of the Ministry of Interior,
- Director General for Criminal Affairs at the Ministry of Justice,
- One of the faculty members of the department of criminal and criminal procedural law of the universities,
- A self-employed lawyer having the capacity of being elected as the head of the Bar Association.

214. The Commission, which acts independently, is responsible and authorised;

- To determine the principles regarding the functioning of the complaint system, to ensure coordination between institutions,

- To file requests for disciplinary investigations about law enforcement officers from law enforcement authorities,

- To make suggestions for inspections and supervision on issues related to the operation of the system, to assess the inspection and supervision reports and to suggest the measures to be taken,

- To monitor the functioning of the central registration system, to make suggestions to the Ministry on this matter,

- To create the CRS database, to analyse/have analysed the data, to develop suggestions, to announce them to the public,

- To prepare annual reports containing findings, opinions and suggestions on the matters within the field of duty and to send these reports to the Parliament and the Presidency in March every year,

- To monitor, evaluate and make suggestions to the Ministry for improving the working conditions of law enforcement officers and improving law enforcement services,

- To monitor the implementation of the ethical principles in terms of law enforcement, to make suggestions to the competent authorities and to cooperate with them,

- To conduct public surveys at least every two years in order to measure the trust in the

Law Enforcement Complaint System and to assess the public's views and thoughts about the system,

- To communicate and collaborate with universities, NGOs and other organizations on matters within its field of duty,
- To make opinions and suggestions about in-service training programs of the law enforcement officers,
- To provide opinion on the legislative arrangements related to the issues falling within its field of duty.

215. Additionally, according to Article 8 of the Law no. 6713 and Article 80 of the relevant Regulation, if the prosecutors initiate an investigation against the law enforcement officers for crimes arising from their duties or committed during their duties and personal offences, they shall notify the situation to the Ministry or the local administrative authority within seven working days at the latest. Accordingly, if so required, necessary administrative measures are taken and disciplinary investigations are initiated by the relevant administrative authorities.

216. The authorities consider that the below submitted statistics demonstrate the efficient functioning of the Law Enforcement Monitoring Commission.

217. In 2020, 42.501 applications were made to the Commission. Among these, 3.878 cases were related to the offences of killing, intentional injury, excessive use of force, battery, ill-treatment, torture and misconduct.

2020	**Warning**	**Reprimand**	**Reduction in salary**	**Deferment of advancement to a higher grade**	**Dismissal from the profession**	**Dismissal from Civil Service**
Killing	0	0	0	5	1	2
Intentional Injury	27	77	81	87	5	2
Excessive use of Force	1	28	8	22	0	0
Battery	13	42	26	37	1	1

Ill-treatment	8	76	55	37	0	1
Torture	0	0	0	0	0	0
Misconduct	44	85	119	70	41	5

218. In 2021, 57.522 applications were made to the Commission. Among these, 4.759 cases were related to the offences of killing, intentional injury, excessive use of force, battery, ill-treatment, torture and misconduct.

2021	**Warning**	**Reprimand**	**Reduction in salary**	**Deferment of advancement to a higher grade**	**Dismissal from the profession**	**Dismissal from Civil Service**
Killing	0	0	6	3	1	2
Intentional Injury	26	39	54	45	2	2
Excessive use of Force	9	2	1	1	0	0
Battery	24	25	36	23	1	4
Ill-treatment	28	23	33	20	0	3
Torture	0	0	0	0	0	0
Misconduct	69	136	144	110	28	33

219. In 2022, 61.103 applications were made to the Commission. Among these, 4,958 cases were related to the offences of killing, intentional injury, excessive use of force, battery, ill-treatment, torture and misconduct.

2022	Warning	Reprimand	Reduction in salary	Deferment of advancement to a higher grade	Dismissal from the profession	Dismissal from Civil Service
Killing	0	1	0	2	0	0
Intentional Injury	31	46	46	53	1	1
Excessive use of Force	2	15	0	8	0	0
Battery	17	24	46	35	0	0
Ill-treatment	7	27	11	6	0	0
Torture	0	0	0	0	0	0
Misconduct	72	117	133	63	18	3

220. The Authorities would like indicate that every complaint lodged by individuals is recorded centrally without a prior filtering system. These complaints are examined on merits and serious incidents are taken into consideration for further disciplinary or criminal actions. That is to say, the number of files containing a decision of no need for the imposition of a disciplinary penalty includes the manifestly ill-founded cases as well.

221. The authorities are of the opinion that this mechanism will further improve the effectiveness of the disciplinary proceedings concerning the abusive use of force by the law enforcement officials.

3. Prescription Periods Applicable for Disciplinary Investigations and Failure to Initiate Disciplinary Proceedings

222. The Code of Civil Servants (Law no 657) regulates the disciplinary proceedings against public officials.

223. Article 127 of this Law sets out the statutory limitation periods applicable to disciplinary sanctions. Accordingly, if disciplinary investigation does not begin within 1 month with regard

to the sanctions of warning, reprimand, deduction from salary or deferment from advancement, or if the disciplinary proceedings do not begin within 6 months with regard to the sanction of dismissal from civil service, the authority to impose a disciplinary sanction shall become time-barred.

224. Moreover, in cases where a disciplinary sanction is not imposed within 2 years at the latest after the date on which the acts or circumstances requiring the sanction has taken place, the authority to impose a sanction shall become time-barred.

225. In this connection, the Turkish authorities would like to highlight the activities of the new Human Right Action Plan. The Plan that was announced in March 2021 and it names the following as one of its activities: "*In the context of zero tolerance for torture, the statutory limitation will be abolished in respect of disciplinary violations, as it was done in respect of criminal offences*." In order for the activity in question to be carried out, the Ministry of Interior has been designated as the responsible institution.

226. In some cases, where the European Court found a violation of Article 3 of the Convention on its procedural limb, the Court stated that failure to suspend members of security forces from their duties while criminal proceedings against them are pending caused violation of Article 3. According to Article 137 of the Code of the Civil Servants (Law no 657); suspension from duty is prescribed as a precautionary measure taken against civil servants whose presence in office may be considered risky in cases necessitated by the State's public services. The measure of suspension from duty may also be taken in any stage of the investigation.

227. According to Article 138 of this Code, those who have the authority to suspend from duty are the superiors who have the power of appointing inspectors of the ministry and the general directorate, and district governors in districts and provincial governors in provinces (The governor must give consent to the branch heads of provincial administrations). The measure of suspension from duty taken by governors and provincial governors shall be immediately notified to the institution where the civil servant works. Article 139 (Amended on 23 December 1972 by Article 2 § 1 of the Decree Law) governs the liabilities of the chiefs taking the measure of suspension from duty. An investigation shall be initiated within 10 days following the suspension in respect of the civil servants suspended from their duties. Where chiefs that do not immediately initiate an investigation in respect of the civil servant suspended from duties are found to do so arbitrarily or due to their rancour or hatred as a consequence of the investigation carried out, those chiefs are subject to legal, financial and criminal liabilities. According to Article 140 that regulates suspension from duty during criminal prosecution, civil servants who

are the subject of criminal proceedings carried out by courts can also be suspended from their duties by those authorised in Article 138.

228. In addition to suspension from duty there are several types of disciplinary sanctions set forth in Law no 657. Article 125 of the Law on Public Servants contains a list of measures that can be taken by competent superiors as disciplinary punishments, including warning, reprimand etc. (see the statistics above) depending on the gravity of misconduct.

229. The Turkish Authorities would also like to underline that in accordance with article 48 § A-5 of the Law no 657, persons sentenced to one year or more imprisonment cannot be recruited as a public officer. Namely, when a civil servant is sentenced to a term of imprisonment of 1 year or more, he/she is to automatically lose his/her capacity to work as a civil servant. Therefore, administrative authorities shall dismiss his/her from the post in accordance with article 98 of the same law.

H. OTHER MEASURES

1. Human Rights Protection Mechanisms

230. In the recent years several human right protection mechanisms have been established and they contribute to the improvement of human rights standards in Türkiye.

a. Individual Application Procedure Before the Constitutional Court

231. In 2012, individual application procedure before the Constitutional Court has been introduced. Individuals in the applicants' situation could therefore pursue today the avenue of lodging an individual application to uphold their Convention rights, including in the present cases. The Constitutional Court is able to request the deficiencies in the criminal proceedings to be redressed and also able to award just satisfaction in case of finding a violation of human rights. In this respect, the Turkish authorities would like to recall that the European Court indicated in the *Hasan Uzun* case (application no. 10755/13) that the individual application to the Constitutional Court should be considered an effective remedy as of 23 September 2012.

b. The Human Rights and Equality Institution

232. On 20 April 2016 with the Law no 6781, the 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. 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 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/.

c. The Ombudsman Institution

233. The Ombudsman Institution has been established with the adoption of the Law no 6328 and published at Official Gazette in 29 June 2012. The Institution 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.

2. Training and Awareness-Raising Measures

234. The Turkish authorities would like to indicate that as explained above Turkish Legislation provides several safeguards in order of prevention of all forms of ill treatment. On the other hand, the authorities are well aware of the fact that training and raising awareness of relevant legal professionals are also of great importance. In this regard, Türkiye has conducted significant activities in the recent years.

a. Training of Judges and Prosecutors

235. 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.

236. In the curricula of the pre-service training, the following subjects, which are relevant to issues examined under *Batı* are provided;

a) Grounds of the Court Judgments in light of the European Court of Human Rights,

b) Human Rights and Practices of the European Court of Human Rights,

c) Arrest- Custody- Detention- Undercover Witnessing,

d) Reflections of the European Court of Human Rights Judgments in the Domestic Law,

e) The European Convention of Human Rights and Türkiye,

f) Arrest-Custody-Detention Practices,

g) Freedom of Expression,

h) European Union Law.

237. In addition, between 2019-2023; a course on investigation procedures has been given to a total of 2,327 candidates with an average of 30 hours; a course on prosecution practices to 1,612 candidates with an average of 100 hours; a course on constitutional judiciary and individual application has been given to a total of 3.634 candidates with an average of 8 hours.

238. The authorities would also like to indicate that the candidates have to pass a final exam to be appointed as a judge or public prosecutor. The final exam, *inter alia*, involves questions concerning these subjects.

b. Other In-Service Training Events for Judges and Prosecutors

239. The judges and public prosecutors are routinely provided in-service trainings concerning human rights. Participation to these courses is compulsory. Information on several courses, which are relevant to the issues examined under *Batı*, is provided below.

240. Between 2-3 April 2018, 1-2 October 2018, 26-28 October 2018, 10-11 December 2018 and 9-11 December 2022 training programmes were offered on “Effective Investigation and Questioning Techniques” for total 416 public prosecutors and judges. On 13 October 2020, 19 March 2021, 9 September 2021, 15 April 2022, 7 December 2022 and 15 May 2023, 518 judges/prosecutors were given a course on “effective investigation and questioning techniques” through on-line education on the same subject.

241. In addition, a total of 296 judges/prosecutors participated in the "Criminal Magistrates' Practices" seminar held on 30 September-2 October 2022, 12-13 December 2022, 19-20 December 2022. On 7 September 2020, 6 October 2021 and 14 September 2022, 378 judges/prosecutors were given a course on “Criminal Magistrates' Practices” through on-line education on the same subject.

c. Training of the Police, Gendarmerie and Prison Officers

242. In response to the violations established in the present cases, an important CoE supported police training programme, the "Police and Human Rights Programme, 1997-2000", was set up to improve knowledge of human rights in the police corps and modernise its structures.

243. With a view to securing the fulfilment of anti-terror services more effectively, efficiently, lawfully and with respect for human rights as protected in the ECHR, the staff serving in central and rural units of the Anti-Terror Department are regularly provided in-service training under the coordination of the Anti-Terror Department for the prevention of the acts defined as a terrorist offence in the law, for the protection of the rights and freedoms of individuals, for the prevention of disorder, for the maintenance of public security and social peace and in order that the members of the staff fulfil their duties in line with the principles of the rule of law and respect for human rights.

244. In this context, human rights courses are covered in the "Basic Training Course on the Fight against Terrorism" in accordance with Article 12 of the Practice Direction on the In-service Training Plan.

245. Moreover, particular importance has been attached to human rights training within the scope of the in-service training activities. In this connection, "Human Rights" courses have been added to the trainings on "Arrest and Placement in Custody Methods", "Investigation Process", "Questioning Methods in the Fight against Terrorism", and "Specialisation". Furthermore, a course on the "Fight against Terrorism and Human Rights" is provided.

246. Within the scope of vocational trainings, courses on "human rights" were provided to 64,135 persons in 2017, to 118,043 persons in 2018, to 65,044 persons in 2019, to 66,589 persons in 2020 and 77.756 persons in 2021, to 124.129 persons in 2022 and to 13.348 persons in 2023 so far.

247. In the last 5 years (2018-2023), the following training courses were provided: "Human Rights" to 464.909 persons; "Use of Proportionate Force" to 240.330 persons and from 2020 to 2023, the "Investigation Techniques" courses were provided to 41.976 persons.

248. Additionally, between 2008 and 2018, "Human Rights" classes have been provided in the Police Vocational Schools of Higher Education and Police Vocational Training Centres. At present, "Human Rights" classes are being provided for two hours a week for a period of 14 weeks during the fall term of the 2nd grade in the Police Vocational Schools of Higher Education; "Democratic Policing and Social Psychology" classes (Social Psychology, Social

Events and Mass Management, Democratic Policing, Human Rights and Police-People Relations) are being provided for a total of 14 hours to the 1st Group of the 19th Term Special Operation Police Vocational Training Centre; "Democratic Policing, Human Rights and Police-People Relations" classes are being provided for a total of 42 hours to the 2nd Group of the 19th Term Special Operation Police Vocational Training Centre and for a total of 76 hours to the 3rd Group of the 19th Term Special Operation Police Vocational Training Centre; and "Democratic Policing and Human Rights" classes are being provided for a total of 14 hours during the training at the 22nd Term Special Operation Police Vocational Training Centre.

249. In addition, on 3 December 2021, "Human Rights Action Plan: Law Enforcement and Power to Use Weapons Workshop" was held. On 27 January 2022, "Workshop on Ill-Treatment, Arrest and Detention Procedures of Law Enforcement" was held in Ankara within the scope of the Human Rights Action Plan.

250. Within the scope of pre-service and in-service training activities for the staff of the Gendarmerie General Command, courses are provided on "Human Rights" (36 hours in total) "Turkish Criminal Law" (36 hours in total), "Criminal Procedure" (36 hours in total), "Investigation of Terrorist Offences" (36 hours in total), and "Judicial Police Services" (51 hours in total).

251. Within the scope of on-site training activities provided by the Headquarters of the Gendarmerie General Command, visits are made to the Provincial Gendarmerie Commands, and members of the staff are provided with training on human rights and the examination and assessment of human rights violations. Moreover, detention rooms are inspected in terms of their compliance with the standard criteria.

252. Gendarmerie General Command has prepared a handbook on 'proportionate use of force and weapon' and it is being used in gendarmerie pre and in-service trainings.

d. Training of Forensic Medicine Experts

253. The Forensic Medicine Institute is a training institution as well as the official institution of expertise. As part of its educational function, the Institute trains forensic experts by taking in doctors who graduated from the faculty of medicine and passed the national Medical Speciality Exam (TUS).

254. In the course of training forensic experts within the framework set by regulations, trainees are offered information on human rights violations as well as the Istanbul Protocol and the Minnesota Autopsy Protocol. In this connection, they are taught how to examine persons who

claim to have been exposed to torture and ill-treatment. They also learn how to perform an autopsy on persons who allegedly died as a result of such ill-treatment.

255. Examinations of persons who allege to have been exposed to torture or ill-treatment are conducted in line with the criteria laid down in the Istanbul Protocol. On the other hand, autopsies on bodies that are sent to the Forensic Medicine Institute, concerning an alleged death resulting from torture and ill-treatment, are performed pursuant to the Minnesota Autopsy Protocol.

256. The forensic experts provide lessons on İstanbul Protocol for the other doctors.

257. Furthermore, forensic experts who receive training at the Forensic Medicine Institute give trainings to physicians from other institutions on human rights violations, torture and ill-treatment, within the scope of the above-mentioned Istanbul Protocol.

3. Projects, Strategy Papers and Action Plans

a. The Project on "Improving the Effectiveness of Investigation of Allegations of Ill-Treatment and Combating Impunity"

258. The project was conducted by the Council of Europe and Ministry of Justice collectively between December 2017 and May 2019. The targeted institutions of the project were Justice Academy of Türkiye, Forensic Medicine Institute, Constitutional Court, Council of Judges and Prosecutors, Court of Cassation, judges, prosecutors, forensic experts, law enforcement officers.

259. The primary aim of the Project was to contribute to the improvement and strengthening of the judges and prosecutors' capacity to effectively conduct investigations to combat ill-treatment and impunity:

- by identifying potential legal amendments and necessary change of practice and proposing solutions concerning effective investigations against ill-treatment and fight against impunity;
- by strengthening the capacities of the Training Department of the Ministry of Justice (İncluding Justice Academy) concerning new module on effective investigation, reinforcing its pool of trainers;
- by improving awareness and knowledge of judges and prosecutors and other stakeholders on effective investigation against ill-treatment.

The Project implemented a successful series of;

• conferences and international workshops in order to raise awareness about challenges, new procedures, distribute specific information to a broader audience on effective investigation against ill treatment and respective ECtHR- case-law; The very first international workshop focused on "Challenges in investigating ill treatment and responsibilities of relevant stakeholders: International and Comparative approach, the second international conference focused on International and national perspectives and challenges in dealing with ill treatment allegations concerning disadvantaged groups (migrants, women, children, and domestic violence). In total 128 participants actively attended in the international workshop and international conference.

• working group and thematic round table meetings (4) in consultation with the stakeholders to develop comprehensive needs assessment and recommendation paper of Turkish legal and operational framework for combating alleged ill-treatment with a view to identify gaps and make proposals to improve the legislation and in particular practice of judicial bodies; 4 round tables were organized which several domestic laws, secondary laws and relevant decrees and legal practices were examined by the key national stakeholders including Civil Society Organisations (CSOs) under the guidance of the international and the national consultants, and compared with the ECtHR and CPT standards and relevant safeguards. In total, 230 national participants actively attended in these Project interventions.

• training programmes for prosecutors and judges to conduct more effective and comprehensive investigations; following the drafting of the curriculum and training materials, the training of trainers (ToT) program on effective investigation and combatting impunity was completed in September 2018. 22 new trainers joined the pool of trainersof the Justice Academy to transfer their knowledge and skills to their peers. Three (3) pilot training (in-service) programs were delivered to the judges and prosecutors in Ankara, İstanbul and İzmir in 2019. New trainers trained total of 67 judges and prosecutors. The trainers will be benefited by the Justice Academy for pre-service and in-service training activities.

• study visits to the Council of Europe Headquarters (Strasbourg) and Russia to provide first-hand experience and facilitate exchange of information on effective investigation against ill-treatment allegations in line with the European Court of Human Rights' standards. In total 28 judges and prosecutors including trainers and representatives of the MoJ enhanced their knowledge and awareness on effective investigation on Article

3 of the ECHR and ECtHR case-law through exchanges with the ECtHR staff, and other country practices.

260. The project trainers prepared two reference books (consisting of European Court of Human Rights' and Turkish Constitutional Court's case-law on all forms of ill treatment. A guidelines booklet on effective investigation and combatting impunity on ill treatment was prepared.

261. The project consultants prepared the document 'Assessment report and recommendations on adjustment of legislation and practice in order to improve the effectiveness of investigation of ill-treatment '.

262. Overall, the Project contributed to better understanding and application of the ECtHR standards on effective investigation of ill treatment and combatting impunity against all forms of ill- treatment.

b. The Project on "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights"

263. The Government would like to submit information on the project named "*Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights*", which is a European Union-Council of Europe Joint Project and covers a period from 17 September 2021 to 16 September 2025.

i. Expected outputs and results

264. The project in question (IPA/2021/424-050 Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the field of Fundamental Rights) launched its activities with the opening conference held on 21 September 2021 in Ankara.

265. Expected outputs and results of this project are as follows:

- The monitoring mechanism for execution of judgments of the TCC is strengthened in line with the EU best practices, and the stakeholder platform has improved monitoring;
- Judges, prosecutors, relevant public officers and lawyers are aware of the case-law of the ECtHR and the TCC, and are able to implement those judgments in similar cases;
- Inadequate implementation of the TCC judgments and serious human rights lacunas detected via the TCC's case-law are effectively addressed;
- The transfer of EU expertise and cooperation between Turkish courts and relevant stakeholders with the European and Member States institutions/courts, and the European Court of Human Rights are enhanced;

- Awareness of the general public and public institutions on the role of the TCC in the protection of fundamental rights through its judgments is increased.

ii. The main activities

266. The main activities of this project are as follows:

-Preparation of a roadmap to ensure that the first instance courts and public authorities render decisions in line with the TCC case-law regarding the protection of fundamental rights based on the comparative assessment of other countries;

-Development of a monitoring mechanism model including strengthening of a specific monitoring unit in the TCC, as well as the establishment of an IT platform in coordination with the Court of Cassation (CoC) and the Council of State (CoSt), the Courts of Appeals and other relevant stakeholders (including the CSOs) to improve the monitoring of execution of the TCC judgments, including the data collection mechanism regarding references made to the TCC judgments by ordinary courts;

-Development of stock-taking methods on results of the established monitoring system to assess the developments in the individual application system and conducting a qualitative impact assessment of the TCC case-law on prevention of human rights violations;

-Training for judges, prosecutors, lawyers, courts, bar associations and other stakeholders on different human rights categories, including gender equality, with a focus on the human rights issues identified in the case-law of the ECtHR and the TCC;

-Development of a training of trainers programme;

-Preparation of publications, studies, recommendations on good practices of applying individual application system in constitutional justice and mechanisms for execution and implementation of judgments of constitutional courts by other public bodies;

-Development of alternative communication and visibility channels for lawyers to inform them about recent judgments of the TCC;

-Regular meetings with lawyers of the ECtHR Registry;

-Placements and study visits to European institutions and peer courts in the EU Member States to improve the TCC's capacity to apply the ECHR and for its effective functioning;

-Round table meetings with high courts and Regional Courts of Appeals on specific topics of individual applications judgments.

267. Within the scope of the project activities, in Istanbul on 14-15 February 2022 with participation of 223 prosecutors and judges, in Gaziantep on 28-29 March 2022 with participation of 247 prosecutors and judges, in Bursa on 13-14 June 2022 with participation of

243 prosecutors and judges, in Trabzon on 1 November 2022 with participation of 92 prosecutors and judges and in Erzurum on 12-13 June 2023 with participation of 186 prosecutors and judges, regional meetings titled “Decisions On Violations in Respect of Individual Applications Lodged Before Ordinary-Administrative Judiciary and Elimination of the Consequences of Violation” were held.

268. At regional meetings; in the sessions where Objective and Subjective effects of the Constitutional Court Decisions were examined, presentations on following subjects were made; Effects of Violation Decisions on Administrative Judiciary-Civil and Criminal Judiciary, Objective and Subjective Effects of Individual Application Decisions, Objective effects of Norm Review Decisions, Problems Encountered in Administrative Judiciary-Civil and Criminal Judiciary and Suggestions, Frequently Encountered Areas of Violations in Individual Applications, Reopening of the Proceedings and Investigations within the Scope of Individual Applications, and Violations of Right to a Fair Trial, Right to Property, Right to Personal Liberty and Security, Freedom of Expression, Right to Respect for Private Life, Right to Life and Prohibition of Torture and Ill-treatment.

269. On 7 February 2022, a roundtable meeting titled "Examination of Interventions Caused by Penitentiary Institutions in Individual Application" was held in Ankara with 42 participants, composed of the officials of the General Directorate of Prisons and Execution Judges. On 21 March 2022, a roundtable meeting titled “Elimination of Violations in Individual Applications Due to Deportation Procedures” was held in Ankara, with 35 participants, composed of Administrative Judiciary Judges, representatives of the Directorate General of Migration Management and officials from the Ministry of Foreign Affairs. A roundtable meeting was held in Ankara on 12-13 May 2022 with Legal Experts on ECtHR and 78 participants.

270. In addition, within the scope of the project, two study visits were organized to the European Court of Human Rights, between 22-25 June 2022 and 3-6 July 2022, and 40 participants consisting of the President and Members of the Constitutional Court and Rapporteurs attended these study visits.

271. Within the scope of project activities, the violations and related general measures concerning the *Batı and Others v. Türkiye (33097/96)* were organised by the Constitutional Court in annual reports entitled “Rights Groups Action Plans”. In this regard, statistics on the violations on the right to life, prohibition of ill-treatment and the right to organise meetings and

demonstrations were compiled and the necessary actions to be taken to prevent these violations were decided.

272. Within this framework, the aim of raising awareness among the members of the judiciary and other public authorities on the jurisprudence of the Constitutional Court in the field of the obligation to conduct an effective investigation in relation to the right to life and the prohibition of ill-treatment, in particular on the provisions on the suspension of pronouncement of judgment in terms of the relevant group of rights, has been set. To this end, it is planned to add relevant courses or presentations to the curriculum of the Turkish Justice Academy and to organise a comprehensive symposium with the participation of administrative judges and public prosecutors and members of the administrative judiciary within the framework of the Law No. 4483 on the Prosecution of Civil Servants and Other Public Officials. In addition, it has been agreed with the Turkish Justice Academy to organise joint roundtable meetings with the participation of public prosecutors and presidents and members of assize courts, and it has been deemed appropriate to hold the relevant meetings starting from October 2023.

273. Landmark cases on violations in the above-mentioned rights groups were also published on the individual application tab on the official website of the Constitutional Court.[22] In this way, access of all stakeholders to violation judgments on issues of concern to them has been facilitated.

c. The Project on "Strengthening the Criminal Justice System and the Capacity of Justice Professionals on Prevention of the European Convention on Human Rights Violations in Türkiye"

274. This Project is co-financed by the European Union and the Council of Europe and is implemented by the Council of Europe. The beneficiary institutions of the Project are the Directorate General of Criminal Affairs of the Ministry of Justice of the Turkish Republic and the Justice Academy.

275. The stakeholders of the Project are the Constitutional Court, Court of Cassation, Council of Judges and Prosecutors, Financial Crimes Investigation Board, Directorate General of

[22] https://anayasa.gov.tr/tr/bireysel-basvuru/temel-hak-ve-ozgurluklerin-ihlaline-dair-emsal-kararlar/yasam-hakkina-dair-emsal-kararlar/yasam-hakkina-dair-emsal-kararlar/
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https://anayasa.gov.tr/tr/bireysel-basvuru/temel-hak-ve-ozgurluklerin-ihlaline-dair-emsal-kararlar/toplanti-ve-gosteri-yuruyusu-duzenleme-hakkina-dair-emsal-kararlar/toplanti-ve-gosteri-yuruyusu-duzenleme-hakkina-dair-emsal-kararlar-tum-liste#baslik2

Security (Department of anti-smuggling and organized crime, Department of Counter Terrorism, Department of Cyber Crime) and the Union of Turkish Bar Associations.

276. The overall objective of the Project is to further strengthen and make the Turkish judiciary more efficient, effective and visible by ensuring its compliance with the international and European standards in the field of criminal justice. In this respect, numerous meetings and study visits were held, training activities were organised and publications were prepared.

277. The following activities carried out in connection with the topic are particularly noteworthy:

-12-13 March 2020 - Meeting of the Working Group on Development of Training Modules and Materials: The first meeting of the working group for the development of training modules and materials in the context of "Prosecution Practices" was held.

- 24 June 2020 - Webinar on Writing Reasoned Decisions within the Scope of the Right to a Fair Trial in Criminal Proceedings: With the participation of 81 Judges of the Criminal Court of First Instance, the President of the Assize Courts, the Judges and Presidents of the Criminal Chamber of the Regional Courts of Appeal, as well as the trainers of the CJP, the Directorate General for Foreign Affairs and European Union Affairs, the Human Rights Department and the Justice Academy of Türkiye, an online webinar on "Writing a Reasoned Decision within the Scope of the Right to a Fair Trial in Criminal Proceedings" was held. In the webinar, with the participation of speakers from the European Court of Human Rights, the Constitutional Court and the Court of Cassation, the issues of the standard of reasoned decision in the light of the case law of the ECtHR, the Constitutional Court and the Court of Cassation and the obligation to justify when examining evidence were discussed.

278. For the other activities and publications see https://cas2.adalet.gov.tr/

d. Judicial Reform Strategy 2019

279. The Judicial Reform endeavours started as of 2009 when the Judicial Reform Strategy was first prepared.

280. The new Strategy Document 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.

281. The main objectives of 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.

282. In the Judicial Reform Strategy Türkiye's "zero tolerance for torture and ill-treatment" is repeated.

283. One of the main aims of the strategy document is to prepare a new Human Rights Action Plan. In this regard it was aimed to develop solutions for areas of violations mentioned in the decisions of Constitutional Court and ECtHR, consider the monitoring reports of the international protection mechanisms in the field of human rights, improve cooperation with national and international NGOs working on the field of human rights.

284. The other main objective in the Strategy report is to raise awareness and sensitivity for human rights in the judiciary. In this regard the main actions will be to monitor and inspect the compliance of the Constitutional Court and the ECtHR, organize training courses on human rights.

285. A new model will be developed in order to improve the quality of legal education.

286. The quality of pre-service and in-service training will be improved in the judiciary. In this regard, it will be ensured that human rights law will be a part of pre-service and in-service training programs. Legal methodology and legal argumentation programs will be included in pre-service and in-service training courses. Continuous and compulsory education model will be adopted in judiciary. In-service training will be one of the criteria taken into consideration in the promotion of judges and prosecutors. Training courses will be provided on new or under-applied practices creating the components of the system in civil and criminal justice as well as on areas requiring expertise. Training courses will be organized in partnership with the judicial police. The numbers of judges and prosecutors receiving foreign language and postgraduate education abroad will be increased.

287. The number of judges, public prosecutors and judicial personnel will be increased in proportion to the workload. To this end, the number of judges, prosecutors and judicial personnel will be increased taking into consideration the per capita average and the actual

workload of these offices in the Council of Europe Member States. The principle of gender equality will continue to be looked after in the recruitment of judges, prosecutors and staff. The number of professionals such as psychologists, sociologists and experts working in courthouses will be increased.

288. Tools for measuring and improving performance as well as increasing quality in the judicial system will be strengthened. In this regard, the performance criteria in the judiciary will be redefined and a "Performance-Based Monitoring System" will be developed for long-continued investigations or cases, "The Centre for Performance Measurement and Monitoring in the Judiciary" will be established within the CJP Inspection Board. The authority and responsibility areas of justice commissions will be reorganized for improving the quality of service and concluding trials in a reasonable time.

e. Human Rights Action Plan

289. 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[23].

290. The vision of the Action Plan is "Free individual, strong society; a more democratic Türkiye" and starts with 11 fundamental principles. The Action Plan contains many activities concerning the relevant group of cases.

- ✓ In the context of zero tolerance for torture, the statutory limitation periods will be abolished in respect of disciplinary infringements, as it was done in respect of criminal offences.
- ✓ A database will be created concerning investigations and prosecutions into allegations of torture and ill-treatment
- ✓ Crime scene investigation, judicial search and physical seizure procedures will be mandatorily recorded on a camera.
- ✓ Forensic medicine experts and doctors will be offered trainings in order to ensure compliance with the Istanbul Protocol and international standards in forensic/judicial medical examination and reporting procedures.
- ✓ In order to ensure that an effective administrative investigation is carried out regarding the violations of rights originating from the acts of law enforcement officers and public officials, the practice will be reviewed in consideration of international standards.

[23] https://insanhaklarieylemplani.adalet.gov.tr/resimler/eylemplani-eng.pdf

- ✓ The recourse and disciplinary mechanisms against the public officers who, by acting in contravention of their responsibilities, caused rights violations will be conducted effectively.
- ✓ The number of units and physical facilities in hospitals specifically dedicated to judicial/forensic medical examination will be increased.
- ✓ 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.
- ✓ In the light of the recommendations of the European Committee for the Prevention of Torture and the UN Committee against Torture, the standards, including the physical capacities, of custody centres and removal centres will be maintained and regularly reviewed.
- ✓ The provisions on the suspension of pronouncement of judgment and the suspension of sentences will be addressed as a whole and revised for the purpose of improving the criminal justice system.
- ✓ The effectiveness of the Law Enforcement Monitoring Commission will be enhanced with a view to ensuring the effective, speedy and transparent functioning of the complaint system regarding the actions of officers of the law enforcement.

I. PUBLICATION AND DISSEMINATION OF THE JUDGMENTS

291. The Turkish authorities ensured that the European Court's judgments have been translated into Turkish and published on its official website which was made available to the public and legal professionals alike.

292. The judgments have been circulated to the Constitutional Court, the Court of Cassation, Human Rights and Equality Institution of Türkiye, the Ombudsman Institution and the relevant judicial authorities.

IV. CONCLUSION

293. As a conclusion, the Turkish Authorities would like to note that necessary individual measures have been taken in the cases of *Hasan Köse* (15014/11), *Batı* (33097/96), *Ceyhan Demir and Others* (34491/97), *Başbilen* (35872/08), *Mustafa Aldemir* (53087/07), *Özçelik* (73346/11), *Canan* (29443/14), *Amine Güzel* (41844/09), *Sorli* (78727/16), *Güngör* (3824/17) and *Tutakbala (38059/12).* The authorities would like to invite the Committee to close these cases.

294. In other cases, the Committee will be informed on further developments in respect of individual measures.

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

List of Cases

No	Title	App Number	Judgment Date	Final Judgment Date
1	BATI AND OTHERS	33097/96	03/06/2004	03/09/2004
2	CEYHAN DEMIR AND OTHERS	34491/97	13/01/2005	13/04/2005
3	SIMSEK AND OTHERS	35072/97	26/07/2005	26/10/2005
4	GASYAK AND OTHERS	27872/03	13/10/2009	13/01/2010
5	MUSTAFA ALDEMIR	53087/07	02/07/2013	04/11/2013
6	AMINE GUZEL	41844/09	17/09/2013	17/12/2013
7	BASBILEN	35872/08	26/04/2016	26/07/2016
8	MIZRAK AND ATAY	65146/12	18/10/2016	18/01/2017
9	HASAN YASAR AND OTHERS	50059/11	11/10/2016	06/03/2017
10	HASAN KOSE	15014/11	18/12/2018	06/05/2019
11	CANAN	29443/14	14/12/2021	14/12/2021
12	ÖZÇELIK	73346/11	15/03/2022	15/03/2022
13	SORLI	78727/16	05/04/2022	05/04/2022
14	TUTAKBALA	38059/12	17/05/2022	17/05/2022
15	GUNGOR	3824/17	15/11/2022	15/02/2023

Informative Table on the Payment of Just Satisfaction

No	Title	App Number	Pecuniary Damage Awarded	Non-Pecuniary Damage Awarded	Costs and Expenses Awarded
1	BATI AND OTHERS	33097/96	x	x	x
2	CEYHAN DEMIR AND OTHERS	34491/97	x	x	x
3	SIMSEK AND OTHERS	35072/97		x	
4	GASYAK AND OTHERS	27872/03		x	x
5	MUSTAFA ALDEMIR	53087/07	x	x	x
6	AMINE GUZEL	41844/09		x	x
7	BASBILEN	35872/08		x	
8	MIZRAK AND ATAY	65146/12		x	x
9	HASAN YASAR AND OTHERS	50059/11		x	
10	HASAN KOSE	15014/11	x	x	

11	CANAN	29443/14	x	x	
12	ÖZÇELIK	73346/11		x	
13	SORLI	78727/16	x	x	
14	TUTAKBALA	38059/12		x	
15	GUNGOR	3824/17		x	x

Appendix 1

AVERAGE DURATION OF PROCEEDINGS BEFORE THE PROSECUTOR'S OFFICES

Years	TCC Article	Number of Files	Number of Suspects	Number of Offences	The Average Duration of Cases (Days)
2020	86/3-c	3912	5257	5565	213
2020	86/3-d	3870	7356	7785	192
2020	256	1354	3408	3450	195
2020	257	49088	86583	90451	175
2020	94	471	882	894	239
2020	95	3	4	4	48
2021	86/3-c	3974	5409	5834	280
2021	86/3-d	4058	8331	8875	265
2021	256	1414	3879	3974	212
2021	257	54702	97072	101563	189
2021	94	428	785	810	326

2021	95	2	5	5	106
2022	86/3-c	4781	6154	6537	238
2022	86/3-d	5463	10.076	10.604	243
2022	256	1328	3472	3518	224
2022	257	53968	95590	99249	182
2022	94	309	719	750	461
2022	95	2	6	6	126

AVERAGE DURATION OF PROCEEDINGS BEFORE THE FIRST INSTANCE CRIMINAL COURTS (Days)			
TCC Article	**Years**		
	2020	**2021**	**2022**
86/3-c	331	390	365
86/3-d	346	423	354
256	437	460	447
257	375	374	362
94	508	573	511

AVERAGE DURATION OF PROCEEDINGS BEFORE THE REGIONAL COURTS OF APPEAL (Days)			
TCC Article	**Years**		
	2020	**2021**	**2022**
86-3/c	197	254	202

86/3-d	169	226	214
256	243	212	148
257	214	237	205
94	66	213	141
95	66		53

AVERAGE DURATION OF PROCEEDINGS BEFORE THE COURT OF CASSATION (Days)			
	2020	2021	2022
1st Criminal Chamber	287	142	110
5th Criminal Chamber	569	393	211
8th Criminal Chamber	351	358	520

AVERAGE PERIOD OF IMPRISONMENTS DECIDED BY FIRST INSTANCE COURTS		
Years	**TCC Article**	**Average No. of Days Imprisoned**
2020	86/3-c	435
2020	86/3-d	506
2020	257	269
2020	87	1168
2020	94	1055
2021	86/3-c	473
2021	86/3-d	478
2021	257	237
2021	87	1170
2021	94	1121

2022	86/3-c	481
2022	86/3-d	565
2022	256	719
2022	257	239
2022	87	1188
2022	94	1991
2022	95	2280