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Communication from Turkey concerning the case of Selahattin Demirtas v. Turkey (No. 2) (Application No. 14305/17)

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Réunion : 1419e réunion (décembre 2021) (DH)

Référence du point : Plan d'action (01/10/2021)

Communication de la Turquie concernant l'affaire Selahattin Demirtas c. Turquie (No. 2) (requête n° 14305/ 17) ***[anglais uniquement]***

Ankara, 1 October 2021

ACTION PLAN

Demirtaş v. Turkey (No. 2) (Appl. No. 14305/17)

Final on 22 December 2020

I. CASE DESCRIPTION

1. This case concerns a violation of Article 5 § 1 and 5 § 3 (right to liberty and security), a violation of Article 18 taken in conjunction with Article 5, a violation of Article 10 (freedom of expression), and a violation of Article 3 of Protocol No. 1 to the European Convention on Human Rights ("the Convention")

2. The European Court of Human Rights ("the Court" or "the European Court") held that there has been a violation of Article 5 § 1 and 5 § 3 of the Convention on account of the domestic courts had failed to give specific facts or information that could give rise to a reasonable suspicion that the applicant had committed the offences in question and justify his arrest and pre-trial detention for the period of pre-trial detention which began with the applicant's arrest on 4 November 2016 and ended on 7 December 2018, when he started serving the final prison sentence imposed following the criminal proceedings in Istanbul (§ 297). Additionally, the Court held that there has been a violation of Article 18 of the Convention taken in conjunction with Article 5 on account of the fact that the applicant's detention pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate.

3. The Court also held that there has been a violation of Article 10 and a violation of Article 3 of Protocol no 1 on account of the lifting of parliamentary immunity, the criminal proceedings brought against the applicant and his pre-trial detention violated his rights to freedom of expression and to sit as a member of parliament. It found that the domestic courts had failed to examine whether the applicant's speeches were covered by the right to non-liability for acts and statements made in the National Assembly under Article 83(1) of the Constitution, which had not been amended. Nor had they weighed up the competing interest in the freedom of expression of political opinions by a Member of Parliament and opposition

leader or examined whether the charges were directly linked to the applicant's political activities.

II. INDIVIDUAL MEASURES

A. The Scope and The Subject Matter of the Judgment of the Court Dated 22 December 2020

(*The period from 4 November 2016 to 7 December 2018*)

4. The Government would like to note at the outset that the Committee of Ministers' mandate of supervision of the execution of judgments granted by Article 46 of the Convention is limited to the framework outlined by the Court's findings. Accordingly, the Government emphasises that in the light of the paragraph 297 of the judgement delivered by the Grand Chamber, the scope of the execution of the judgment of *Demirtaş v. Turkey* is limited to the period between 4 November 2016 and 7 December 2018. Therefore, the Turkish Government kindly invites the Committee of Ministers to make its examination in line with the scope of the said judgment.

5. The subject matter of the Judgement of the Grand Chamber concerns the proceedings (docket no. 2017/189) before the Ankara 19th Assize Court. The authorities would like to note that the criminal proceedings are still ongoing but as of 25 May 2021, the case file before the Ankara 19th Assize Court was merged with a case file before the Ankara 22nd Assize Court (docket no 2021/6). Detailed information will be provided below.

B. Background of the Applicant's Detention dated 4 November 2016

6. Upon the lifting of the applicant's inviolability as a result of the Constitutional Amendment of 20 May 2016, the Diyarbakır Chief Public Prosecutor's Office decided to join 31 investigations against him under the investigation file no. 2016/24950. There existed 31 different investigation files, as well the investigation as to the events of 6-8 October, within the scope of the investigation no. 2016/24950 consisting of several investigations. Within the scope of these investigations, the applicant was also accused of the charges related to his speeches on various dates in the context of the events known to the public as "the ditch events" (*Hendek Olayları*), the activities carried out under the auspices of the Democratic Society Congress (DTK) established under Section 3 of the KCK Convention and other joined

investigation files, in addition to the criminal charges against him in respect of the events of 6-8 October.

7. On 4 November 2016 the Diyarbakır Public Prosecutor's Office, in the scope of investigation file no 2016/24950, requested from the Magistrate Judgeship for his detention on remand for the offences of *"inciting to committing offences"* and *"membership of an armed terrorist organization.* In the letter of request for detention, the public prosecutor's office handled in detail the charges imputed to the applicant. In the letter of referral to detention on remand consisting of 6 pages, the applicant's activities during the process known by the public as incidents of 6-7-8 October, his expressions made on various dates constituting propaganda in favour of the terrorist organization legitimizing terrorism, battery and violence, and his activities concerning the Democratic Society Congress indicated in the KCK Main Convention were explained. As a result, the applicant was requested to be detained on remand on account of the imputed *offences of membership of an armed terrorist organization* and *inciting to committing offences.*

8. On the same day, the Diyarbakır 2nd Magistrate Judgeship ordered the applicant's detention on remand for the offences of *"inciting to committing offences" (TCC 214/1)* and *"membership of an armed terrorist organization" (TCC 314/1).* The following pieces of evidence were included in the decision on the applicant's detention on remand:

- In parallel with the call of the executives of the PKK/KCK terrorist organization for insurrection and taking to the streets, on 6 October 2014 the Central Executive Board of the HDP, of which the applicant is also a member, posted tweets. By the tweets posted, the public was invited to take to the streets and to support those who took to the streets. From the same account, a tweet was posted indicating that *"from now on, everywhere is Kobani, we are inviting you to indefinite resistance until the siege and wildness in Kobani ends."*. Following these tweets, the incidents took place in 16 different cities in Turkey on 6-7-8 October 2014. During these incidents, a number of offences were committed such as ferociously or brutally homicide, undermining the unity of the State and integrity of the country, disseminating propaganda in favour of the terrorist organization, breach of inviolability of domicile, damaging property, qualified robbery, deprivation of liberty, breach of the freedom of labour and work, intentional endangering of public security, inciting to non-compliance with laws, stealing and confiscation of transportation vehicles. During the commission of these offences, a total of 50 persons lost their lives (12 persons lost their lives in Diyarbakır). 678 persons were injured. 1113 buildings (hospitals, schools, banks, municipalities etc.) were damaged. There exists suspicion on the basis of concrete

evidence demonstrating that the applicant committed the offence of *"inciting to committing offences"* (TCC 214/1) together with the members of the Central Executive Board of the HDP and simultaneously with the PKK/KCK terrorist organization.

- Additionally, in the detention order, it was noted that (i) the applicant indigenised the above-mentioned call for action in his speeches on various dates and used the expression "*resistance*" for the PKK's actions aiming the creation of autonomous governments by ditching trenches and called these efforts "legitimate"; (ii) he participated in the activities of the DTK operating under the KCK Convention, (iii) there are strong suspicions that the applicant had committed the offence of membership of a terrorist organisation, with a general reference to the existence of a large number of investigations initiated into the activities of the applicant which are the subject matter of the investigation reports. For instance;

* On 13 September 2015 the applicant made a press statement in Lice district upon the declaration of curfew in Sur district by the Diyarbakır Governorship. The applicant expressed that *"our public want <u>self- governance</u> by their own assembly and municipality where the elected persons are competent rather than appointed ones. Our public has the power to resist against the pressure and massacre policies everywhere. We have the power to protect ourselves against all attacks. We are demonstrating that we are not desperate, we will resist together. We will reach the salvation without forgetting our motherland and history and by defending our rights.*

** On 18 December 2015 the applicant made a press statement[1] together with K.Y., S.I and E.K. in Diyarbakır. During that statement, he indicated that "every place where you carry out operations is dominated by an atmosphere of enthusiasm rather than an atmosphere of fear and panic. Do you know why? Those persons are so sure that they will triumph as from the very first day. They are the defenders of an honourable, proud and dignified case. We will not let the cruelty and fascism triumph once more; this resistance will triumph. Let those who try to underestimate by calling them ditches and holes look back to the history. There are tens of millions of heroes and brave persons resisting against this coup. You*

[1] The applicant makes this comment on terrorist acts known as ditch events. The PKK terrorist organisation dug ditches, set up barricades and placed bombs and explosives in these barricades on parts of some provinces of Turkey so as to exercise sovereignty by force of arms which was declared in these provinces under the name of the so-called self-governance with these terrorist acts. The members of the terrorist organisation clashed with the security forces and they either killed or injured the civilians who wanted to leave these regions. The applicant regarded these terrorist acts as resistance and also regarded the anti-terror operations to restore public order as the attack to the public. As a result of these acts by the terrorist organisation, approximately 200 security officers were martyred, and tons of bombs and explosives were destroyed.

have waged a war against the public. The public resists and will resist everywhere. We will also attend the extraordinary congress of the Democratic Society Congress on 26-27 December, namely the next weekend, in Diyarbakır. We will have intensive discussions and take important decisions for more effective management, in the political arena, of the process of the establishment of self-governance and autonomy and its functioning. We will materialize all of them."

** The applicant participated in the general assembly of the Democratic Society Congress which was established and which carried out activities on the basis of the KCK Convention. During his speech he delivered there, he told that the public had to continue to resist against the State.*

9. Consequently, on 4 November 2016 the applicant was placed in detention on remand not only for his acts concerning the events of 6-8 October but also for his statements concerning the terrorist acts known as ditch events, DTK speeches and his being a suspect within the scope of many investigations into the terrorism.

10. In accordance with the indictment drawn up within the scope of the investigation file (no.2016/24950) by the Diyarbakır Chief Public Prosecutor's Office dated 11 January 2017, a criminal case was brought against the applicant at the relevant Assize Court for the offences of establishing, leading or being a member of an armed terrorist organisation, disseminating propaganda in favour of a terrorist organisation, praising the offence and the offender, publicly inciting people to hatred and hostility, inciting people to disobey the law, organizing unlawful meetings or demonstration marches, participating in them, taking part in an unlawful meeting or march without arms and not dispersing of her own motion after having been warned to do so, publicly inciting people to commit offences, inciting people to organize unlawful meetings and demonstration marches[2].

11. The following findings included in the said indictment indicating the fact that the applicant was tried not only for the events of 6-8 October are worthy of attention:

[2] The relevant provisions as to the offences committed by the applicant are as follows: Article 314 § 1 of the TCC (Law no. 5237) on the basis of Article 7 § 1 of the Prevention of Terrorism Act (Law no. 3713), Article 5 of the Law no. 3713, Articles 53 and 58 § 9 of the TCC and Article 325 § 1 of the Code of Criminal Procedure (Law no. 5271, "the CCP"); Article 7 § 2 of the Law no. 3713 (15 counts), Articles 53 and 58 § 9 of the TCC and Article 325 § 1 of the CCP; Article 28 § 1 of the Law no. 2911 (3 counts), Article 32 § 1 thereof (1 count), Articles 53 and 58 § 9 of the TCC and Article 325 § 1 of the CCP; Article 216 § 1 of the TCC (2 counts), Article 53 thereof and Article 325 § 1 of the CCP; Article 215 § 1 of the TCC (4 counts), Article 53 thereof and Article 325 § 1 of the CCP; Articles 214 § 1 and 53 of the TCC and Article 325 § 1 of the CCP; Articles 217 § 1 and 53 of the TCC and Article 325 § 1 of the CCP; Articles 214 § 1 and 53 of the TCC, sentences 1 and 2 of Article 34 of TCC on the basis of the last paragraph of Article 214 of the TCC and Article 27 of the Law no. 2911, Article 53 of the TCC and Article 325 § 1 of the CCP; Article 63 of the TCC).

"The activities alleged to be committed by the accused in the summary of proceedings may be grouped under 4 main headings:

1-) his activities as a senior executive of the organisation with the title of "Main Political Field Unit Responsible" under the KCK/TM structure which is provided for in paragraph 2 of Article 14 of the KCK Convention,

2-) his activities and acts as a senior executive of the Democratic Society Congress referred to as the 3rd leg of the resolution paradigm by the ring-leader of the PKK/KCK terrorist organisation, Abdullah ÖCALAN which was considered as a sub-component of the PKK/KCK Armed Terrorist Organisation,

3-) his activities as a result of which he committed the offence of "disseminating propaganda of a terrorist organisation "by way of making statements that legitimise the terrorist organisation's activities of armed struggle and violence and its existence in his speeches on different dates,

4-) his activities with respect to his statements in the meeting of the Central Executive Board of the HDP in the beginning of the events known as the events of 6-7-8 October."

12. The case was transferred to Ankara on the ground of public security and the Ankara 19th Assize Court rendered a decision at the end of the preparatory examination dated 28 April 2017 with docket no. 2017/189. In the relevant decision, *"having regard to the classification and nature of the imputed offences, the state of available evidence, the accused's defence submissions, the expert examination reports and according to the case file, the existence of concrete evidence showing the existence of strong suspicion that the imputed offences had been committed, the upper and lower limits of the sentences, that the imputed offence was among catalogue offences listed under Article 100 § 3 of the Code of Criminal Procedure, that the measure of conditional bail would remain insufficient considering the time spent in detention"* , the Court ordered the applicant's continued detention.

13. In the course of the relevant proceedings, on **2 September 2019** the Ankara 19th Assize Court, conducting the trial within the scope of the charges which are the subject matter of the Grand Chamber's judgment, ordered the applicant's release.

14. On 25 May 2021, the criminal proceedings in question were joined with the criminal proceedings before the Ankara 22nd Assize Court and accordingly this case file before the Ankara 19th Assize Court has been closed.

C. Execution of Sentence Imposed On the Applicant as a Convict

(Period between 7 December 2018 and 31 October 2019)

15. In the meantime, a criminal proceeding was initiated against the applicant with the indictment of 16 August 2016 issued by the Bakırköy Chief Public Prosecutor's Office requesting that the applicant be sentenced for the offence of *disseminating propaganda in favour of a terrorist organisation* within the scope of the investigation initiated on the ground that he had disseminated terrorist propaganda in a meeting held on 17 March 2013 in İstanbul.

16. At the end of the proceedings conducted on the basis of the file with docket no. 2017/173, on 7 September 2018 the İstanbul 26th Assize Court found that the applicant disseminated propaganda in favour of the PKK terrorist organisation due to some of his expressions in the said meeting and sentenced him to 4 years and 8 months' imprisonment.

17. After the applicant's appeal on points of law and facts against the relevant decision had been dismissed, his conviction - in accordance with the provisions of law at the material time - became final. Thereupon, on **7 December 2018** the execution of the judgment was started.

18. On 10 September 2019 by applying to the İstanbul 26th Assize Court, the applicant's lawyer requested that the applicant's detention period, which became final as 4 years and 8 months' imprisonment sentence, in the case-file of the İstanbul 26th Assize Court with docket no. 2017/173 be deducted from the time which the applicant spent in detention in accordance with the case-file of the Ankara 19th Assize Court with docket no. 2017/189.

19. The İstanbul 26th Assize Court accepted this request on 20 September 2019. It decided to deduct the applicant's detention period which he spent between 4 November 2016 and 7 December 2018 in accordance with the case-file of the Ankara 19th Assize Court with docket no. 2017/189 from the –sentence that was in process of execution.

20. In short, the applicant's detention, which was the subject matter of the Grand Chamber's judgment, ended on 7 December 2018 because of the the execution of the judgment delivered by the İstanbul 26th Assize Court. The total detention period was 2 years 1 month and 3 days between 4 November 2016 and 7 December 2018 (§ 297 of the judgment). Subsequently, on 20 September 2019, this detention period was deducted from the prison term that would be executed in accordance with the judgment of the İstanbul 26th Assize Court.

21. On the other hand, by the Law. no 7188 dated 17 October 2019 which entered into force on 24 October 2019 subsequent to the publication on the Official Gazette, it was introduced the opportunity of lodging an appeal against the decisions - regardless of the term

of the penalty- delivered in respect of certain offences which includes the relevant conviction at issue against the applicant. The applicant filed a petition dated 30 October 2019 with the İstanbul 26th Assize Court within the scope of the relevant amendment and requested that the execution of the judgment be stayed in order to have recourse to the remedy of appeal against the relevant judgment. Thereupon, on 31 October 2019 the İstanbul 26th Assize Court ordered that the execution of the applicant's sentence be suspended following the approval of the request and that the applicant be released in terms of the said conviction.

22. Accordingly, the applicant's deprivation of his right to liberty and security between 7 December 2018 and 31 October 2019 was resulted from his conviction. This term was considered by the Grand Chamber within the context of Article 5/1(a) of the Convention (see, *Selahattin Demirtaş v. Turkey* (No. 2) [GC], no. 14305/17, § 296).

D. Legal Grounds for the Applicant's Detention between 20 September 2019 – 3 May 2021 *(The period between 31 October 2019 and 3 May 2021)*

a. The Events of 6-8 October

23. The Government would like to provide information to the Committee on the offences committed in the course of the events of 6-8 October (see also, *Selahattin Demirtaş v. Turkey* (No. 2) [GC], no. 14305/17, §§ 17-23).

24. Subsequent to the HDP Central Executive Board's call on 6 October 2014, in parallel with the terrorist organisations' call, public order was disturbed throughout Turkey, particularly in the Turkish provinces in the Eastern and South-Eastern Anatolian regions, and civilians' lives and properties were inflicted harm. As a result of the protests held in a total of 36 provinces; 2 police officers were martyred and 43 civilians lost their lives. In the course of the events; 331 police officers and 438 civilians (769 persons in total) were injured. 2,389 events took place throughout Turkey and 121,899 demonstrators participated in the events in question. In the course of the protests; 737 police vehicles and 1,144 vehicles belonging to civilians and other institutions (1,881vehicles in total) were damaged. 27 district governorship buildings, 52 security directorate buildings, 283 school buildings, 73 political party buildings, 12 municipality buildings, and 2,111 other buildings (2,558 buildings in total) were attacked and damaged. In the scope of these events, 4291 suspects had been arrested and 1105 of them

was detained. (Detailed information is also available in the Turkish Constitutional Court's decision dated 21 December 2017, §24-34[3]).

25. Certain cases and investigations should be mentioned in order to show the severity and extent of the incidents taking place during the events of 6-8 October. In this regard, the Government would like to note that a number of investigations were initiated for the following offences within the context of hundreds of incidents taking place in several provinces, especially in Diyarbakır, İstanbul, Van, Mardin, Bingöl, Gaziantep, Adana and Batman. The investigations as to the certain incidents are still ongoing.

- *Plunder,*

- *Acting in breach of Article 302/1 of the TCC (Undermining the unity and territorial integrity of the State),*

- *Theft,*

- *Contravening the Meetings and Demonstration Marches Act,*

- *Being a member of an armed terrorist organisation,*

- *Disseminating propaganda in favour of a terrorist organisation,*

- *Resistance to prevent officers from performing their duties,*

- *Killing,*

- *Endangering the security of traffic,*

- *Committing an offence on behalf of a terrorist organisation without being a member of it,*

- *Hindering transportation vehicle unlawfully,*

- *Using explosives in a manner that creates fear, panic and anxiety,*

- *Illegal possession of explosive substances,*

- *Forgery of official documents,*

- *Slander,*

[3] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/25189?KelimeAra%5B0%5D=selahattin+demirta%C5%9F&page=3

- *Damaging property,*

- *Infringement of inviolability of workplace,*

- *Intentional endangering of public security,*

- *Infringement of inviolability of home,*

- *Injury,*

- *Forestalling and conducting ID check on behalf of the terrorist organisation and its structures upon the call made by the supporters of the terrorist organisation,*

- *Depriving a person of his/her liberty by using force and threat with more than one person,*

- *Supporting offender.*

b) Grounds for detention

26. The Government would like to draw the Committee's attention to the fact that inciting others to commit an offence was prescribed as an offence in itself pursuant to the Turkish law. Moreover; where the offence/offences incited is/are committed, the person who incited another to commit the offence shall be held responsible for these acts.

27. Article 38, entitled "Incitement", of TCC provides as follows:

(1) A person who incites another to commit an offence shall be subject to the penalty appropriate to the offence that is committed.

(2) Where there is incitement to offend by using influence arising from a direct-descendent or direct-antecedent relationship, the penalty of the instigator shall be increased by one-third to one half. Where there is incitement of a minor, a direct-descendant or direct-antecedent relationship is not necessary for the application of this paragraph.

(3) Where the identity of the instigator is not known and if the offender plays a role in the identification of the instigator, or other accomplice, he shall be sentenced to a penalty of imprisonment for a term of twenty to twenty-five years if the offence committed requires aggravated life imprisonment and to a term of imprisonment of fifteen years

to twenty years if the offence committed requires life imprisonment. Otherwise the penalty to be imposed may be reduced of one-third.

28. Incitement is the act of instigating a person who does not have an idea about committing a crime by someone else to commit a crime. As required by the criminal policy followed, it has been accepted that the instigator shall be punished with the penalty envisaged for this offence set out in the law. Apart from this general provision, Article 214 of the TCC specifically stipulates the responsibility of the instigator within the scope of offences against public order.

29. Article 214, entitled "Incitement to commit an offence", of TCC provides as follows:

"(1) A person who openly incites another person to commit an offence shall be sentenced to a term of imprisonment ranging from six months to five years.

(2) A person who arms one section of the public against another part and incites them to kill each other shall be sentenced to a term of imprisonment ranging from fifteen to twenty-four years.

(3) If the offences which have been incited are actually committed, the inciting person shall be sentenced as an instigator."

30. As can be seen, in the event of the commission of the incited offences, the inciting person shall also be held responsible for those offences pursuant to Article 214 § 3 of the Turkish Criminal Code.

31. On the basis of Article 214/3 of the TCC, the Ankara Chief Public Prosecutor's Office conducted the investigation no. 2014/146757 particularly for the events of 6-8 October 2014, and the scope of this investigation was expanded in accordance with the new evidence. It was established in the said investigation that there existed strong criminal suspicion against the applicant that he was the instigator for certain offences committed upon the call made via Twitter.

c) Detention Order of the Domestic Court

32. In this scope, by means of its letter dated 20 September 2019, the Ankara Chief Public Prosecutor's Office requested the applicant's detention for the offences committed upon the calls issued by the HDP Central Executive Board and reported as involving a strong suspicion that the applicant had been the instigator.

33. The Ankara 1st Magistrate Judgeship in Criminal Matters heard the applicant in the presence of his lawyers by means of the Audio-Visual Information System (*SEGBİS*). It

ordered the applicant's detention on remand on account of the existence of strong suspicion that he had been the instigator of the following offences:

"Undermining the unity and territorial integrity of the State (Article 302 of the TCC)",

"Aggravated intentional killing (Article 82 of the TCC)",

"Attempted intentional killing (Articles 35 and 82 of the TCC)",

"Plunder (Article 149 of the TCC)",

"Deprivation of liberty (Article 109 of the TCC)"

34. As is seen, the applicant's detention dated 20 September 2019 is not related to the acts giving rise to the Grand Chamber's judgment.

d) Indictment

35. The said investigation conducted against Demirtaş within the scope of the events of 6-8 October was completed and criminal proceedings were brought by the indictment no. 2020/43416 of the Ankara Chief Public Prosecutor's Office (Investigation Bureau for Terrorist Offences) dated 30 December 2020.

36. The indictment was 3530 page-long and included a total of 2856 real and legal persons as parties to the case (37 deceased persons, 2676 victims-complainants, 108 suspects, persons reporting crimes etc.).

37. The indictment included the following charges against the applicant: '*Homicide (37), Attempted Homicide (31), Plunder (24), Retention (38), Attempted Retention (2), Damaging Property (1750), Damaging Property by Fire (397), Damaging Public Property (1060), Damaging Public Property by Fire (503), Violation of Inviolability of Work Place (53), Violation of Inviolability of Work Place at Night Time (294), Theft of Property Left in the Open at Night Time (26), Theft of Property Left in the Open (20), Theft (114), Theft at Night Time (272), Simple Injury (5), Simple Injury by Firearms (43), Simple Injury of a Public Official by Firearms (264), Intentional Simple Injury of a Public Official (7), Intentional Injury by Firearms Causing a Bone Fracture (1), Intentional Injury of a Public Official by Firearms Causing a Bone Fracture (1), Intentional Injury by Firearms (78), Injury of a Public Official by Firearms (51), Violation of the Freedom of Labour and Work (3), Damaging Places of Worship (4), Causing Miscarriage (1), Burning the Flag (24), Violation of the Law no. 5816 (25), Undermining the Unity and Territorial Integrity of the State*'

e) Initiation of Proceedings upon Admission of Indictment, Preliminary Proceedings Report and First Findings on the Grand Chamber's Judgment reached by the 22nd Assize Court

38. The case in question was registered in the Ankara 22nd Assize Court's list of cases with the docket number 2021/6 and within this scope, on 7 January 2021 the Ankara 22nd Assize Court issued a 217 page-long preparatory hearing report.

39. In the preliminary proceedings report, having examined all evidence in the case-file and judgment of the ECtHR in detailed, the Assize Court, at the end of the examination, ordered the continued detention of Demirtaş and 26 co-accuseds. The reasoning of the decision included the following findings and assessments:

'As regards Selahattin DEMİRTAŞ;

It appears that after accused Selahattin Demirtaş was reminded of that his brother Nurettin Demirtaş was missing in the family photo used in the news published in the web page https://www.hürriyet.com.tr/gündem/hdpli-selahattin-demirtas-anne-ve-babasınıziyaret-etti-28690578 at the web site hürriyet.com.tr, he stated about his brother's story that "he went to prison when he was a university student, spent half of his life in prison, wished to participate in the democratic politics, joined the party, became the co-chair. Through judicial pressure, they made it impossible for him to engage in politics. They gave him very serious punishments. They brought several actions against him. We did not want him to spend years in prison here once again. He now lives in Erbil. Not only him, thousands have to live in exile. Each of them upsets and wounds me. Not for my brother, he is just one of them. Tens of thousands are apart from their country, just because of their thoughts they are in a situation where they cannot come to their country. If we get a good result after 7th of June, we will have significant opportunities to resolve this problem and for peace". The accused's explanations about his brother were considered as submissions which constitute concrete and reasonable suspicion that he will attempt to abscond with a view to avoid punishment in case if he is sentenced to a punishment after relevant judicial procedures concerning possible criminal investigation and proceedings.

[It is decided] That due to the facts that accuseds namely the members of the HDP (the Peoples' Democracy Party) MYK (Central Executive Board) A.K., B.Y.,

H. A., Y. Ö., Z. K. and the member of the parliament D. Ç. were fugitive; that there many complainants and witnesses in the file; that there is a possibility that the witnesses, victims or others may be attempted to be oppressed, thus it is known that they avoided the investigations; that in that connection measures other than detention such as measures of judicial control including the prohibition leaving the country prescribed by Article 109 of the Code of Criminal Procedure would be insufficient in terms of the nature of the investigation and the status of the evidence; that in Article 5 of the European Convention on Human Rights, which is binding in the context of domestic law pursuant to Article 90 of the Constitution, and in most of the established decisions and reasonings of the European Court of Human Rights concerning the measure of detention, "possibility of absconding and the purpose of ensuring public order and preventing the commission of another crime" are considered among circumstances where measure of detention is applicable; and that as explained above, in the case file these concerns and criteria exist in the present case, it is understood that the measure of detention is necessary;…'.

…

[It is decided] that by sending a letter to the Presidency of the Turkish Grand National Assembly, it shall be asked which accuseds have been a member of the parliament as of 2014, and who -be requested to be punished in the indictment- made explanations on the stand in the assembly about the 6-8 October 2014 incidents known as Kobane incidents, and it shall be requested that whole texts of these explanations and parliamentary minutes be sent to this Court (digitally),

[It is decided] that when the interlocutory decision no. 9 is implemented, an examination shall be carried out by an expert committee to be elected ex officio for determination of whether the content of the posts allegedly shared by the accuseds within the scope of the indictment and -if made- that of the speeches made in the assembly match by making a comparison and which of them happened earlier."

40. The findings concerning the Grand Chamber's judgment in the preliminary proceedings report are also worthy of attention:

"…

It is understood that the file opened with our court and registered on docket no. 2021/6 is a very large and comprehensive file consisting of 3530 pages of indictment, 324

folders of pieces of evidence and their attachments, and again in the same case there are 37 deceased victims, as well as 2676 complaints and victims.

The file was examined by our bench of court in a very meticulous and sensitive manner and it was established the following in respect of detention.

In this context; as regards the incidents that took place on 6-7 October 2014, they include the previous acts and activities by the accused persons in relation to the offence and the acts and activities that they subsequently demonstrated and carried out in this scope. For example, it is observed that they were arrested for the offences and acts that were not included in the case file of the Ankara 19th Assize Court with docket no. 2017/189 in which Selahattin Demirtaş was detained and that were not requested and that these offences and acts were not subject to detention by the said court. It is observed from the UYAP records that in the case-file of the Ankara 19th Assize Court with docket no. 2017/189, the accused Selahattin Demirtaş was tried and detained for the offences of establishing or managing an armed terrorist organisation, disseminating propaganda in favour of a terrorist organisation, praising the offence and the offender, public incitement to hatred and hostility, public incitement to disobey laws, organising and managing unlawful meetings and demonstration marches and participating in these acts, not dispersing of his own motion despite the warning by participating in the unlawful meetings and demonstration marches without a weapon, public incitement to commit an offence, public provocation to unlawful meetings and demonstration marches, forcibly dispersing meetings and demonstration marches. Our court, at the first stage, underlines that the facts and parties of the two files are not the same and that there is a new and different file opened with our court.

After these explanations, in respect of the accused persons, our court examined the offences imputed on the parties and the pieces of evidence given in the file by taking into account Article 100 et seq. of the CCP, Article 19 of the Constitution, Article 5 of the European Convention on Human Rights and the criteria in the case-laws of the European Court of Human Rights.

According to Article 46 of the European Convention on Human Rights, the High Contracting Parties are obliged to abide by the judgments of the ECtHR. In Article 90 of the Constitution, ratification of international treaties is regulated. According to 90(5) of the Constitution, "International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international

agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

In paragraph 63 of the judgment of Selahattin Demirtaş v. Turkey, the European Court of Human Rights stated that the Diyarbakır Public Prosecutor joined 31 separate criminal investigations in respect of Selahattin Demirtaş together in a single file, that there were currently seven separate sets of criminal proceedings pending against the applicant before the national courts, that the said investigations and proceedings did not constitute the subject-matter of this application and that the judgment it rendered would relate to the investigation being conducted by the Diyarbakır Chief Public Prosecutor's Office.

In the same judgment, the ECtHR stated that after November 2016, as a result of an operation carried out against 12 HDP members of parliament, the accused was arrested, and he was detained by the decision of the Diyarbakır 2nd Magistrate's Court and that the objection was dismissed by the Diyarbakır 3rd Magistrate's Court.

In its judgment, the ECtHR indicated that the applicant's first detention, which took place between 4 November 2017 and 7 December 2018, was the subject-matter of its examination. The applicant's second detention, which started on 20 September 2019, is related to the file before our court and has not been examined by the ECtHR. The application lodged with the Constitutional Court in respect of detention at our court in question is still pending. Accordingly, the said judgment is not binding for our court owing to the fact that no examination has been made regarding the detention in the file of our court and that this situation has also been confirmed by the ECtHR.

…"

41. In the preliminary proceedings report, the information and documents indicating the existence of sufficient evidence for the applicant's continued detention were assessed in detail.

42. As mentioned above (§ 14) as of 25 May 2021, the criminal proceedings were joined with the criminal proceedings before the Ankara 22nd Assize Court and accordingly the case file before the Ankara 19th Assize Court had been closed.

43. The authorities would like to note that the criminal proceedings concerning this detention (dated 20 September 2019) are still pending before the Ankara 22nd Assize Court. On 23 September 2021, the last hearing was held. At the same hearing, the assize court decided applicant's continued detention on the ground that reasons for detention specified in the preliminary proceedings report of 07.01.2021, the review during the hearing of 02.04.2021

and reviews made on 29.04.2021 and 06.09.2021 on the basis of case file still retain. The next hearing will be held on 18 October 2021.

f) The Applicant's Individual Application before the Constitutional Court Concerning His Current Detention

44. In the meantime, on 7 November 2019, the applicant Selahattin Demirtaş lodged an individual application with the Constitutional Court with respect to his detention by the decision of the Ankara 1st Magistrate Judgeship in Criminal Matters dated 20 September 2019 and the individual application was assigned the number 2019/36348. The individual application in question is still pending.

45. In his individual application form, the applicant raised the following complaints due to his placement in detention on 20 September 2019:

-Violation of his freedom of expression under Article 26 of the Constitution and Article 10 of the Convention and violation of his right to liberty and security under Article 19 of the Constitution and Article 5 of the Convention;

-Violation of his right to a reasoned judgment under Article 19 § 3 of the Constitution and Article 5 § 3 of the Convention;

-Violation of his right to an effective remedy under Article 19 § 8 of the Constitution and Article 5 § 4 of the Convention;

-Violation of Articles 13 and 14 of the Constitution in conjunction with Article 19 thereof and violation of Article 18 of the Convention (prohibition of detention on political grounds) in conjunction with Article 5 thereof; and

-Violation of the *non bis in idem* principle under Article 6 of the Constitution and Article 4 of Protocol No. 7 to the Convention.

g) The Applicant's Pending Individual Application (no. 13609/20) before the ECtHR Concerning His Detention Dated 20 September 2019

46. Furthermore, on 19 January 2021, the ECtHR communicated an application with the Government by stating that on 2 March 2020 Selahattin Demirtaş lodged an individual application concerning the violation of the certain rights in the Convention due to his placement in detention on 20 September 2019. In the communication letter; the Court put questions whether the rights guaranteed by Articles 5 § 1, 5 § 3, 5 § 4, 10 and 18 of the

Convention have been violated and granted time to the Government for submission of the observations. In the annexes of the communication letter, the subject-matter of the case was indicated by summarising the process starting from the applicant's placement in detention 4 November 2016 until his detention dated 20 September 2019 and **it was emphasised that the present application essentially concerned the applicant's placement in detention on 20 September 2019.**

h) **The *Applicant's* Current Situation as a Convict** (*The period after 3 May 2021 and the current situation)*

47. As mentioned above (§§ 15-22), a criminal proceeding was initiated against the applicant with the indictment of 16 August 2016 issued by the Bakırköy Chief Public Prosecutor's Office requesting that the applicant be sentenced for the offence of *disseminating propaganda in favour of a terrorist organisation* within the scope of the investigation initiated on the ground that he had disseminated terrorist propaganda in a meeting held on 17 March 2013 in İstanbul.

48. At the end of the proceedings conducted on the basis of the file with docket no. 2017/173, on 7 September 2018 the İstanbul 26th Assize Court had found that the applicant disseminated propaganda in favour of the PKK terrorist organisation due to some of his remarks expressed in the said meeting and sentenced him to 4 years and 8 months' imprisonment.

49. After the applicant's appeal on points of law and facts against the relevant decision had been dismissed by the Istanbul Court of Appeal on 4 December 2018, his conviction - in accordance with the provisions of law at the material time – had become final. Thereupon, on 7 December 2018 the execution of the judgment had started.

50. Thus, the execution of detention within the scope of the applicant's application which is the subject matter of the Grand Chamber's judgment had ended on 7 December 2018 (§§220 and 297 of the judgment). Subsequently, this detention period (4 November 2016 - 7 December 2018) had been deducted from the prison term that would be executed in accordance with the judgment of the İstanbul 26th Assize Court.

51. On the other hand, by the Law no 7188 dated 17 October 2019 which entered into force on 24 October 2019, it was introduced that convictions of certain offences listed in the bill could be appealed before the Court of Cassation following the Regional Court of Appeal's

final decision regardless of the term of the penalty. On this basis, the applicant lodged a further appeal with the Court of Cassation.

52. In this scope, the applicant had filed a petition dated 30 October 2019 with the İstanbul 26th Assize Court and requested that the execution of the judgment be stayed in order to have recourse to the remedy of appeal against the relevant judgment. Thereupon, on 31 October 2019 the İstanbul 26th Assize Court had ordered that the execution of the applicant's sentence be suspended following the approval of the request and that the applicant be released in terms of the said conviction.

53. Accordingly, the applicant's deprivation of his right to liberty and security between 7 December 2018 and 31 October 2019 was based on a decision ordering his conviction, and was not considered by the Grand Chamber (see, *Selahattin Demirtaş v. Turkey* (No. 2) [GC], no. 14305/17, § 297).

-The Judgment of the Court of Cassation Dated 26 April 2021

54. Upon the applicant's appeal, on 26 April 2021, the Court of Cassation examined the Istanbul Assize Court's judgment, and the Court of Cassation examined firstly the applicant's parliamentary immunity and inviolability in detail.

55. As regards the allegation that the applicant's the parliamentary inviolability was unlawfully lifted, the Court of Cassation mentioned in short that *"...given that the accused, whose inviolability was lifted under Provisional Article 20 added to the Constitution by Article 1 of the Law no. 6718 dated 20 May 2016 and who took office as the co-chair of the HDP on the date of the offence, was not elected as an MP; the appeal of the accused's lawyer indicating that 'inviolability of the accused was unlawfully lifted' was not found justified."*

56. As regards the allegation that the applicant's statements, which are the subject matter of the proceedings, fall within parliamentary non-liability regulated under Article 83/1 of the Constitution the Court of Cassation mentioned in brief that *"**Given that the accused expressed his statements, which are the subject matter of the proceedings and which are not related with legislative activities, outside the Assembly- namely during Nawroz events which were held by the provincial organization of the HDP and the Peoples' Democratic Congress in Kazlıçeşme square located in Zeytinburnu district of Istanbul; the appeal of the accused's lawyer indicating that 'the said statements fall within the scope of parliamentary non-liability under Article 83/1 of the Constitution' was not accredited**."*

57. As regards the other complaints of the applicant with respect to the alleged shortcomings occurred on trials counducted before the first instance criminal courts, the Court

of Cassation examined the said complaints under Article 36 of the Turkish Constitution and Article 6 of the Convention and in accordance with the ECHR's case law. Consequently, the Court of Cassation concluded that *"...It has been understood that the applicant insistently avoided making defence statements from the beginning of the trial, that Article 14 of the Turkish Constitution and Article 17 of the European Convention on Human Rights prohibit "the abuse of rights", that completion of cases within a reasonable time is possible only when the parties fulfil their obligations in an equitable manner, that although it was not required, the court gave an interlocutory decision at the hearing of 30 April 2018 ordering that the public prosecutor's written opinion on the merits should be notified to the accused, that after the SEGBIS (the Audio/Visual Information System) records had been transcribed, the minutes of the hearing containing the written opinion on the merits were notified to the accused on 21 June 2018, that the fact that the written opinion on the merits was again notified to the accused on 4 September 2018 would not necessitate giving the accused extra time to make his defence, that in this context, there was no need to separately notify the written opinion on the merits as the minutes of the hearing notified to the accused on 21 June 2018 contained the prosecution's written opinion on the merits, and that there was sufficient time to prepare his defence between the date of notification of the minutes of hearing and the date of hearing. Accordingly, it is not possible to agree with the argument raised by the accused's defence counsel to the effect that their right to defence was restricted and the opinion expressed in the legal opinion (tebliğname) of the Chief Public Prosecutor's Office at the Court of Cassation to the effect that the decision should be quashed".*

58. As a result, the Court of Cassation upheld the Istanbul Assize Court's judgment sentencing the applicant 4 years and 8 months' imprisonment on the ground that *"...the court's decision convicting the accused on the ground that he had committed the offence of 'disseminating propaganda in favour of the PKK/KCK armed terrorist organisation' has been found to be correct".*

59. The applicant lodged an individual application with the Constitutional Court against this final judgment on 10 May 2021 (Appl. No. 2021/19210). The applicant claimed that his right to a fair trial, freedom of expression, right to free elections were violated on account of this judgment. Furthermore, he claimed that the safeguards prescribed under Articles 13 and 14 of the Constitution, notably those specified under the heading of "*Restriction of fundamental rights and freedoms"* and "*Prohibition of abuse of fundamental rights and freedoms"* were violated in conjunction with the violations of substantial rights

indicated above. On the same ground, he claimed that Article 18 of the Convention was also violated. The Constitutional Court's examination concerning the application is still underway.

i) The Execution of the Judgment of the Court of Cassation Dated 26 April 2021

60. The execution of this judgment started on 3 May 2021.

61. In accordance with this judgment, Head Public Prosecutor's Office of Edirne, the province in which the applicant is being kept as convict, prepared a committal order (*müddetname*) on 6 May 2021. According to this order, the applicant may be released on the terms of conditional release (*şartlı tahliye*) on 3 November 2021. Otherwise, the date for his release is 3 January 2023 (*bihakkın tahliye*).

62. The committal order (*müddetname*) was notified to the applicant himself on 21 May 2021.

63. Accordingly, as of 3 May 2021, the applicant has no longer been kept in prison as detainee but he is being kept as convicted on account of the said judgment of Istanbul Assize Court.

j) The applicant's ongoing detention pending trial

64. As noted above, the applicant is held in prison as a convict. However, his detention started on 20 September 2019 is still in place. Lastly, the trial court, notably Ankara 22nd Assize Court reviewed his detention during the hearing of 23 September 2021 and decided its continuation.

65. This court, on several occasions, made an assessment in view of the European Court's judgment. Most recently, on 6 September 2021, the Ankara Assize Court, in line with its previous analysis, found that :

"...After these explanations, in respect of the accused persons, our court examined the offences imputed on the parties and the pieces of evidence given in the file by taking into account Article 100 et seq. of the CCP, Article 19 of the Constitution, Article 5 of the European Convention on Human Rights and the criteria in the case-laws of the European Court of Human Rights.

According to Article 46 of the European Convention on Human Rights, the High Contracting Parties are obliged to abide by the judgments of the ECtHR. In Article 90 of the Constitution, ratification of international treaties is regulated. According to 90(5) of

the Constitution, "International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

In paragraph 63 of the judgment of Selahattin Demirtaş v. Turkey, the European Court of Human Rights stated that the Diyarbakır Public Prosecutor joined 31 separate criminal investigations in respect of Selahattin Demirtaş together in a single file, that there were currently seven separate sets of criminal proceedings pending against the applicant before the national courts, that the said investigations and proceedings did not constitute the subject-matter of this application and that the judgment it rendered would relate to the investigation being conducted by the Diyarbakır Chief Public Prosecutor's Office.

In the same judgment, the ECtHR stated that after November 2016, as a result of an operation carried out against 12 HDP members of parliament, the accused was arrested, and he was detained by the decision of the Diyarbakır 2nd Magistrate's Court and that the objection was dismissed by the Diyarbakır 3rd Magistrate's Court.

In its judgment, the ECtHR indicated that the applicant's first detention, which took place between 4 November 2017 and 7 December 2018, was the subject-matter of its examination. The applicant's second detention, which started on 20 September 2019, is related to the file before our court and has not been examined by the ECtHR. The application lodged with the Constitutional Court in respect of detention at our court in question is still pending. Accordingly, the said judgment is not binding for our court owing to the fact that no examination has been made regarding the detention in the file of our court and that this situation has also been confirmed by the ECtHR...."

66. In this respect, the Ankara Assize Court examined the European Court's reasoning and held that the judgment of violation is not related to the applicant's current detention.

k) The Committee's Findings Concerning Individual Measures

67. The Committee of Ministers examined Demirtaş in its 1398th, 1406th and 1411th CM-DH meetings. The Turkish authorities would like to make explanations in response to the Committee's findings and decisions taken in these meetings.

68. In particular, the Committee's decisions taken as a result of its last examination in the 1411th CM-DH meeting need further consideration.

69. In the authorities' view, there are two issues outstanding in these decisions:

1) Whether the second set of proceedings, in other words the Istanbul Assize Court's conviction, was also covered by the Grand Chamber judgment;
2) The implications of lifting of the applicant's inviolability.

70. The Turkish authorities are of the opinion that the Committee's approach with respect to these issues is not compliant with the Court's findings.

1 –The second set of proceedings in the supervision process

71. The criminal proceedings conducted by the Istanbul Assize Court, as a result of which the applicant was convicted, were identified as the second set of proceedings in the notes and decisions taken so far.

72. The Committee, in line with the Secretariat's analysis[1], indicates that these proceedings were also examined by the Grand Chamber; and thus, they are also included in the supervision process.

73. The Turkish authorities would like to underline that in the judgment at hand there is no an objective ground supporting this approach.

74. The European Court of Human Rights has never examined the merits of Istanbul Assize Court's judgment of 7 September. This judgment, which has been defined as second set of proceedings, was taken into account as far as it is related to the applicant's detention period (§§285-297).

75. As noted above, the execution of the applicant's prison sentence and the pre-trial detention on account of a separate set of proceedings were overlapped. For this reason, the Court considered these proceedings during the determination of the term passed under detention concerning Article 5 aspects of the application. Accordingly, the authorities would like to underline that this case itself is not a subject matter of the ongoing supervision process

[1] In the notes on agenda (CM/Notes/1411/H46-39) it is indicated that "*The applicant's conviction under Article 7 § 2 of the Anti-Terrorism Law in the criminal proceedings before the Istanbul Court has become final and the applicant started serving his prison sentence on 3 May 2021. The authorities argue that this conviction and sentence are not covered by the European Court's judgment and that there is therefore no obligation on Turkey under the Convention to release the applicant from prison. In the Secretariat's view, however, the conviction and sentence under Article 7 § 2 fall within the scope of the Court's judgment, giving rise to an obligation to quash the conviction and release the applicant*."

as the Court has not delivered a judgment regarding this case. Thus, this case can only be considered to the extent that it is related to the applicant's detention.

76. The authorities would like to note that the period which spent by the applicant in the prison as a convict on account of this judgment has not been taken into account by the Court as it falls within the scope of Article 5/1(a) of the Convention (See §§ 296, 297 of the Judgment). The same fact is also the case in terms of execution of the judgment as of 3 May 2021 when he started serving the remainder of the prison sentence imposed on him.

77. In line with the Court's approach based on Article 5/1(a) of the Convention, the Committee cannot examine the period during which the applicant serves his prison sentence, notably the period begun on 3 May 2021.

78. The contrary opinions should be based on the Court's findings. In particular, what shortcomings in the second set of proceedings resulted in what violations should clearly be demonstrated.

79. This is not possible because the European Court found no violation on the basis of the case facts surrounding the so called second set of proceedings. In spite of this clear fact, it is striking for the authorities how the Secretariat could indicate that conviction and sentence under Article 7 § 2 fall within the scope of the Court's judgment, giving rise to an obligation to quash the conviction and release the applicant. Further, it is also incomprehensible for the authorities that how the Committee could take a decision calling the quashing of the applicant's conviction by the Istanbul Assize Court.

80. Once again the Turkish authorities would like to recall that the Committee should conduct the supervision of a given judgment within the limits set by the Court. If there is no a violation found by the Court with respect to a particular case, the Committee cannot take decisions concerning this case referring to other cases substantially examined by the Court.

81. The Istanbul Assize Court's judgment and the applicant's conviction with final effect are new facts that could be challenged by the applicant before the Constitutional Court and the European Court, if need be. However, the Committee took this issue as if it was a finalised case without seeking the exhaustion of the legal remedys. This amounts to be an excess of power.

82. The Committee has already granted the applicant remedies that he can obtain as a result of successful individual applications. It appears that the applicant currently has no a legal interest to lodge an application with the Court unless he is not willing to claim just satisfaction. The most significant legal remedy that can be claimed through the judicial

means available has already been granted by the Committee who called the applicant's immediate release and the quashing of his conviction.

83. The Committee justified this inconsistency by indicating that the heart of the violation of Article 10 found by the Court was that the unprecedented, *ad homines* amendment of Article 83 § 2 of the Turkish Constitution on 20 May 2016 unforeseeably deprived the applicant of parliamentary inviolability in respect of statements he made as a member of Parliament (CM/Del/Dec(2021)1411/H46-39, § 3).

84. In response to this claim the authorities would like to reiterate that the European Court has never examined the second set of proceedings on the basis of violation of Article 10. As noted above, the Court considered this case in so far as it is related to the applicant's detention. No judgment has been delivered on the merits of the second set of proceedings.

85. On the other hand, the Court of Cassation, in its judgment of 26 April 2021, in view of Article 83/1 of the Constitution where the parliamentary nonliability is provided, found that the applicant's speech was not covered by it and upheld the first instance's judgment. In its reasoning this Court indicated that the applicant's speech is not related to his parliamentarian activities (see §55 above).

86. Therefore, the Committtee's finding in the decisions appears to be superfluous assessment as the case facts in question have never been examined by the Court. The authorities would like to highlight that each case should be examined under its own circumstances. In this way, it should be established whether the accused's expression falls within the scope of Parlimentarian non-liability provided under Article 83/1 of the Constitution. In fact, in the Grand Chamber judgment, the lack of such an examination by the domestic courts was found as the underlying reason of the violation of Article 10[2]. Unlike previous judgments, the Court of Cassation made an analysis in its judgment upholding the judgment of Istanbul Assize Court (see above para. 56).

87. Sometimes the violation of Article 18 is presented as a counter argument to broaden the margin of supervision conducted by the Committee. In this respect, the authorities would like to recall paragraph 402 of the judgment:

> "...*The Government were not given notice of the applicant's complaint under Article 18 in conjunction with Article 10 of the Convention, and therefore no specific question was put to the*

[2] See § 262 of Demirtaş (No.2): "**262**...*Nevertheless, the magistrates who ordered the applicant's initial and continued pre-trial detention, the prosecutors who instituted the criminal proceedings against him, the assize court judges who decided to keep him in pre-trial detention and, lastly, the Constitutional Court judges did not carry out any examination of whether the speeches in issue were protected on account of the applicant's parliamentary non-liability. The Court is struck by the lack of any kind of analysis of the applicant's argument on this point*."

parties about it. The Court therefore considers that the applicant's complaint under Article 18 of the Convention may be considered only in conjunction with Article 5, this being the complaint of which notice was given"

88. That is, the Court's findings with respect to violation of Article 18 could only be considered in conjunction with the violation of Article 5.

2 –The Parlimentary Immunity

89. Another outstanding issue adversely affecting the supervision process is the Committee's presumptions regarding the lifting of the applicant's parliamentary immunity. In particular the decisions taken in the 1411th CM-DH meeting suggest that there is a confusion concerning the legal framework of the Parliamentary immunity.

90. At the outset, the authorities would like to note that there are two types of Parliamentary immunity in the Turkish legal system. These are Parliamentary non-liability and inviolability. It appears that there is a confusion concerning the difference between the non-liability and inviolability.

91. For this reason the authorities believe that a brief explanation concerning these terms would be helpful.

i) Parliamentary non-liability

92. The Parliamentary non-liability is provided in Article 83/1 of the Constitution. This safeguard protects freedom of expression of the members of parliament since they cannot be subject to judicial proceedings on account of votes cast and views expressed within the National Assembly or the repetition or dissemination of such views outside the Assembly, unless the Assembly decides otherwise at a sitting held on a proposal by the Bureau.

93. Parliamentary non-liability is absolute. It does not allow any investigative measures and continues to protect members of parliament even after the end of their term of office. It is clear that repeating a political speech outside the National Assembly cannot be construed as being limited to repeating the same words that were used in Parliament.

ii) Parliamentary inviolability

94. Unlike parliamentary non-liability parliamentary inviolability is not absolute. It provides a temporary protection, shielding elected representatives from any arrest, detention or prosecution during their term of office without the consent of the National Assembly. The criminal proceedings can follow their normal course once the Member of Parliament's term of office has ended.

95. Another difference is the nature of the offences charged. As indicated above, no criminal investigation or prosecution shall be initiated concerning the acts of exercising the freedom of express during the parliamentary activities. Accordingly, if an investigation concerning the speeches of a member of parliament is initiated once the deputy's term of office has ended, it should be first established that whether that speech falls within the scope of Parliamentary non-liability provided by Article 83/1 of the Constitution. To this end, it should be examined whether the speeches in question are related to the MP's parliamentary activities or not.

96. This approach is in line with the Euoropean Court's established case law. For instance, in *Cordova v. Italy (No. 2) (Appl.No.45649/99)* the Court's following findings are quite significant in this respect:

> "*63. The Court notes however that in this case Mr Sgarbi's statements, having been made at an election meeting and* ***therefore outside a legislative chamber, were not connected with the exercise of parliamentary functions in the strict sense****, and seem to be more consistent with a personal quarrel. In such circumstances it would not be right to deny someone access to a court purely on the basis that the quarrel might be political in nature or connected with political activities.*
>
> 66. ... *In this connection it should be noted that there have since been developments in the Constitutional Court's case-law on the issue, and that it now considers it wrong for immunity to extend to statements lacking any substantial connection with prior parliamentary activities which the parliamentarian concerned could be thought to be relaying (see paragraphs 30, 31 and 45 above).*[3]"

97. The Turkish authorities would like to note that the applicant preferred to be a candidate for the presidential elections of 2018 instead of parliamentary elections. As a result, by his own will, his term as a MP ended at that time. Accordingly, he cannot make use of the Parliamentary inviolability provided by Article 83/2 of the Constitution since then. Accordingly, the presumption that no criminal investigation, prosecution or proceedings could be initiated if the Constitutional amendment of 2016 was not introduced is not true.

98. In this sense, the authorities would like to highlight that the lifting of the applicant's parliamentary inviolability is not relevant information at the moment when determining whether an investigation/prosecution is procedurally possible or not. The non-

[3] Also in **De Jorio C. Italie 73936/01** "*53. En l'espèce, la Cour relève que, prononcées dans le cadre d'une interview avec un journaliste, et donc en dehors d'une chambre législative, les déclarations litigieuses de X n'étaient pas liées à l'exercice de fonctions parlementaires* stricto sensu*, paraissant plutôt s'inscrire dans le cadre d'une querelle entre particuliers. Or, dans un tel cas, on ne saurait justifier un déni d'accès à la justice par le seul motif que la querelle pourrait être de nature politique ou liée à une activité politique (voir, mutatis mutandis, Cordova c. Italie (no 2), précité, § 63).*"

liability under Article 83/1 should not be confused with inviolability provided under Article 83/2 of the Constitution.

99. In any event, as the applicant has not been a MP since 2018, the judicial authorities are able to assess whether the applicant's speeches fall within the scope of Article 83/1 (parliamentary non – liability) or not. To do so the applicant's statements made before the parliament should be compared to those made outside the parliament. Furthermore, it should also be established whether the content of the speeches made outside are related to the accused's parliemantary activities (see the *Cordova* above).

100. However, the decisions taken by the Committee imply that no such a judicial assessment is necessary. It appears that the Committee has tacitly determined that all cases relating to the applicants' speeches during his term of office are automatically fall within the scope of non-liability provided by Article 83/1 of the Constitution. However, the Committee is not able to do so as it is not a judicial body. Each case should be assessed by the relevant courts under its own circumstances. Nonetheless, the Committe, without examining the content of the case files, indicated that the all charges should be dropped. This approach implies that the Committee has found that the applicant's statements are within the scope of absolute protection of non-liability.

101. As indicated in the decisions, the constitutional amendments in question were introduced in respect of Article 83/2 of the Constitution. The absolute protection is provided under Article 83/1 of the Constitution. This amendment was relating to the procedural aspect of the issue as it prescribed measures concerning the procedural requirements sought under Article 83/2. As such, it did not affect the substantial essence of the parliamentary immunity of the applicant. Hence, the applicant may still benefit from the absolute protection of parliamentary non-liability today. However, at the outset, a judicial assessment should be made by the relevant prosecution or judicial authorities. The Committee is not in such a position.

102. In this respect, the decisions taken are not in line with the Convention, the Court's case law, the Turkish Constitution and the basic legal principles. At the moment, there is no a procedural obstacle to maintain the onging criminal investigations and proceedings. As regards the finalised second set of the proceedings the legal avenues are still in place. The applicant may resort to the European Court if necessary. The Court would examine the application and decide if there is a violation. The Committee is not currently in a position to assess the legality of this particular case.

Just Satisfaction

103. The Court awarded just satisfaction in respect of pecuniary damage, non-pecuniary damage and costs and expences. The Government ensured that the just satisfaction amount awarded was disbursed within the deadline set by the European Court of Human Rights (ECtHR). The Government therefore considers that the applicant has been redressed for the negative consequences of the violation by way of the just satisfaction awarded by the Court. No further individual measures are necessary.

Conclusion

104. As a conclusion, the Turkish authorities would like to highlight that the applicant is currently held in prison as a convict. Currently, the remainder of the prison sentence -the first part of which was executed between 7 December 2018 and 31 October 2019- is being executed. The applicant may be released on the terms of conditional release (*şartlı tahliye*) on 3 November 2021 The execution of the prison sentence of the applicant will come to an end on 3 January 2023, the foreseen date of release (*bihakkın tahliye*).

105. The Turkish authotrities would further like to note that the applicant's pending detention within the context of criminal proceedings before the Ankara 22th Assize Court continues. This detention was lastly examined on 23 September 2021, and the assize court decided the applicant's continued detention. The next hearing will be held on 18 - 27 October 2021.

106. With respect to the applicant's current detention pending trials, the Turkish authorities would like to recall that this detention has started on 20 September 2019. The authorities would like to underline that the Ankara Assize Court firmly held that the current detention was not examined by the Grand Chamber in the judgment at hand. This detention is a subject matter of another individual application before the Constitutional Court (Appl.No. 2019/36348). On the other hand same detention has also been examined by the European Court (Appl. No. 13609/20). Therefore, there are multiple applications before both the Constitutional Court and European Court of Human Rights with respect to the applicant's detention starting on 20 September 2019.

107. On this basis, the Turkish authorities would like to emphasize that the applicant's current detention has never been examined on points of law. For this reason, no urgent individual measure, such as the applicant's immediate release, can be based on the judgment at hand. As found by the trial court, the European Court examined the applicant's detention between 4 November 2016 – 7 December 2018 on points of law. This detention has come to an end on 2 September 2019. The European Court's considerations regarding the current

detention, starting on 20 September 2019, will be revealed as a result of its new judgment. In this respect, the authorities are of the opinion that the Committee's calls for the applicant's immediate release have no legal basis. The authorities would like to ask what would be the result of a new judgment where the Court finds that there is no violation of Article 5 concerning the applicant's current detention. Could the Committee maintain its current stance on the basis of the judgment at hand?

108. The Turkish authorities would further like to note that the decisions no 3 and 4 taken during the 1411th CM-DH meeting appear to be problematic with the purpose of the supervision of the execution of the judgment[4].

109. The Committee indicates that all charges in relation with the applicant's freedom of expression should be automatically dropped because no criminal proceedings would have been possible if his **parliamentary inviolability** had not been lifted by the Constitutional amendment of 2016. This presumption is not true.

110. As indicated above parliamentary inviolability is a temporary measure. It ends automatically when the term of office ends. Parlimentary non-liability provides an absolute protection with respect to freedom of expression exercised during the parliamentary activities. Therefore, a member of parliament might be prosecuted on account of his/her speeches once the term of office comes to an end. His / her speeches might involve racist remarks, propaganda of terrorism and instigation to violence etc.

111. The investigation or prosecution authorities should assess whether these speeches fall into the scope of absolute non-liability. In this respect, the facts such as whether the statements inquestion are repeat of the expressions made in the parliament and if not so whether it is related to the parliamentary activities shall be taken into account. In order to do so the prosecution office or the trial court should examine the accused's speeches made in the parliament and compare them with the expression subject to investigation. Accordingly, as the

[4] The Deputies…

3. underlined, however, that the heart of the violation of Article 10 found by the Court was that the unprecedented, *ad homines* amendment of Article 83 § 2 of the Turkish Constitution on 20 May 2016 unforeseeably deprived the applicant of parliamentary inviolability in respect of statements he made as a member of Parliament; concluded therefore that the obligation to provide him with *restitutio in integrum* in respect of this violation requires the removal of all the negative consequences for the applicant's freedom of expression which resulted from the constitutional amendment, in particular **the consequences of criminal prosecutions in respect of statements made by him which would otherwise have been protected under Article 83 § 2 of the Constitution**;

4. **called, therefore, for the applicant's immediate release, the quashing of his conviction by the Istanbul Assize Court, and termination of the criminal proceedings pending before the 22nd Ankara Assize Court, together with the removal of all other negative consequences of the constitutional amendment**;

Committee has done, it is not possible to define automatically that all speeches are within the scope of absolute non-liability. This conclusion requires a meticulous case-specific judicial examination. Each case needs to be examined under its own circumstances.

112. For instance, within the second set of proceedings, the Court of Cassation examined the content of the applicant's speech and found that it was not relevant with his parliamentary activities. As a result, this court held that the applicant's statements constituted the offence of terrorism propaganda. Accordingly, it is not possible to make an overall identification of the accused's statements without examining the content. Whether a specific expression falls into the scope of the nonliability might be established only by a judicial decision.

113. The authorities would like to note that the applicant preferred to be a candidate for the presidential elections of 2018 instead of parliamentary elections. As a result, by his own will, his term as a MP ended at that time. Accordingly, he cannot make use of the Parliamentary inviolability under Article 83/2 of the Constitution since then.

114. Therefore, even if there was no Constitutional amendment of 2016, the applicant could be investigated as from 2018. In this respect, the investigation or prosecution authorities are entitled to initiate a proceeding to assess whether the applicant's speech falls within the scope of non-liability (Art 83/1) or not. This practice is in line with the European Court's case law.

115. The authorities are of the opinion that the decisions of the Committee suggest that there is confusion with respect to the functions of parliamentary non-liability (Article 83/1 of the Constitution) and inviolability (Article 83/2). The nonliability provides an absolute, substantial protection whereas the inviolability is a temporary measure. The constitutional amendment of 2016 only concerns Article 83/2. This amendment introduced a provisional Article in the Constitution concerning the procedural aspect of the lifting of the immunity, so that it does not affect the substantial essence of the immunity. Nonetheless, the Committee took a decision as though the amendment in the Constitution involves provisions relating the substantial aspect of the parliamentary immunity as well.

116. The authorities would like to clarify that the amendment in question has no substantial effect. The applicant can still claim that a speech examined under an investigation falls within the scope of parliamentary non-liability as he did in the second set of proceedings. In such a case the prosecution office or the criminal court should assess the content of the statement. This burden on the part of the judicial authorities has never been lifted. The

European Court found violation on account of domestic judicial authorities' failure to do so (§262 of the judgment).

117. To conclude, the authorities would like to indicate that the lifting of the applicant's inviolability with the constitutional amendment of 2016 has no effect on the ongoing criminal proceedings as it has a procedural nature. In any event, the applicant could be investigated or prosecuted as of 2018 when his term of office ended as a result of his candidacy for presidential election. In this respect, the presumption adopted by the Committee that no criminal investigation, prosecution or proceeding could have been possible unless the applicant's inviolability had not been lifted by the constitutional amendment is not correct. Therefore, the decisions taken in 1411th CM-DH meeting are not compliant with the Convention, the Constitution, the Court's case law and legal principles and rules governing the supervision of execution in general.

III. GENERAL MEASURES

A. Legislative Arrangements Concerning Pre-trial Detention

-Violation of Article 5/1 and 5/3 of the Convention

118. Under this heading the authorities will explain the general measures taken or envisaged to be taken concerning the violation of right to liberty and security on account of the pre-trial detention.

119. Article 100 *et seq.* of the CCP sets out the grounds for pre-trial detention. Pursuant to Article 100 of the CCP, pre-trial detention may be ordered against an accused or suspected person provided that there is concrete evidence grounding a strong suspicion of commission of an offence and that there is a ground for pre-trial detention. By the Law no. 6526 of 21 February 2014, the term "facts (*olgu*)" previously used in the said Article was amended as "concrete evidence (*somut deliller*)". The same Article also lists the circumstances which may constitute grounds for pre-trial detention.

120. The Turkish Authorities would like to state the followings to reach a clear understanding. According to this Article, two pre-condition is required for a pre-trial detention. First, there should be strong suspicion demonstrating that a crime has been committed. Second, there exists justifiable reason(s) for detention. What should be understood as 'reason(s) for detention' is clearly regulated under the same Article. In this scope, only the following reasons could be taken into account as a justifiable ground for detention:

- The concrete facts that raise the suspicion that the suspect or the accused would escape, hide or flee;
- Wrongful behaviors of the suspect or accused, notably tampering with evidence, attempting to exert pressure on witnesses, victims or others.

121. In other words, a court cannot detain a person for any reason, indicating that there is a strong suspicion of crime. It should demonstrate the existence of one of the reasons particularly sought in the law.

122. However, if the offences listed in the CCP 100/3 – these are called catalogue crimes – are in question, the existence of a reason for detention could be presumed. The authorities would also like to note that the application of this presumption has been significantly narrowed down by the legislative amendments within the context of 4th judicial package, which was recently adopted (see §§ 132 - 138).

123. Article 101 of the CCP provides that motions for pre-trial detention must absolutely contain a comprehensive reasoning and legal and factual grounds indicating that the application of conditional bail measures (*adli kontrol tedbiri*) would remain insufficient. The second paragraph of the same Article specifies which contents must be clearly expressed in deciding to place a person in pre-trial detention, extend the detention, or dismiss a request for release. Accordingly, such decisions shall clearly specify the evidence indicating the existence of a strong criminal suspicion, grounds for pre-trial detention, and proportionality of the detention measure, as well as justifying them with concrete facts. The last paragraph of the Article provides the right to objection against detention orders.

124. Article 103 of the CCP stipulates that the public prosecutor or the suspect or his/her defence counsel may request a magistrate judge to release the suspect on conditional bail. According to Article 103 § 2 of the CCP, if the public prosecutor considers that conditional bail or pre-trial detention is no longer necessary at the investigation stage, he/she may decide *ex officio* to release the suspect. The same Article adds that the suspect shall be released when a decision of non-prosecution is issued. Furthermore, Article 104 of the CCP provides that a suspect or an accused person may submit a request for release at any stage of investigation or prosecution. The second paragraph of this Article stipulates that the request for release shall be ruled on by a magistrate judge or a court and that it shall be possible to raise an objection against those decisions.

125. Article 108 of the CCP indicates that *ex officio* reviews of detention shall be conducted in respect of detained suspects and accused persons at regular intervals.

126. According to Article 109 of the CCP, the preventive measure of conditional bail is provided as an alternative to pre-trial detention. As a result of the amendment introduced by the Law no. 6352 of 2 July 2012, the maximum limit of the prescribed sentence is no longer a criterion that will be sought in terms of applicability of a conditional bail measure. Thanks to this amendment, conditional bail may be applied as an alternative measure in all cases where a pre-trial detention order may be issued.

127. Furthermore, the amendment to this Article introduced on 14 April 2020 allows for conditional bail as alternative to pre-trial detention with respect to the suspects who have been determined to be unable to maintain their lives on their own under the conditions of penitentiary institutions as per the Law on the Execution of Penalties and Security Measures despite the existence of circumstances warranting detention. Female suspects who are pregnant or have given birth in the preceding six months could be also be released on the basis of conditional bail. The remainder of the Article sets out the types of obligations with regard to conditional bail.

128. Therefore, even if there are grounds for pre-trial detention, the relevant magistrate judge or court may decide to apply the conditional bail measure instead of pre-trial detention. As indicated above, even if a detention order is to be issued, this order must specify the legal and factual reasons as to why the conditional bail measure would be insufficient. Thus, as it can be seen, conditional bail is a preventive measure which must be taken into consideration before detention.

129. In addition to the above-mentioned legislation, Turkey has taken an additional step to reduce the length of detention. Namely, with the Law no. 7188 which came into force on 24 October 2019 (added as Article 102 § 4 of the CCP), the period of pre-trial detention during the investigation period was reduced. In the cases within the jurisdiction of the assize courts, this period is one-year maximum[5] and in the case of crimes that are not within the jurisdiction of the assize courts, this period is six-month maximum. However, in terms of the crimes defined in the Fourth, Fifth, Sixth and Seventh Chapters of the Fourth Section of the Second Book of the TCC, crimes within the scope of the Anti-Terror Law and crimes committed collectively, this period is one year and six months maximum, and may be extended for another six months by describing the reason. Accordingly, the public prosecutors have to finish the investigation within these periods in cases where the suspect is in pre-trial detention. Otherwise, the suspect shall be released.

[5]In case of some certain –severe- crimes this period is one year and six months and might be extended for six months.

130. The CM examined the aforementioned reforms made until 2016 within the context of *Demirel* group of cases. The CM found these reforms sufficient and stated that all the measures required by Article 46 § 1 of the Convention have been adopted, thus the CM decided to close the examination of the *Demirel* group of cases in 2016 (see Final Resolution CM/ResDH (ResDH (2016)332).

131. The CM stated that they also noted with interest the current reforms regarding the *Mergen and Others* group of cases in the 1377bis DH meeting held on 1-3 September 2020.

-4th Judicial Package of 8 July 2021

132. Lastly, the 4th judicial package was presented to the parliament on 18 June 2021 and the bill of legislation was adopted on 8 July 2021[6]. As a result, Article 100 of the Code of Criminal Procedures was amended. This amendment introduced a further safeguard as to the detention on remand on the basis of catalogue crimes.

133. As mentioned above the certain crimes defined as catalogue crimes suggest that a justifiable ground exists as regards detention on remand. With the most recent amendments application of this presumption has been significantly narrowed down. That is to say, mere charging with the catalogue crimes shall not be a sufficient reason for detention, concrete evidence justifying the strong suspicion shall also be presented.

134. Further, due to the amendment in Article 110 of the Code of Criminal Law, it has been made mandatory for the judicial authorities to periodically examine the issue of whether the continuation of the conditional bail obligation will be necessary during both the investigation and prosecution phases. That is to say, during the investigation phase, a decision will be made by the magistrate judge upon the request of the public prosecutor, at intervals of 4 months at the latest, on whether the suspect's obligation to continue conditional bail is required. During the trial phase, the court will decide ex officio whether the accused, who has a conditional bail decision, will continue this obligation or not, within 4 months at the latest.

135. Additionally, a person who is caught outside of working hours upon an arrest warrant issued for the purpose of taking his/her statement and who undertakes to be present before the judicial authority on the specified date, will be able to be released in line with the order of the public prosecutor.

136. Furthermore, every 2 days spent under the obligation not to leave the residence, will be taken into account as 1 day in the deduction of the penalty. Further, the grounds for

[6] https://www.tbmm.gov.tr/kanunlar/k7331.html

increasing the penalty in crimes of "deliberate killing", "deliberate injury", "torture" and "deprivation of liberty" committed against the spouse will also include the divorced spouse.

137. 4th Judicial Package had also included significant change with regard to objection procedure to the decisions of detention and conditional bail rendered by Magistrates Judgeships[7]. Previously, a Magistrate Judgship's decision of detention (or conditional bail) was objected to the next Magistrate's Judgship or other Magistrate's Judgship. However, due to the change in legislation by the 4th Judicial Package, Criminal Court of First Instance was determined as objection authority for the decisions of Magistrate's Judgships. Thus, a more effective appeal mechanism was put in power.

138. As a conclusion, the Turkish authorities would like to indicate that the current legal safeguards concerning the pre-trial detention provide a Convention compliant legal framework.

B. Legislative Amendments Concerning Freedom of Expression

-For the Offence of Disseminating Propaganda in Favour of an Illegal Organisation (Article 7 § 2 of the Anti-Terrorism Act Law no. 3713)

139. The first sentence of section 7(2) of Law no. 3713 was amended on 30 April 2013 by Law no. 6459. As per the amendment, the act of making propaganda of terrorist organizations by justifying or praising or inciting their methods has been recognized as an offence only if they contain violence, force or threat.

140. The Article reads before and after the amendment as follows:

Art. 7 § 2 (Former Version)	Art. 7 § 2 (with 2013 amendment)
"Any person who disseminates propaganda in favour of a terrorist organisation shall be liable to a term of imprisonment of one to five years ..." (…)	"Any person who disseminates propaganda in favour of a terrorist organisation by justifying, praising or encouraging the use of methods constituting coercion, violence or threats shall be liable to a term of imprisonment of one to five years ..." (…)

[7] This amendment was adopted as bill of legislation on 8 July 2021.

-The latest amendments introduced on 17/10/2019 with Law no 7188.

141. In addition to the abovementioned amendment, the authorities would like to draw the Committee's attention into the recent legislative amendments made on 17/10/2019 with Law no 7188. Within the context of the said amendment a new progress was added into the Article 7/2 of the Anti-Terror Law. This amendment will further improve right to freedom of expression.

Art. 7 § 2 (with 2013 amendment)	Art. 7 § 2 (with 2019 amendment)
Anyone who makes propaganda of a terrorist organization by justifying or praising or inciting the terroristorganizations' methods which contain violence, force or threat shall be sentenced to imprisonment for a term of one to five years. In the event that this offense is committed through the press and publication, the penalty to be imposed is increased by half. In addition, judicial fines shall be imposed on those responsible for the media who have not participated in committing the crime of the press and media organs.	Anyone who makes propaganda of a terrorist organization by justifying or praising or inciting the terroristorganizations' methods which contain violence, force or threat shall be sentenced to imprisonment for a term of one to five years. In the event that this offense is committed through the press and publication, the penalty to be imposed is increased by half. In addition, judicial fines shall be imposed on those responsible for the media who have not participated in committing the crime of the press and media organs. **Expressions of thought that do not exceed the limits of reporting or for the purpose of criticism shall not constitute a crime…**

142. The Authorities would also like to mention another safeguard mechanism introduced with Law no 7188. Before these amendment convictions less than 5 years' imprisonment could only be appealed before the district appellate courts (İstinaf Mahkemeleri). In other words, the District Court of Appeals was the last resort. However, in accordance with the said amendment, regardless of its duration, convictions under certain crimes including Article 215 of the TCC and Articles 6/2,4 and 7/2 of the Anti Terror Law could be appealed before the Court of Cassation following the completion of the proceedings by the Court of Appeal. This new provision will further ensure the conformity of the case-law in similar cases.

143. To conclude, in light of the abovementioned legislative amendments the Authorities are of the opinion that Turkey has improved and consequently further aligned its legislation with Convention Standards in order to prevent similar violations.

144. On the other hand, the European Court found violation of Article 10 on the basis of Constitutional amendment of 2016 which bypassed the procedural requirements provided under Article 83/2 of the Convention. The authorities would like to note that this provision's applicability is limited with a certain time span. Accordingly, there is no a general measure to take in this respect. In addition, this amendment did not affect the substantial essence of the parliamentary immunity. Article 83/1 of the Constitution provides an absolute immunity with respect to freedom of expression exercised in relation with the parliamentary activities. Accordingly, the applicant maintains benefitting from that.

C. Legislative Framework Concerning the Right to Stand for Elections

145. Turkish Authorities would like to emphasise that the Right to Stand for Elections receive great importance from the Turkish State and the people.

146. In this scope Article 67 of the Constitution titled "Right to vote, to be elected and to engage in political activity" reads as follows:

> *"ARTICLE 67- In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, to engage in political activities independently or in a political party, and to take part in a referendum.*
>
> *(As amended on July 23, 1995; Act No. 4121) Elections and referenda shall be held under the direction and supervision of the judiciary, in accordance with the principles of free, equal, secret, direct, universal suffrage, and public counting of the votes. However, the law determines applicable measures for Turkish citizens abroad to exercise their right to vote.*
>
> *(As amended on May 17, 1987; Act No. 3361, and on July 23, 1995; Act No. 4121) All Turkish citizens over eighteen years of age shall have the right to vote in elections and to take part in referenda.*
>
> *The exercise of these rights shall be regulated by law.*
>
> *(As amended on July 23, 1995; Act No. 4121, and on October 3, 2001; Act No. 4709) Privates and corporals at arms, cadets, and convicts in penal execution institutions excluding those convicted of negligent offences shall not vote. The necessary measures to be taken to ensure the safety of voting and the counting of the votes in penal execution institutions and prisons shall be determined by the*

Supreme Board of Election; such voting is held under the on-site direction and supervision of authorized judge.

(Paragraph added on July 23, 1995; Act No. 4121) The electoral laws shall be drawn up so as to reconcile the principles of fair representation and stability of government.

(Paragraph added on October 3, 2001; Act No. 4709) Amendments to the electoral laws shall not apply to the elections to be held within one year from the entry into force date of the amendments."

147. Article 76 of the Constitution titled "Eligibility to be a Deputy" reads as follows:

"ARTICLE 76- (As amended on October 13, 2006; Act No.5551, April 16, 2017; Act No. 6771) Every Turk over the age of eighteen is eligible to be a deputy.

(As amended on December 27, 2002; Act No. 4777, April 16, 2017; Act No. 6771) Persons who have not completed primary education, who have been deprived of legal capacity, who are neither exempt nor deferred from military service, who are banned from public service, who have been sentenced to a prison term totalling one year or more excluding involuntary offences, or to a heavy imprisonment; those who have been convicted for dishonourable offences such as embezzlement, corruption, bribery, theft, fraud, forgery, breach of trust, fraudulent bankruptcy; and persons convicted of smuggling, conspiracy in official bidding or purchasing, of offences related to the disclosure of state secrets, of involvement in acts of terrorism, or incitement and encouragement of such activities, shall not be elected as a deputy, even if they have been granted amnesty.

Judges and prosecutors, members of the higher judicial organs, lecturers at institutions of higher education, members of the Council of Higher Education, employees of public institutions and agencies who have the status of civil servants, other public employees not regarded as labourers on account of the duties they perform, and members of the armed forces shall not stand for election or be eligible to be a deputy unless they resign from Office."

148. Article 79 of the Constitution titled *"General Administration and Supervision of Elections"* reads as follows*:*

"ARTICLE 79: Elections shall be held under the general administration and supervision of the judicial organs.

(As amended on October 21, 2007; Act No. 5678) The Supreme Board of Election shall execute all the functions to ensure the fair and orderly conduct of elections from the beginning to the end, carry out investigations and take final decisions, during and after the elections, on all irregularities, complaints and objections concerning the electoral matters, and receive the electoral records of the members of the Grand National Assembly of Turkey and presidential election. No appeal shall be made to any authority against the decisions of the Supreme Board of Election.

The functions and powers of the Supreme Board of Election and other electoral boards shall be determined by law.

The Supreme Board of Election shall be composed of seven regular members and four substitutes. Six of the members shall be elected by the General Board of High Court of Appeals, and five of the members shall be elected by the General Board of Council of State from amongst their own members, by the vote of the absolute majority of the total number of members through secret ballot. These members shall elect a chairperson and a vice-chairperson from amongst themselves, by absolute majority and secret ballot.

Amongst the members elected to the Supreme Board of Election by the High Court of Appeals and by the Council of State, two members from each group shall be designated by lot as substitute members. The Chairperson and Vice-Chairperson of the Supreme Board of Election shall not take part in this procedure.

(As amended on October 21, 2007; Act No. 5678) The general conduct and supervision of a referendum on laws amending the Constitution and of election of the President of the Republic by people shall be subject to the same provisions relating to the election of deputies."

149. Article 82 of the Constitution titled *"Activities Incompatible with Membership"* reads as follows*:*

"ARTICLE 82- Members of the Grand National Assembly of Turkey shall not hold office in state departments and other public corporate bodies and their subsidiaries; in corporations and enterprises where there is direct or indirect participation of the State or public corporate bodies; in the enterprises and corporations where the State and other public corporate bodies take part directly or indirectly; in the executive and supervisory boards of public benefit associations whose private resources of revenues and privileges are provided by

law; of the foundations receiving subsidies from the state and enjoying tax exemption; of the professional organizations having the characteristics of public institutions and trade unions; and in the executive and supervisory boards of aforementioned enterprises and corporations which they have a share and in their higher bodies. Nor shall they be representatives, accept any contracted engagement of the boards stated above directly or indirectly, serve as a representative, or perform as an arbitrator therein.

Members of the Grand National Assembly of Turkey shall not be entrusted with any official or private duties involving proposal, recommendation, appointment, or approval by the executive organ. (Sentence repealed on April 16, 2017; Act No. 6771)

Other duties and activities incompatible with membership in the Grand National Assembly of Turkey shall be regulated by law."

150. Article 83 of the Constitution titled *"Parliamentery Immunity"* reads as follows*:*

"ARTICLE 83- Members of the Grand National Assembly of Turkey shall not be liable for their votes and statements during parliamentary proceedings, for the views they express before the Assembly, or, unless the Assembly decides otherwise, on the proposal of the Bureau for that sitting, for repeating or revealing these outside the Assembly.

A deputy who is alleged to have committed an offence before or after election shall not be detained, interrogated, arrested or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in flagrante delicto requiring heavy penalty and in cases subject to Article 14 of the Constitution as long as an investigation has been initiated before the election. However, in such situations the competent authority has to notify the Grand National Assembly of Turkey of the case immediately and directly.

The execution of a criminal sentence imposed on a member of the Grand National Assembly of Turkey either before or after his election shall be suspended until he ceases to be a member; the statute of limitations does not apply during the term of membership.

Investigation and prosecution of a re-elected deputy shall be subject to the Assembly's lifting the immunity anew.

Political party groups in the Grand National Assembly of Turkey shall not hold debates or take decisions regarding parliamentary immunity."

151. Article 84 of the Constitution titled *"Loss of Membership"* reads as follows*:*

"ARTICLE 84- (As amended on July 23, 1995; Act No. 4121)

The loss of membership of a deputy who has resigned shall be decided upon by the Plenary of the Grand National Assembly of Turkey after the Bureau of the Grand National Assembly of Turkey attests to the validity of the resignation.

The loss of membership, through a final judicial sentence or deprivation of legal capacity, shall take effect after the Plenary has been notified of the final court decision on the matter.

The loss of membership of a deputy who insists on holding a position or carrying out a service incompatible with membership according to Article 82 shall be decided by the Plenary through secret voting, upon the submission of a report drawn up by the authorized committee setting out the factual situation.

Loss of membership of a deputy who fails to attend Parliamentary proceedings without excuse or leave of absence for five sessions, in a period of one month shall be decided upon by the Plenary with a majority of the total number of members after the Bureau of the Assembly determines the situation.

(Repealed on September 12, 2010; Act No. 5982)

152. Article 85 of the Constitution titled *"Application for Annulment"* reads as follows*:*

"ARTICLE 85- (As amended on July 23, 1995; Act No. 4121)

If the parliamentary immunity of a deputy has been lifted or if the loss of membership has been decided according to the first, third or fourth paragraphs of Article 84, the deputy in question or another deputy may, within seven days from the date of the decision of the Plenary, appeal to the Constitutional Court, for the decision to be annulled on the grounds that it is contrary to the Constitution, law or the Rules of Procedure. The Constitutional Court shall make the final decision on the appeal within fifteen days"

153. In view of the legal framework outlined above, it might be concluded that the Turkish legal system provides requisite safeguards upheld by the Convention as regards right to stand for elections.

154. The authorities would like to underline that the lifting of the applicant's parliamentary immunity was a result of a long-run public debate. Besides, the applicant's party (HDP) had also taken part in these debates. In this scope, the applicant and other 79

HDP member of parliament themselves had asked for the lifting of their immunities in July 2015, at a time when there were already 45 investigation reports against the applicant before the Parliament. Therefore, the constitutional amendment cannot be qualified as unforeseeable for the applicant.

155. Moreover, the authorities would like to note that a constitutional amendment requires at least 2/3 of majority. This bill of amendment was adopted by a significant qualified majority of the members of the Parliament, including the MPs of the opposition parties. With this amendment the inviolability of 154 members of the Parliament was lifted. Only the 55 of them were from the applicant's party. Therefore, it is not reasonable to claim that this amendment particularly targeted the applicant and HDP members. It should be underlined that Chairmen of the opposition parties, including main opposition party submitted their testimony before the relevant public prosecutors.

156. This amendment concerns the procedural aspect of the parliamentary immunity as it prescribed provisions concerning the measures sought under Article 83/2 of the Constitution. No similar amendment has been adopted since then. As it is an isolated case, it is not possible to take a general measure specific to this violation.

D. Impartiality and Independence of the Judiciary and Violation of Article 18 Taken in Conjunction with Article 5 of the Convention

1) Current Situation

a. Provisions of the Constitution and Law Regulating the Independence of the Judiciary

157. The importance of an impartial and independent judiciary has been stressed in the Constitution of the Republic of Turkey, the Law no. 6087 on the Council of Judges and Prosecutors, the Law no. 2802 on Judges and Prosecutors and many decisions made and delivered by the Council of Judges and Prosecutors ("CJP").

158. Article 9 of the Constitution provides that judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation. In 2017, by the Law no. 6771, the expression of "and impartial" was added after the expression of "independent" in Article 9 of the Constitution; and thus the fact that the judicial power belongs to independent and impartial courts is guaranteed by the Constitution and it is emphasized that independence also embodies impartiality. Article 138 of the Constitution provides that judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the

Constitution, laws, and their personal conviction conforming to the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

159. By the amendment made to the Constitution by the Law no. 6771 in 2017, it was regulated that three members of the CJP shall be elected among the members of the Court of Cassation; one member shall be elected among the members of the Council of State and three members shall be elected among teaching staff working in the field of law at higher education institutions and lawyers, whose qualifications specified in law by the Grand National Assembly of Turkey. Therefore, the structure of the CJP has been based on the principles of independence and impartiality. In further strengthening the independence and impartiality of the judiciary, the Grand National Assembly of Turkey, namely, the legislative power, has been made to participate in the election of the CJP members.

160. In May 2021, 7 new members of the Council of Judges and Prosecutors (CCP) have been elected with broad consensus by the Parliament. As an indicator for the independence and impartiality of Turkish judiciary, the new members are supported by vast majority of the Parliament. 450 out of 470 Member of Parliament who participated in the meeting, voted for them. This means, that the council of judges and prosecutors has been shaped up by a huge consensus of democratically elected MPs in the Parliament. Therefore, the CJP is not a structure that is under total control of the executive branch as it is claimed.

161. It is also important to state that the Court has examined the structure of the magistrate judgeships, which are the major judicial units responsible for detention on remand. the Court found that magistrate judges enjoy constitutional safeguards in the performance of their duties, including security of tenure. The Constitution specifies that they are independent and that no public authority may give them instructions concerning their judicial activities or influences them in the performance of their duties. These fundamental constitutional principles as to independence are reproduced in legislation, in particular in the Law on Judges and Prosecutors. Having regard to the constitutional and legal safeguards afforded to the magistrate judgeships, the Court rejected the complaint alleging a lack of independence and impartiality of the magistrate judgeships as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (see *Baş v. Turkey*, no. 66448/17, 3 March 2020).

b) Safeguards Ensuring the Independence and the Impartiality of the Judiciary

162. Article 4 titled “Independence, security of tenure and duties” of the Law no. 2802 on Judges and Prosecutors lays down that judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. Judges shall be independent in discharge of their duties; they shall render judgments in line with their conscientious conclusion in accordance with the Constitution, laws, and legislation.

163. In order to safeguard the independence of the judiciary certain offences have been introduced in the Turkish Criminal Code (TCC). Article 277 of the TCC entitled "*Attempting to influence the judge, expert or witness*" provides that any person who unlawfully attempts to influence judicial bodies, or forces them to give instructions in favour or against any one of or all the parties present in the trial before the court, or the offenders, or those participating in the action, or the victim, shall be sentenced to imprisonment from two years to four years and the punishment to be imposed shall be from six months to two years if the attempt is no more than favouritism. The 2nd paragraph of same Article provides that in the event that the act constituting the offence in the first paragraph also constitutes another offence, the sentence to be imposed according to the provisions of the conceptual aggregation shall be increased up to half.

164. Article 288 of the same Law entitled "*Attempt to influence a fair trial*" provides that any person who makes a public oral or written declaration until finalization of the investigation or prosecution proceeded on an incident in order to influence the judge, experts or witnesses in order for them to deliver illegal decisions, carry out illegal procedures and provide false statements shall be punished with imprisonment from six months to three years.

c) The “Declaration of Turkish Judicial Ethics”

165. This issue has been emphasised in the section titled “Judges and Prosecutors Are Independent” in the “Declaration of Turkish Judicial Ethics” adopted by the CJP on 6 March 2019 as follows:

“Through their independence, they are the guarantees of fair trial and the rule of law. They act knowing that the independence of the judiciary is recognised so that the judiciary can function without pressure or influence. They unconditionally reject any pressure or influence that could directly or indirectly affect their independence. They make their

decisions independently, without being concerned about the reaction of individuals, institutions or the public and about pleasing them. They are aware that appearing independent is as important as being independent to ensure and maintain trust in the judiciary. They are aware that independence does not mean being irresponsible and privileged, on the contrary, that it aims to ensure the administration of justice within the framework of the principle of accountability. They are aware that accountability in accordance with the principles and procedures specified in the laws is a principle that does not damage their independence, but in contrast, strengthens their social legitimacy."

166. The CJP has also adopted international texts due to the importance attributed to judicial independence and impartiality. The Budapest Guidelines, which was adopted by the decision of 10 October 2006 of the CJP, reads as follows;

"They shall exercise their functions on the basis of their assessment of the facts and in accordance with the law, free of any undue influences,

They shall carry out their functions fairly, impartially, objectively and, within the framework of provisions laid down by law, independently."

167. Similarly, in the section titled "Value 1: Independence" in the Bangalore Principles of Judicial Conduct, which was adopted by the decision of 27 June 2006 of the CJP, it was stated that;

"Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects." and in Application 1.3 in the same section, the sensitivity surrounding judicial independence was reflected as the following: *"A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom."* In addition, in Application 2.1 and 2.2 in the section "Value 2: Impartiality", the due diligence with respect to impartiality was emphasised: "*A judge shall perform his or her judicial duties without favour, bias or prejudice. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary."*

d) The "Istanbul Declaration on Transparency in the Judicial Process"

168. Moreover, the "Istanbul Declaration on Transparency in the Judicial Process" was prepared and accepted under the guidance of the Court of Cassation. In 2017, the Grand General Assembly of the Court of Cassation accepted the "Principles of Judicial Conduct of the Court of Cassation".

2) Planned Works to Strenghten the Independence and Impartiality of the Judiciary

169. In addition to the above-mentioned constitutional-legal regulations and guarantees, which provide an adequate framework for judicial independence and impartiality, the following studies are also carried out by Turkish Authorities to further strengthen the judicial independence and trust in the judiciary:

b. The Eleventh Development Plan (2019-2023)

170. The Eleventh Development Plan (2019-2023) ("the Plan") approved by the Grand National Assembly of Turkey on 18 July 2019 includes a separate part concerning the judiciary under the heading of "Rule of Law, Democratization and Good Governance"[8].

171. One of the most important priorities of the Plan period is to further strengthen, institutionalize and consolidate rule of law conception which contains adherence of legislative, executive and judiciary to the law, Constitutional protection of fundamental rights and freedoms, judicial review of administrative actions, independence and impartiality of judiciary, equity before law, providing citizens effective rights to legal remedies.

172. It is targeted that the governance approach based on rule of law that accepts respect to public order and individual rights as a principle; protects and improves fundamental rights and freedoms; struggles effectively with violations of rights will be strengthened. The other important targets in the Plan are as follows:

- The legislation and practice regarding the freedom of expression will be reviewed and regulations will be made to develop the rights and freedoms of individuals.
- The legislation and practice regarding the custody, detention and other protection measures will be reviewed and implementation of these measures appropriately will be ensured.
- A new Human Rights Action Plan will be prepared and implemented effectively.
- Related public institutions' capacities to protect and enhance the rights and freedoms will be developed and effective coordination will be realized.
- Adherence to the rule of law, objectivity, transparency and accountability of the executive power will be strengthened.
- It is important to benefit from the dynamic and flexible structures of non-governmental organisations ("NGOs") which have become a key stakeholder of economic and

[8] For detailed information please see https://www.sbb.gov.tr/wp-content/uploads/2019/11/ON_BIRINCI_KALKINMA-PLANI_2019-2023.pdf (Turkish version) and https://www.sbb.gov.tr/wp-content/uploads/2020/03/On_BirinciPLan_ingilizce_SonBaski.pdf (English version).

social development as well as their potential to respond to needs and problems at the national and international levels, from the perspective of the strengthening of democracy and enhancing efficiency and quality in public services. During the Plan period, it is aimed to improve active citizenship awareness, to ensure effective participation of the NGOs in decision-making processes, to increase cooperation between civil society-public-private sectors and to develop social dialogue environment, and to strengthen institutional, human and financial capacities of the NGOs.

- In line with the requirements of the rule of law and supremacy of law, ensuring fast, fair, efficient functioning of the trial process, predictability, facilitating access to justice and increasing confidence in the justice system are the main objectives.
- Access to justice as one of the basic conditions of supremacy of law principle will be facilitated; the right to defense will be strengthened.
- The Development Plan contains important objectives with a view to improving the independence of the judiciary. Accordingly; it will be ensured that the appointment, transfer and promotion of judges are carried out on the basis of objective and predetermined criteria and of qualifications.
- The disciplinary process about judges and prosecutors will be rearranged on the basis of objective criteria, and the rights of judges and prosecutors in relation to the relevant process will be strengthened, and the disciplinary decisions will be announced to the public, which will ensure that the process becomes transparent, on condition that the personal data is protected.

173. The above-mentioned targets that have been included in the Eleventh Development Plan are also covered in the Judicial Reform Strategy Document; several important steps have been taken and continue to be taken to swiftly achieve them.

174. The Turkish authorities would like to recall that in Turkey which is a founding member of the Council of Europe, all investigations, prosecutions and proceedings are carried out by independent and impartial judges and public prosecutors. The Turkish authorities have made many reforms to ensure the independence and impartiality of the judiciary.

175. Great importance has been attached to the implementation of the regulations and reforms mentioned-above. Turkey has adopted the European Convention on Human Rights and the case-law of the ECtHR as a guide and is in the process of negotiations with the EU, and it has a legal system in which the fundamental rights and freedoms are protected at the highest possible level. Offences are investigated by independent and impartial public

prosecutors, and likewise, accused persons are tried by independent and impartial courts. Objections, legal remedies, an individual application to the Constitutional Court and an application to the ECtHR can be resorted to against conclusions to be reached by the judicial authorities.

176. It should be pointed out in particular that human rights, rule of law and democracy are the fundamental principles of the Republic of Turkey. Pursuant to Article 90 of the Constitution, in case that an international agreement in relation to the fundamental rights and freedoms contradicts with national legislation, the said international agreement shall prevail. Being aware of its international obligations, the Republic of Turkey fulfils all the responsibilities incumbent upon it concerning the protection of fundamental rights and freedoms by taking measures provided by law and democracy.

b) The Judicial Reform Strategy Document

177. The Turkish authorities would also like to state that the Judicial Reform Strategy Document concentrates on efforts to further strengthen the judicial system and adopts a comprehensive and dynamic approach.

178. Turkey always appreciates constructive comments and recommendations made by the bodies of the Council of Europe. In this regard, Turkey is in constant cooperation with the Council of Europe. As regard the Judicial Reform Strategy Document, bodies of the EU and the Council of Europe were informed comprehensively about the drafting process which was completed in an inclusive and participatory manner and the opinions and comments of those bodies were collected on several occasions.

179. The Judicial Reform Strategy contains numerous activities to enhance judicial independence and impartiality. These activities are intended to further strengthen the independence of judges and prosecutors and prevent any influence on judicial decision-making. It should be noted that significant and concrete steps have been and are being taken to implement the Judicial Reform Strategy.

180. Furthermore, it should be noted that the Human Rights Action Plan will amplify the reform process and particularly serve as a complementary factor in further strengthening fundamental rights and freedoms.

-*Judicial Reform Strategy 2019*[9]

[9] For detailed information please see
https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/23122019162949YRS_ENG.pdf

181. The activities within the scope of the 23th Chapter titled "the Judiciary and Fundamental Rights" that is an important part of the negotiations on membership to the European Union have been carried out under the responsibility of the Ministry of Justice in coordination with the relevant institutions. In this respect, the 1st Judicial Reform Strategy Document was published in 2009 and the 2nd one in 2015.

182. As the implementation period expired in 2019 and by force of the continuous reform approach, the New Judicial Reform Strategy Document was disclosed by the President of Turkey in May 2019. In the Judicial Reform Strategy that has been prepared with the vision of "a reassuring and accessible judicial system", 9 targets, 63 objectives and 256 activities have been specified. The Judicial Reform Strategy Document ("Document") has been translated into English, German, Russian, Arabic and French, and published on the Internet.

183. The Judicial Reform Strategy Document has been prepared with a contributive understanding, and the objectives and activities included in this Document have been adopted with the main purpose of protection and improvement of rights and freedoms. The main objectives set out in the Document are 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 within a reasonable time.

184. It should be noted that significant steps have been and are being taken to implement the Judicial Reform Strategy.

185. Under the Aim 1: "Protection and improvement of rights and freedoms", new policies with a broad perspective have been set out for the protection and promotion of rights and freedoms. Detailed provisions on rights and freedoms will be included in the Human Rights Action Plan, for which the preparations are underway. By the Human Rights Action Plan, new objectives on protection and improvement of the human rights are planned to be implemented. In this regard, the goal is to develop solutions for areas of violations mentioned in the decisions of the Constitutional Court and the Court, to consider the monitoring reports of the international protection mechanisms in the field of human rights and to improve cooperation with national and international NGOs working on the field of human rights.

186. The issues covered in the Judicial Reform Strategy Document have two basic aspects: one covers the legislative infrastructure, while the other covers its application. It is planned to increase human rights sensitivity in practice.

187. These efforts will focus particularly on the freedom of expression and freedom of the press, the right to assembly and demonstration, and the reasonable application of arrest/detention measures.

188. Some important activities included in the relevant objective are as follows:

- Thorough analysing the legislation and practice of freedom of expression, provisions that further expand the rights and freedoms of individuals will be introduced.
- The assurances for legal remedies against judicial decisions, concerning the freedom of expression, will be raised.
- Through reviewing the legislation and the application regarding the custody, detention and other protection measures, affecting the right to freedom and security, amendments will be made and measures will be taken for their restrained implementation.
- Provisions regarding the maximum period of detention in the course of investigation and prosecution processes will be separately regulated.

189. An effective legal mechanism for examining applications for violations of the right to a trial within a reasonable time and providing redress in this respect will be established a series of trainings and studies on promoting awareness have been planned to raise the sensitivity and awareness of the judiciary on human rights. One of the activities conducted to that end is the arrangement according to which the judgments of the Court and the Constitutional Court will be taken into consideration in assessments on the promotion of judges and public prosecutors.

190. Another activity described within this aim is to review the legislation and the application regarding the custody, detention and other preventive measures affecting the right to liberty and security and to adopt measures for their proportional implementation. Moreover, organising training courses particularly on reasoning of decisions concerning detention measures and organising training courses on human rights are other important activities foreseen in the Judicial Reform Strategy Document.

191. Under the heading of Aim 2, objectives and activities on “Independence, Impartiality and Transparency of the Judiciary” are established. Within the scope of Aim 2, objectives strengthening judicial conduct of judges and prosecutors to enhance the independence and impartiality of the judiciary are set forth. Some important objectives and activities on improving the independence, impartiality and transparency of the judiciary set forth in Aim 2 are as below:

- Geographical guarantee shall be brought for the judges and public prosecutors with a certain professional seniority,
- Promotion system of the judges and prosecutors shall be restructured taking into account of qualifications and performance,
- The power of the Minister of Justice to assign judges to another jurisdiction in case of urgency shall be revoked,
- Within the scope of strengthening the judicial conduct, principles of ethics shall be determined, which will be closely monitored and supervised; and professional conduct shall be included in pre-service and in-service training,
- When legislative proposals are prepared, representatives of relevant beneficiaries shall be involved, while the culture of participation and negotiation shall be improved in the judiciary,
- When identifying the need for legislative amendment, regulatory impact analysis reports shall be prepared and these reports will be shared with the public,
- Involvement of the relevant institutions, bodies, civil society and academia will be ensured,
- The scope of the activity reports in civil and administrative judiciary shall be extended and the public recognition shall be raised.

Objective 5.2 Effective participation of the defence party in the trial will be ensured.

192. The objectives and activities included in the Judicial Reform Strategy Document have been rapidly achieved[10]. 122 out of 256 activities indicated in the Document were put into effect. The application rate of the Document, which covers the years 2019-2023, is approximately 50% in its second year. After the relevant Document was announced to the public, by the Law no. 7188, known as the first reform package, important steps have been taken within the scope of the objectives in question. In the relevant package and the following, some of the steps taken with the purpose of improvement of the fundamental rights and freedoms, namely, the freedom of expression, are as follows:

193. Through adding the provision of "the expression of an opinion that does not exceed the limits of reporting or for the purpose of criticism shall not constitute an offence" to Article 7 of the Law no. 3713, the area of individuals' rights and freedoms has been expanded.

[10] https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/5102020133816eylemplani.pdf

194. The remedy of further filing an appeal before the Court of Cassation against decisions rendered by the criminal chambers of the regional courts of appeal has been introduced in respect of various offences such as defamation, inciting to commit an offence, praising the offence and the offender, discouraging people from performing military service, and etc. even if the relevant decision falls within those that cannot be appealed.

- A separate maximum period of detention for the investigation stage has been set in order to prevent lengthy detentions until the indictment is issued, and it has been ensured that the detention be ended by law if the relevant period is exceeded.
- It has been adopted that the detention period for juveniles be shortened in every process.
- It has been ensured that the decisions of blocking access be applied not for the entire internet site in question, but only for the publishing, part or section giving rise to the violation. Thus, the negativity of blocking access to the areas apart from the publishing, part or section giving rise to the violation has been removed.
- The ethical principles to be followed by the member of the Judiciary have been established in line with the standards of the United Nations and the Council of Europe, and on 11 March 2019 “the Declaration of Judicial Ethics in Turkey” was announced to the public.
- By the amendment made to the paragraph 6 of Article 9/A of the Law no. 2802, it has been ensured that the interview for candidate judges and prosecutors be carried out by a board established on the basis of a broad representation.
- In the first reform package and the others, various procedures and methods, namely, developing alternative methods of settling disputes have been introduced in order to conclude the processes within a reasonable time; the provisions lengthening both criminal and civil proceedings have been reviewed.

195. Furthermore, other supportive steps such as providing trainings, holding meetings and organizing workshops concerning the objectives and activities included and achieved in the Judiciary Reform Strategy Document have been planned and taken. These steps are as follows:

- Under the heading of “Protection and improvement of rights and freedoms”:

  - Training courses on human rights, mainly freedom of expression and press shall be organized.

  - Training courses on reasoning of decisions, especially reasoning of decisions on detention, shall be organized.

- Under the heading of "Improving the independence, impartiality and transparency of the Judiciary":

  - Principles of professional conduct shall be included in pre-service and in-service trainings.

- Under the heading of "Increasing the quality and quantity of human resources":

  - It shall be ensured that human rights law will be a part of pre-service and in-service training programs.

  - Legal methodology and legal argumentation programs shall be included in pre-service and in-service training courses.

c) The Human Rights Action Plan

196. On 2 March 2021, the new Human Rights Action Plan was announced by the President of the Republic.

197. The Human Rights Action Plan was prepared in a collaborative and participative approach. That is to say, all judgments and decisions of the Court, Directives and Recommendations of the relevant bodies and committees of the Council of Europe and the United Nations are duly taken into consideration. Additionally, the opinions of all relevant public institutions, non-governmental organisations, international organisations and relevant participant communities including minorities have been sought and meetings have been held with them. The opinions and proposals gained as a result of these meetings were assessed diligently.

198. The Human Rights Action Plan includes 9 goals, 50 objectives and 393 activities[11]. The plan will be implemented over the course of the next two years and will focus on many issues including improving the standards of freedom of speech and the right to meeting and assembly.

199. The vision of the Action Plan is "Free individual, strong society; a more democratic Turkey" and starts with 11 fundamental principles.

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

[11] https://inhak.adalet.gov.tr/Resimler/SayfaDokuman/5320211949561614962441580_insan-haklari-EP-v2_eng.pdf

Republic. The relevant committee will hold a meeting once every 6 months and the reports on implementation will be announced to the public.

201. Action Plan contains many activities concerning the relevant case:

202. Under the aim of Strengthening the Conception of the Rule of Law based on Human Rights following steps are planned to be taken:

-Activity 1.1.e. *Necessary changes will be made to the legislation on political parties and elections with a view to empowering democratic participation.*

Institution Responsible Ministry of Justice

Term 1 Year

203. Under the aim of Strenghtening Judicial Independence and Impartiality following activities are planned:

-Activity 2.1.a*. The region-based appointment system of judges will be revised with a view to preventing frequent change of judges during judicial processes.*

Institution Responsible Council of Judges and Prosecutors

Term 6 Months

-Activity 2.1.b*. Judges and prosecutors serving at regional courts of appeal or regional administrative courts will be guaranteed not to be appointed to first-instance courts for a certain amount of time in the absence of their requests or of any disciplinary investigation in their respect.*

Institution Responsible Ministry of Justice

Term 6 Months

-Activity 2.1.e. *The disciplinary infringements and sanctions applicable to judges and prosecutors will be reviewed in consideration of the principles of objectivity, foreseeability and proportionality.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 2.1.g*. The promotion system of judges and prosecutors will be restructured on the basis of an objective set of performance criteria, such as compliance with the target time-limit, sufficiency of the reasoning in their decisions, accuracy rates in decisions, and sensitivity to human rights.*

Institution Responsible Council of Judges and Prosecutors

Term 3 Months

***-Activity 2.1.h**. In order to ensure that judges and prosecutors better perform their functions and that judicial impartiality prevail, the effectiveness of the inspection system will be increased on the basis of objective criteria.*

Institution Responsible Council of Judges and Prosecutors

Term 6 Months

***-Activity 2.1.i.** The Justice Academy of Turkey will be restructured on the basis of pluralist, participatory and transparent norms, and its independence will be strengthened.*

Institution Responsible Ministry of Justice

Term 1 Year

***-Activity 2.1.j**. The structure and functioning of sports arbitration boards will be revised in consideration of, inter alia, judgments of the ECtHR.*

Institution Responsible Ministry of Youth and Sports

Term 6 Months

204. Under the aim of Strenghtening the Right to a Fair Trial *(Right to a Reasoned Decision and Right to a Trial Within a reasonable Time)* following activities are planned:

***-Activity 2.2.a.** Pre-service and in-service trainings will be organised to ensure that the decisions issued by courts and public prosecutors are sufficient, convincing and comprehensible in a manner that also satisfies the standards laid down by the judgments of the Constitutional Court and the ECtHR.*

Institution Responsible Justice Academy of Turkey

Term Permanent

***-Activity 2.2.b.** The in-service training programmes for judges and prosecutors will be planned according to the results of a performance-based needs analysis.*

Institution Responsible Justice Academy of Turkey

Term Permanent

***-Activity 2.2.c**. Steps will be taken to ensure that the findings made by the regional and high courts regarding undue delays in the proceedings or lack of reasoning, will be submitted to the Council of Judges and Prosecutors for consideration in promotion and discipline reviews.*

Institution Responsible Ministry of Justice

Term 6 Months

***-Activity 2.2.d**. The criminal chambers of the regional courts of appeal will be afforded further powers to quash first-instance judgments due to manifest lack of reasoning or restriction of the right of defence.*

Institution Responsible Ministry of Justice

Term 6 Months

-Activity 2.4.a. *New steps will be taken towards further improving the practice of "Targeted Time-limits in the Judiciary" according to the results of detailed courthouse- and case-based analyses in a way that will ensure the completion of trials within a reasonable time.*

Institution Responsible Ministry of Justice

Term Permanent

-Activity 2.4.b*. In an aim to ensure speedy resolution of proceedings and prevent grievances of citizens, the implementation of the targeted time-limits will be extended to cover proceedings before the regional courts, as well as the Forensic Medicine Institute procedures.*

Institution Responsible Ministry of Justice

Term 6 Months

-Activity 2.4.c*. Necessary measures will be taken to ensure the speedy resolution of jurisdictional disputes which emerge at the investigation stage, particularly in cases concerning cyber-crime and fraud.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative amendment made in 4th Judicial Package on 14 July 2021)

-Activity 2.4.d. *Problems related to the jurisdictional disputes between courts will be eliminated in order to secure the right to a trial within a reasonable time.*

Institution Responsible Ministry of Justice

Term 3 Months

-Activity 2.4.e. *Attorneys of the parties will be informed if the trial judge is unable to participate in the on-site inspections or hearings due to an excuse and a time-limit will be set for the determination of the new hearing date.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 2.4.f. *In order to prevent the delays caused by the nonbinding effect of decisions of the Court of Jurisdictional Disputes on similar cases, a legislative amendment will be passed to ensure that the decisions of the said Court carry a binding effect on other cases.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 2.4.g. *It will be laid down as a rule that the reasoned judgment must be written within thirty days in the administrative justice.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

-Activity 2.4.h. *In a bid to complete judicial proceedings within a reasonable time and facilitate the affairs of citizens, the use of electronic notification practice will be extended, rendering it also applicable to citizens residing abroad, and the postal service (PTT) staff will be given regular trainings to ensure the fulfilment of notification services in due form.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 2.4.i. *The applicable scope of criminal-law procedures such as the expeditious trial procedure (seri muhakeme) and the simplified trial procedure (basit yargılama) will be expanded, thereby securing the faster and more effective completion of judicial processes.*

Institution Responsible Ministry of Justice

Term 1 Year (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

-Activity 2.4.j*. Arrangements will be made to ensure that institutions and organisations respond as soon as possible to the requests for provision of documents and information during judicial processes.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 2.4.l*. The cases in which a quashing decision was delivered higher courts will be handled as a priority and in a speedy manner.*

Institution Responsible Ministry of Justice

Term 6 Months

205. Under the Right to Freedom of Expression, following activities are planned:

-Activity 4.1.a. *The relevant legislation will be reviewed in the light of international human rights standards in order to safeguard the freedom of expression at the widest extent.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 4.1.b*. Regular trainings will be organised for judges, prosecutors and law enforcement officers with a view to ensuring that an expression of thought not be subject to investigation if it does not exceed the limits of imparting information or is made for the purpose of criticism.*

Institution Responsible Ministry of Interior (Law Enforcement Officers) Justice Academy of Turkey (Judges and Prosecutors)

Term Permanent

-Activity 4.1.c. *The time-limits prescribed for initiating proceedings in relation to offences committed via the press and media will be reconsidered in a bid to strengthen legal foreseeability and the freedom of expression.*

Institution Responsible Directorate of Communications of the Presidency

Term 1 Year

-Activity 4.1.d*. Measures necessary will be taken to eliminate the practice-related problems with regard to the limitation of a restriction of access only to the content concerned instead of blocking access to the whole of a website.*

Institution Responsible Information Technologies and Communications Authority (Technical Measures) Justice Academy of Turkey (Training of Judges and Prosecutors)

Term Permanent

-Activity 4.1.e. *Measures will be taken to lay down the "safety of journalists", which is a crucial part of the freedom of expression and the press, as an overarching principle and to facilitate the professional activities of journalists.*

Institution Responsible Directorate of Communications of the Presidency (Professional Activities) Ministry of Interior (Safety of Journalists)

Term Permanent

-Activity 4.1.f. *The practice-related regulatory framework that concerns the publication bans ordered by virtue of the Press Law will be reviewed in a manner that will strengthen the freedom of the press.*

Institution Responsible Directorate of Communications of the Presidency

Term 1 Year

-Activity 4.1.g*. Awareness-raising activities will be conducted in an aim to promote and raise the standards of the freedom of the press.*

Institution Responsible Directorate of Communications of the Presidency

Term Permanent

-Activity 4.1.h. *Legal remedies will be rendered available for against rulings which become final once they are delivered in respect of offences committed via an expression of thought.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 4.1.i. *Arrangements will be introduced to ensure that workers who are subject to the Press Labour Law can enjoy in full the rights prescribed by the labour legislation.*

Institution Responsible Ministry of Labour and Social Security

Term 1 Year

-Activity 4.1.j. *Practice-related problems will be eliminated with regard to convicts' and detainees' personal letters and correspondence with their lawyers, along with their access to periodical and non-periodical publications.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative Amendmet has been made on 17 June 2021)

-Activity 4.1.k. *To facilitate the access of convicts and detainees to periodical and non-periodical publications, complex libraries will be established at penitentiary institutions and facilities will be set up to enable selecting and requesting titles over the digital medium.*

Institution Responsible Ministry of Justice

Term Permanent

206. Under the aim of Ensuring Enjoyment of the Freedom of 4.3 Religion and Conscience at the Widest Extent following steps are planned to be taken:

-Activity 4.3.f. *The Regulation on Foundations will be amended in so far as relevant to the issue of the composition of and the elections for executive boards of non-Muslim community foundations.*

Institution Responsible Ministry of Culture and Tourism (Directorate General of Foundations)

Term 1 Year

207. In accordance with the principal decisiveness of the balance of liberty and security, which is the fundamental criterion in terms of human rights policies and practices, the Action Plan sets the following goals and activities under the aim of "Strengthening Personal Liberty and Security"[12]:

-Activity 5.1.a. *A vertical objection procedure will be introduced against the magistrate judges' orders for detention and other preventive measures.*

Institution Responsible: Ministry of Justice

Term: 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

- Activity 5.1.b*. A minimum threshold of seniority requirement will be introduced for assignment as a magistrate judge.*

Institution Responsible: Council of Judges and Prosecutors

[12] For detailed information:

https://insanhaklarieylemplani.adalet.gov.tr/resimler/Action_Plan_on_Human_Rights_and_Implementation_Schedule.pdf

Term: 6 Months

-Activity 5.1.c. *Specialisation of magistrate judges will be ensured in applications submitted against decisions on administrative sanctions.*

Institution Responsible: Ministry of Justice

Term: 3 Months

-Activity 5.1.d. *The legislation related to personal liberty and security will be reviewed within the framework of the principle of proportionality and an analysis report will be prepared in this regard.*

Institution Responsible Ministry of Justice

Term 3 Months (analysis report has been prepared on in July 2021)

-Activity 5.1.e. *The scope of catalogue offences will be narrowed down in accordance with the principle of "proportionality in detention".*

Institution Responsible Ministry of Justice

Term 3 Months

-Activity 5.1.f*. The "requirement to rely on concrete evidence" will also be rendered applicable in respect of catalogue offences prescribed as grounds for detention, thereby strengthening the principle that detention is an exceptional measure.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

-Activity 5.1.g. *The provisions of law that restrict the right to meet with the defence counsel will be reviewed. Institution Responsible Ministry of Justice*

Term 3 Months

-Activity 5.1.h*. Regular trainings will be offered to magistrate judges and prosecutors with regard to detention and judicial supervision measures.*

Institution Responsible Justice Academy of Turkey

Term Permanent

-Activity 5.1.i. *Practice-related grievances and uncertainties in cases of decision of non-jurisdiction (subject-matter or territorial) or during process of determination of the competent authority stemming from the examinations of objections against detention and review of detention will be eliminated.*

Institution Responsible Ministry of Justice

Term 3 Months

-Activity 5.1.j. *A speedy compensation will be provided, via a new administrative remedy to be established, for the damages incurred due to unjust application of detention or certain other preventive measures.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 5.2.a*. The judicial supervision measure will be reviewed at certain intervals and new reforms will be put in place such as setting a maximum length of time for the measures and enabling fulfilment of the signature duty by using technological means.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

-Activity 5.2.b*. The deduction of the time spent in the judicial supervision measure of "home detention" (house arrest) from the final sentence will be made possible.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

-Activity 5.2.c*. It will be ensured that compensation to the persons victimised by the erroneous or unjust imposition of a judicial supervision measure or certain other preventive measure be awarded.*

Institution Responsible Ministry of Justice

Term 1 Year

-Activity 5.3.a. *Steps will be taken to ensure that an individual, who has been arrested outside the business hours on the basis of an arrest warrant for the purpose of taking a statement and releasing thereafter, may be released on the condition that they agree to present themselves to the judicial authorities within a reasonable time.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

-Activity 5.3.b. *Within the context of the execution of arrest warrants, in order to eliminate the grievances caused by the inability of taking statement out of business hours, it will be ensured that these procedures are performed on a 24/7 basis at courthouses.*

Institution Responsible Council of Judges and Prosecutors

Term 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

***-Activity 5.3.c**. The bill of indictment and any orders to forcibly bring witnesses or complainants before the court will be notified the persons concerned via text message sent to their telephones.*

Institution Responsible Ministry of Justice

Term 3 Months (Legislative amendment has been made in 4th Judicial Package on 14 July 2021)

***-Activity 5.3.d.** A legislative work will be conducted to enable discontinuation of criminal proceedings if the complainant fails to appear at the hearing without an excuse despite the notification of a plenary summons inviting them to testify in cases concerning offences prosecuted upon complaint.*

Institution Responsible Ministry of Justice

Term 1 Year

***-Activity 5.3.e**. Measures will be taken to prevent arresting or forcibly bringing an individual, who fails to appear despite a summons, before it is established that the notification process has indeed been completed in due form.*

Institution Responsible Justice Academy of Turkey

Term Permanent

-Monitoring of the Implementation of Human Rights Action Plan

208. On 30 April 2021, a circular has been released by the President in Official Gazette[13]. According to this circular, certain time limits (schedule) for the goals in the said Action Plan have been envisaged and a monitoring body for the implementation of the Human Rights Action Plan has been established.

209. According to the The Action Plan on Human Right and Implementation Schedule[14]:

- The implementation period of the Action Plan is envisaged as two years.

[13] https://www.resmigazete.gov.tr/eskiler/2021/04/20210430-9.pdf
[14] https://insanhaklarieylemplani.adalet.gov.tr/Sayfa/actionplan

- Short (1-3 months), medium (6 months-1 year) and long (2 years) terms have been designated to reach the goals set out for the purpose of achieving the aims indicated in the plan.
- Besides, a "permanent" timetable has been set in terms of certain activities due to their nature.
- There are 285 perodic activities;
- 6 of which will be perfomed within 1 month, 40 within 3 months, 84 within 6 months, 131 within 1 year and 24 within 2 years

210. According to the Presential Circular No: 2021/9 on Aciton Plan on Human Rights;

- The monitoring and evaluation of the Action Plan shall be performed by the "The Action Plan on Human Rights Monitoring and Evaluation Board" formed **under the chairmanship of the President of Republic** and comprised of delegates below:
    1. *Vice President,*
    2. *Ministers of Justice, Family and Social Services, Labor and Social Security, Foreign Affairs, Treasury and Finance, Interior*
    3. *Vice President of the Legal Policies Council*

211. The Board shall coordinate and monitor the working of public institutions with the aim of implementing the Action Plan effectively and monitoring it in a transparent manner.

212. The secretarial services of the Board shall be performed by the Ministry of Justice.

213. The ministries and institutions responsible for the activities prescribed by the Action Plan will prepare their implementation reports at intervals of four months and send them to the the Ministry of Justice.

214. Ministry of Justice shall draft the *"Annual Implementation Report"* on the Action Plan and submit it to the Monitoring and Evaluation Board for approval.

215. The Annual Implementation Report shall be assessed by the Human Rights and Equality Institution of Turkey and the Ombudsman Institution, of which the results shall be submitted to the Presidency of the Republic and the Grand National Assembly of Turkey.

216. The Annual Implementation Report shall be announced to the public by the Presidency of the Republic.

E. High Level Political Messages

217. The importance attached to the independence and impartiality of the judiciary is consistently expressed via the political messages given at the highest level. The President of the Republic and the Minister of Justice attach particular importance to further reinforcement of the independence and impartiality of the judiciary.

218. In this scope on 27 September 2021 during the appointment ceremony of judges and public prosecutors, the President of the Republic delivered important messages[15]. He indicated that besides being the foundation of the state, justice is also the engine of social peace, prosperity, stability, development and growth. In a society where fundamental rights and freedoms as well as justice are not ensured and the faith in law is shaken, the moves the political authority will make for economic development and progress are doomed to fall short as well. The incidents that have taken place in our immediate environ, Syria in particular, have bitterly shown that countries, which ignore justice, fundamental rights and freedoms, law, or humanitarian values, cannot survive. The President has also highlighted that the basic condition for the balance in the scales of justice is the existence of a strong, impartial, independent legal system that has internalized international norms. He particularly indicated that the Judicial Reform Strategy Document and the Human Rights Action Plan, shared with the public, are the latest examples of the Government's reform will. These two documents constitute our roadmap in the field of law and democracy as we walk into the second century of our Republic. The following statements of him, particularly addressing to the new judges and prosecutors, involve strong messages concerning the independence of the judiciary :

> "*The language of the judge, the prosecutor is a fair decision to be given within a reasonable time. Never forget that in every file that comes before you, there is at least one person's story, at least one person's future and destiny. In the exercise of your duty, please do not tarnish the rule of law and the presumption of innocence. Never consent to the defeat of the rights and laws of even a single citizen, regardless of their faith, position, origin or identity. The measure of ensuring justice is not the attitude of the crowds whose real intention and identity are unknown, but the law, order, and common conscience. Do not allow anyone, any power or any material value to come between your conscience and your decisions. Hopefully, with your efforts, we will strengthen the functioning of our justice system and continue to maximize trust in the judiciary and its decisions*."

[15] https://www.tccb.gov.tr/en/news/542/130706/-justice-is-the-engine-of-social-peace-and-prosperity-

219. Furthermore, on 1 September 2021, during the opening of the judicial year, in the presence of members of the high judiciary, the Parliament, and the Government, the following statements of the President of the Republic delivered significant messages as well[16]:

> "*The independence and impartiality of the judiciary, its representation, and the fair decisions it will deliver, as a result, are the guarantees for ensuring justice. If we were to summarise this with a quote: 'Religion of the state is justice.' If there is no justice in a state, it will not matter in which system it is governed, by whom it is ruled, and to what religion or nationality its citizens belong: only cruelty will have reign over there. Yes, justice is the reason for a state's existence. The most important lesson to be derived from what happened in the past is the fact that judicial independence and impartiality and adherence to justice are crucial for our democracy and the rule of law. Court decisions are, of course, binding for everyone. Nevertheless, the independence and impartiality of the judiciary do not necessarily mean that their decisions cannot be criticized under any circumstances. In the new judicial year, we are going to add momentum to our judicial reform efforts, which will relieve the burden on both our judicial organization and our nation. With the awareness that the range of humanity's pursuit of justice will continue until the end of days, we are going to resume these efforts without stopping."*

220. Likewise, in his group meeting speech at the Turkish Grand National Assembly dated 11 November 2020, the President of the Republic stated that new steps would be taken with a view to strengthening the principle of a state governed by the rule of law and ensuring a foreseeable and easily accessible judicial system functioning in a speedy and effective manner. In his speech, the President of the Republic also stated that the needs to be established as a result of the consultations between the parties to the legal system, that the regulations guaranteeing the acquired rights and justified expectations would be increased and thus, the aim of ensuring Turkey's democracy and development oriented growth would be maintained[17].

221. Additionally, in his speech during the announcement of the new Human Rights Action Plan, the President stressed the followings[18]:

[16] https://www.tccb.gov.tr/en/news/542/130302/-we-will-accelerate-our-judicial-reform-efforts-in-the-new-judicial-year-

[17] For detailed information please see https://www.tccb.gov.tr/haberler/410/122761/-yatirim-yapildiginda-en-yuksek-ve-guvenli-kazancin-saglanacagi-ulkelerin-basinda-turkiye-nin-geldigini-tum-dunyaya-gosterecegiz-
https://www.tccb.gov.tr/en/news/542/122762/-we-will-show-the-entire-world-that-turkey-is-one-of-the-top-countries-that-will-yield-the-highest-and-the-most-secure-income-when-invested-in-

[18] In order to see whole speech, please visit: https://www.tccb.gov.tr/assets/dosya/2021-03-02-insanhaklari.pdf

"Our recent history has taught us, through our bitter experiences, that the foundation of state is justice, and that justice is based on people with their rights and dignity. That is why the compass of our cause of justice is human, human dignity, and the ability of humans to continue their lives with all their rights.

...

We can express another approach in this regard in the words of the late Malik El Shahbaz or Malcolm X as it is known to the whole world: "I am after the truth, it doesn't matter who says it; I'm after justice, it doesn't matter who it's for or against."

Yes, with this feeling, we place a high priority on every opinion that will fulfil justice with the meticulousness of a jeweller and give people their due. We embrace the international documents created by the humankind around universal values with the same sincere feeling.

...

Every reform was the result of the unity of feelings and thoughts between us and our nation in achieving a more liberal, more participatory, more pluralistic democracy, and so is the Human Rights Action Plan"

222. In his speech at the "Symposium on Alternative Settlement Methods in Criminal Law", the Minister of Justice pointed out that the judiciary's independence and impartiality was an indispensable part of a state governed by the rule of law and that therefore, further enhancement of the rule of law lay at the centre of the reform mindset. The Minister also stated that it was the practice itself that would sustain law and that the judiciary adjudicated on the basis of the case file, conscience, law and the Constitution. In his speech, the Minister pointed out that the Judicial Reform Document would serve betterment of the justice system. The Minister drew attention to the facts that release pending trial is the norm and detention is the exception and that the judiciary gained speed thanks to the legislative amendments within the scope of the judicial reform. The Minister stated that the reforms were continuous and dynamic, that the works towards a more trusted legal system were ongoing, that the Human Rights Action Plan had been prepared, that the judgments of the Court and the Constitutional Court were followed, that the practices further strengthening legal safety would be ensured altogether and that stronger steps would continue being taken within the framework of both legislation and practice[19].

223. During the 2021 budget discussions, the Minister of Justice emphasised similar points and stated that the exercise of judicial power belonged exclusively to the judiciary, that

[19] For detailed information please see https://basin.adalet.gov.tr/bakan-gul-hukukun-ustunlugunun-daha-da-gelistirilmesi-reform-anlayisimizin-merkezinde-yer-almaktadi

the judiciary received no orders, instructions, recommendations or suggestions from any person, institution or organ, that the ultimate aim of the instruments such as the Judicial Reform Strategy Document and the Human Rights Action Plan was strengthening the rule of law and that significant results had been obtained thanks to realisation of the aims one by one since the announcement of the Judicial Reform Strategy Document despite the pandemic [20].

224. All of the foregoing high-level political messages clearly demonstrate that the executive organ attaches great importance to the independence and impartiality of the judiciary, that the needs for strengthening independence and impartiality were established and concrete steps and reforms have been/will continue being implemented in a speedy manner.

F. Isolated Nature of the Violation of Article 18

225. In respect of the violation of Article 18 taken in conjunction with Article 5 of the Convention, the Court has not particularly indicated that there is a systemic or structural problem with respect to independence of the judiciary. In this respect, it appears that the violation in question has an isolated nature. The authorities would like to highlight that the Court's findings are completely related to the specific facts concerning the certain parliamentary and judicial practices conducted during the criminal investigation and proceedings. In this sense, the Turkish authorities would furthermore like to recall that the lifting of the applicant's parliamentary immunity was a consequence of the Constitutional amendment introduced as a result of a huge public consensus. No similar constitutional act has been taken since the case at hand.

226. Moreover, the Turkish authorities would like to reiterate that the Court did not make any examination or reach any findings with respect to Article 6 of the Convention in the judgment of *Demirtaş v. Turkey*. In this respect, no general measure is required as to the ongoing legal proceedings. The violation of Article 18 was found particularly in conjunction with Article 5 of the Convention. As it is known, Article 18 of the Convention has no independent existence; it can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that a member State has undertaken to secure to those under its jurisdiction.

227. The Turkish legal system provides sufficient legal guarantees to protect the fundamental rights and freedoms set in the Constitution and the Convention and to examine

[20] For detailed information please see https://basin.adalet.gov.tr/adalet-bakanligi-2021-butcesi-plan-ve-butce-komisyonu-nda-kabul-edildi

and settle the complaints that these rights and freedoms have been violated by the administration or third persons.

228. As to the general measures in respect of Article 5 § 1 of the Convention, detailed explanations are presented on the legislation above (see §§ 34-52 above) and projects and awareness-raising activities below (see §§ 128-158 below), the relevant regulations provide sufficient legal guarantees in this field, and it is aimed that these guarantees be further strengthened through the Judicial Reform Strategy Document and Projects and Awareness-Raising Activities.

229. References to the high profile cases by the country's authorities should not be construed as interference in the competence of the judiciary. The principle of the presumption of innocence is naturally respected by everyone, first and foremost by the executive. In this regard, the comments by any politicians, including the President, on certain topics cannot be characterised as an interference with the judiciary. Besides, as the Court itself stressed in one of its judgments, there is no doubt that in a democratic society individuals are entitled to comment on and criticise the administration of justice and the officials involved in it (see *Lesnik v. Slovakia*, no, 35640/97, 11 March 2003, §§ 55).

230. Therefore, the Turkish authorities would like to indicate that the Committee of Ministers should not expand its supervision of execution of the judgment finding violation of Article 18 taken in conjunction with Article 5 of the Convention to an extent to include the supervision of execution in respect of Article 6 of the Convention.

231. Accordingly, the violation of Article 5 of the Convention found in relation with Article 18 is of an isolated nature.

G. Remedy of Individual Application before the Constitutional Court

232. As repeatedly indicated by the Court, starting from the judgment of *Hasan Uzun* (no. 10755/13), individual application to the Constitutional Court is an effective remedy as of 23 September 2012. Any individual against whom an unjustified criminal investigation is conducted has the right to file an application before the Turkish Constitutional Court. The Constitutional Court follows the principles set forth by the Court in its decisions with respect to the individual applications. The jurisprudence of the Constitutional Court is followed by first-instance courts and high courts. Accordingly, the Constitutional Court contributes to the improvement of the case-law of the Court in Turkey in respect of all rights guaranteed under the Convention and Constitution including the right to liberty and security.

233. In this scope, in the case of *Hasan Akboğa* ([Plenary], no. 2016/10380, 27 March 2019), in which the applicant complained of an alleged violation of his right to personal liberty and security within the context of arrest and custody procedures, the Constitutional Court held an examination in the light of the Court's case-law. The Constitutional Court held that, in order for an arrest measure with a legal basis and a legitimate aim to be in compliance with the Constitution, it must also be proportionate. According to the Constitutional Court, the principle of proportionality (*ölçülülük*) comprises of three subprinciples: capability (*elverişlilik*), exigence (*gereklilik*) and proportionality (*orantılılık*). Capability means that the prescribed interference is capable of achieving the intended purpose; exigence describes that an interference is absolutely necessary in order to achieve the intended purpose, in other words it is not possible to achieve the intended purpose by a lighter interference; proportionality stands for a reasonable balance that must be struck between the interference with the rights of the individual and the intended purpose (*ibid.*, § 55). The Constitutional Court also indicated that it is necessary for the judicial authority which applied the measure to examine in each particular case whether the action taken pursued a legitimate aim and was proportionate. However, it is for the Constitutional Court to review whether the margin of appreciation in those matters was overstepped (*ibid.*, § 56).

234. In a judgment dated 29 November 2019, the Constitutional Court examined a complaint about the alleged unlawfulness of an applicant's detention[21]. In the said judgment, the Constitutional Court firstly noted that the applicant's detention had a legal basis. Further, before the examination of whether the detention measure, which was understood to have legal basis, pursued a legitimate aim and was proportionate, it noted that an assessment was necessary as to whether there was a strong suspicion that the offence had been committed, which is the pre-condition of the detention. Within the framework of the principles laid down in its previous judgments, the Constitutional Court examined whether there was strong indication that the applicant had committed an offence in the said case. Consequently, the Constitutional Court held that the authorities had not been able to sufficiently establish the existence of strong indication that the applicant had committed an offence in the said case. It thus concluded that there had been a violation of the right to personal liberty and security, emphasising that there was no need to examine whether there had been grounds for detention or whether the detention measure had been proportionate.

[21] Individual application no. 2017/17432.

235. Furthermore, as another important example, in *Mirgadirov* case, the Court reaffirmed that the remedy before the Constitutional Court was fully capable, like an application to the Court, of leading to an examination of the applicant's allegations under Article 5 §§ 1 and 2 and Article 10 of the Convention, and it offered prospects of appropriate redress (see *Mirgadirov v. Azerbaijan and Turkey*, no. 62775/14, § 155, 17 September 2020).

H. Projects and Awareness-Raising Activities

236. In order to further improve the legislative practice with respect to the right to liberty and security, raising awareness activities and projects are of great importance. The measures have been taken in this regard are as follows.

- The training curriculum of the candidate judges includes the courses of Practices of Human Rights Law and Freedom of Expression.
- The Justice Academy of Turkey provided pre-service training on Practices of Human Rights Law and Freedom of Expression and Press to 2821 candidate judges and prosecutors between May 2019 and 1 July 2020.
- Meetings on IPA-Project preparation, implementation and monitoring and on CAS II Monitoring and Evaluation were held between 2 September and 30 September 2020.
- Between 7 September and 22 September 2020 the Justice Academy of Turkey provided in-service training to a number of judges and public prosecutors on the subjects of Practices of Magistrate Judgeships, Practices of Execution Judgeships, Practices of Criminal Courts of First Instance, Duties of Public Prosecutors in Relation to the Hearing Stage in Criminal Proceedings, Amendments Made by the Law no. 7242 to the Law on the Execution of Penalties and Security Measures and Practices of Public Prosecutor's Offices of Execution.
- Between May 2019 and 28 July 2020, pre-service training was provided to 2716 candidate judges and public prosecutors on the subjects of arrest, custody, detention and judicial supervision, search and seizure, appointing a confidential investigator, monitoring by technical tools and monitoring communication.
- Between 1 September and 30 September 2020, courses on Writing Reasoned Decisions in Criminal Proceedings were provided to 277 candidate judges and public prosecutors.
- Moreover, the Justice Academy of Turkey has taken action to make the legal argumentation a part of the pre-service and in-service trainings. The relevant action has been taken in cooperation with universities.

- The course on Judicial Ethics has been included in the pre-service trainings of the candidate judges. Between May 2019 and 28 August 2020 the Justice Academy of Turkey provided pre-service training on Judicial Ethics to 4785 candidate judges and prosecutors.
- Although Covid-19 Pandemic, The Justice Academy of Turkey maintained its pragrammes in so far as possible.

237. In 2021, in-service training activities performed by distance education method by the Justice Academy of Turkey are as follows:

- On 15 January 2021, "*Duties of the public prosecutor in criminal proceedings relating to the trial stage"* programme was performed with 59 participants (10 Judges, 49 Public Prosecutors),
- On 19 March 2021, *"Effective Investigation and Interrogation Techniques"* programme was performed with 33 participants (9 Judges, 24 Public Prosecutors),
- On 27 April 2021, *"Hearing Management and Decision Writing Techniques in Criminal Procedure"* programme was performed with 34 participants (31 Judges, 3 Public Prosecutors),
- On 24 May 2021, *"Claims for Compensation Due to Protective Measures"* programme was performed 32 participants (27 Judges, 5 Public Prosecutors).

238. Lastly, on 17 December 2021, *"Procedural Provisions in Criminal Proceedings (Call, Forced Summoning, Mandatory Defense Counsel, Giving the Last Word to the Defendant)"* programme is planned to be performed with 100 participants.

1. Projects and Trainings

a. Strengthening the Criminal Justice System and the Capacity of Justice Professionals on Prevention of the European Convention on Human Rights Violations in Turkey (CAS II Project)"

239. A fruitful project under the title of "*Improving the Efficiency of the Turkish Criminal Justice System*" was conducted by the Directorate General for Criminal Affairs of the Ministry of Justice from 2012 to 2014. In view of the Needs Assessment Report drafted within the scope of this project, it was considered that a follow-up project could be prepared in order to further strengthen the judiciary and render it more efficient, effective and visible by harmonising it with international and European standards in the field of criminal justice. In this scope, the project titled "*Strengthening the Criminal Justice System and the Capacity of Justice Professionals on Prevention of the European Convention on Human Rights Violations*

in Turkey (CAS II Project)" was officially launched. The beneficiaries of this project are the Directorate General for Criminal Affairs of the Ministry of Justice and the Justice Academy of Turkey. The project will be conducted in coordination with the Department of Human Rights, while the Constitutional Court, the Court of Cassation, the Council of Judges and Prosecutors, the Financial Crimes Investigation Board, the Directorate General of Police and the Union of Turkish Bar Associations will participate as stakeholders. The duration of the project is 36 months and it will end in March 2022. The project is co-financed by the European Union and the Council of Europe[22].

240. The project will mainly focus on procedural guarantees in criminal matters, cybercrime and financing of terrorism. As regards procedural guarantees, the preventive measures of search and seizure, arrest and custody, pre-trial detention and conditional bail will be addressed along with other procedural matters under the Code of Criminal Procedure (Law no. 5271).

241. The relevant Project is aimed at contributing to the strengthening of the criminal justice system on the application of the European Convention on Human Rights and to the improvement of the capacity of the criminal justice institutions and professionals on the application of provisions of the Convention and the case-law of the Court as well as the improvement of their co-operation and awareness on the human rights law.

242. To strengthen institutional capacity:

- Plans include conducting needs assessment activities, developing manuals and guides, developing training modules and materials, training trainers, conducting study visits, and forming an electronic library.
- Needs assessment activities will be carried out in two paths:
- The legislative needs assessment group will review not only the current legislation but also relevant strategy and policy papers. At the end of its activities, this group will prepare an assessment report on what could be done to mitigate the violations of fundamental rights in criminal law.
- The training needs assessment group, on the other hand, will look at the existing training curriculum and materials particularly with respect to the subjects constituting the project's main focus. Further, this group will draft the efforts needed for improving the training modules and materials.

[22] For detailed information please see http://www.cas.adalet.gov.tr/eng/index.html.

- The working groups to be formed after the needs assessment will develop guides, checklists and handbooks that can be used by law professionals and relevant experts in three main focal points of the project in criminal law. The developed guides, checklists and handbooks will be distributed to the institutions concerned.
- Following the needs assessment to be conducted in coordination with the Justice Academy of Turkey, efforts will be launched to update and improve the pre-service and in-service training modules and materials. The activities in this respect will include updating, revising and complementing the existing training modules and materials on the main areas of focus of this project. Along with the training modules and materials to be developed, a pool of trainers will be established by means of offering a training of trainers to a group of professionals who will be selected among magistrate judges as well as judges and prosecutors specialising in cybercrime and financing of terrorism. This will contribute to improving the Justice Academy's institutional capacity.
- An electronic library will be formed for the Ministry of Justice with 100 online academic materials in Turkish, English and French languages.
- Study visits will be conducted to several European countries with a view to observing best practices in criminal justice.
- Training seminars, roundtable meetings and workshops will be held in order to improve the knowledge and skills of the human resource and law professionals. Training modules and materials to be developed within the scope of the project will be used in pre-service and in-service trainings in coordination with the Justice Academy. The goal is to have 600 candidate judges and prosecutors and 1,500 active judges and prosecutors benefit from face-to-face trainings.
- Regional roundtable meetings will be organised in several cities with the participation of judges, prosecutors, attorneys and experts. The topics to be covered in these meetings will include providing reasons for decisions in detention orders and reviews of detention, legal examination of the detention measure, use of alternative measures, the authority ordering the detention, admissibility of evidence, adversarial proceedings, and procedural guarantees in criminal proceedings.
- Furthermore, international workshops will be held on the same topics in order to exchange views regarding best practices among Turkey and other members of the Council of Europe with respect to the implementation of the European Convention on Human Rights.

- As part of the awareness-raising and cooperation activities between institutions, coordination meetings will be held and an awareness-raising campaign will be carried out.
- In the framework of the information campaign to be launched for the purpose of better informing the public on the functioning of the criminal justice system, open days will be organised in courthouses and information leaflets will be prepared. The materials and resources to be formed within the scope of the project will be disclosed for public access through a website which will be developed under the auspices of the Ministry of Justice.

243. As part of the Project in question, on 5 October 2020 an online webinar was held on the subject "*Lawfulness of Detention and Measures Alternative to Detention in Criminal Justice*", with the participation of the Magistrate Judges, presidents and members of Assize Courts, presidents and members of Criminal Chambers of Regional Courts of Appeal from various cities as well as the Council of Judges and Prosecutors, the Directorate General for Foreign Relations and European Union, the Department of Human Rights and the trainers of the Justice Academy of Turkey. In the webinar, in which competent speakers from the European Court, the Constitutional Court and the Court of Cassation as well as the academicians, lawyers and foreign experts shared their valuable experiences, the detention measure and alternative measures to detention were discussed in the light of the case-law of the European Court, the Constitutional Court and the Court of Cassation and the comparative practice.

244. Moreover, a working group on procedural safeguards was established as part of the relevant Project. As a result of the studies carried out by the working group, which held its first meeting on 19 October 2020, it is aimed at preparing materials such as guides and handbooks that will assist judges and public prosecutors on the right to a fair trial and the right to liberty and security.

245. In addition, it is aimed, among other resources, to translate or update some Council of Europe documents in foreign languages on the right to Freedom of Liberty and Security and share them with judges and prosecutors.

246. Finally, although it has been postponed to a future date due to the Covid-19 pandemic; a roundtable on procedural safeguards (including The Right to Liberty and Security) is planned.

b. HELP (Human Rights Education for Legal Professional) Projects and Trainings

247. What is more, certificate-awarding distance learning activities are conducted via the "HELP (Human Rights Education for Legal Professionals) E-learning Platform" with the

aims of enhancing the knowledge of law professionals serving under the Ministry of Justice in the field of human rights, equipping and enabling them to reflect the Convention on their daily professional practices in the best way possible, and raising their awareness and level of knowledge about the Court's judgments and decisions in their fields of interest.

248. The Council of Europe HELP courses International Cooperation in Criminal Matters and Family Law and Human Rights were launched for the first time in Turkey on 10 January 2020. A group of 30 rapporteur judges participated in these two courses launched in Ankara. The HELP course was implemented in the framework of the HELP in Turkey project, in close cooperation with the Directorate General for Foreign Affairs and European Union, Ministry of Justice in Turkey.

249. In addition, the Justice Academy is conducting HELP trainings for candidate judges and prosecutors. More than 300 trainee judges and prosecutors attend the Council of Europe HELP course Introduction to the European Convention on Human Rights and the European Court of Human Rights launched in both English and Turkish. The course will be implemented over a one-month period and it was implemented in the framework of the HELP in Turkey project, in close cooperation with the Justice Academy of Turkey[23].

250. A group of 538 trainee judges and prosecutors, lecturer and rapporteur judges and the Head of the Department completed the HELP online course Introduction to the European Convention on Human Rights and the European Court of Human Rights and a certificate award ceremony was organised in Ankara[24].

251. After the summer break and under the Covid-19 pandemic situation, on 29 September 2020, HELP Online course Introduction to the European Convention on Human Rights and the European Court of Human Rights in its Turkish version was launched for 229 clerks working at the first instance courts[25].

252. In 2021, 7 courses have been completed so far under the topics of:

-Introduction to the ECHR and ECtHR and Execution of the Judgments,

-Freedom of Expression, Freedom of Expression,

-Violence Against Women and Domestic Violence,

-Reasoning of Criminal Judgments.

[23] For detailed information please see https://www.coe.int/en/web/help/-/four-council-of-europe-help-courses-on-human-rights-launched-in-turkey-for-legal-professionals-in-january.
[24] For detailed information please see https://www.coe.int/en/web/help/-/help-course-launches-and-certificate-award-ceremonies-for-legal-professionals-in-turkey
[25] For detailed information please see https://www.coe.int/en/web/help/-/help-course-launches-and-certificate-award-ceremonies-for-legal-professionals-in-turkey

253. 193 participants from the institutions of the University of TOBB ETU, Faculty of Law and Justice Academy of Turkey (JAT) as Trainer Judges and prosecutors (Mixed Group); university law students; judges and public prosecutors took place in the said courses.

254. As of July 2021, 19 courses are ongoing with more than 800 participants from different institutiuons (mostly Judges, Prosecutors and University Law Students) under the topics of Reasoning of Criminal Judgments, Freedom of Expression, Introduction to the ECHR and ECtHR and Execution of the Judgments and Admissibility Criteria.

255. Lastly, Turkey is in the second place among other member States in respect of the number of users in the HELP learning platform[26] and 1320 Candidates of Judge and Public Prosecutors have completed their HELP programmes with 97 percent success rate.

c. Other projects and awareness-raising activities

256. The CJP has paid attention to the number of the European Court's judgments finding a violation concerning Turkey in connection with "the right to liberty and security", and it has attached great importance to enhancing the competence of the magistrate judges concerning the European standards and the European Court's case-law on the exercise, protection and restriction of the relevant right since they directly influence the right of individuals to liberty and security in view of the fact that they are empowered to order detention on remand and to review objections against such detention orders at the investigation stage.

257. In this regard, the CJP aims to raise the awareness of judges and public prosecutors about the European Court's decisions concerning the related subjects by translating the following guides, bulletins and books of the Court into Turkish and making these guides on Articles and the books available, both in print and electronically, to judges and public prosecutors.

- Guide on Article 5 of the European Convention on Human Rights, entitled Right to Liberty and Security, which was published by the Court and updated on 31 August 2020,
- Guide on Article 6 of the European Convention on Human Rights, entitled Right to a Fair Trial (criminal limb), which was published by the Court and updated on 31 August 2020,
- Guide on Article 6 of the European Convention on Human Rights, entitled Right to a Fair Trial (civil limb), which was published by the Court and updated on 30 April 2020.

[26] For detailed information please see https://www.taa.gov.tr/haber/avrupa-konseyi-help-egitimlerinde-turkiye-avrupa-ikincisi-oldu

- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 01 December 2020-15 January 2021,
- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 15 January 2021-02 February 2021,
- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 3 February 2021- 10 March 2021,
- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 15 March 2021- 15 June 2021.
- Compilation of court statistics since 1959.

258. Besides, the CJP will maintain its effords on awareness rising works regarding applications within the scope of Article 5 of the ECHR, and in particular decisions and content related to arrest, detention and detention proceedings, impartiality and independence of the judiciary by the following activities which will be conducted in 2021:

- Following the ECtHR case law Data Bank HUDOC, having the decisions that are considered to be related to the CJP's field of activity translated into Turkish,
- Distributing the relevant ECtHR decisions or other relevant documents to the relevant units after they are made into bulletins, information notes and, if necessary, into a book or booklet,
- Organizing a video conference meeting in order to increase the awareness of the judges serving in the CJP about the ECtHR Jurisprudence.

259. Participation of judges and public prosecutors in the assessment meetings held for the Human Rights Action Plan under preparation were ensured. In this regard;

- 35 persons participated in the meeting held in Ankara on 18 November 2019,
- 116 persons participated in the meeting held in Istanbul on 9 December 2019, and
- 38 persons participated in the meeting held in Ankara on 25 December 2019.

260. Judges and public prosecutors participated in the meetings held by the Directorate General for Criminal Affairs of the Ministry of Justice as part of 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 Turkey”. In this regard;

- 55 persons participated in the in-service training programme held in Ankara on 3 October 2019,

- 106 persons participated in the online meeting of the working group about "Reasoning of Judgments in Criminal Proceedings in the Scope of the Right to a Fair Trial", which was held on 24 June 2020,
- 84 persons participated in the online meeting of the working group about "Lawfulness of Pre-Trial Detention and Its Alternatives in Criminal Proceedings", which was held on 5 October 2020, and
- 5 persons participated in the online meeting of the working group about "Procedural Safeguards", which was held on 19 October 2020.

261. Additionally, the following meetings have been held before the announcement of the Human Rights Action Plan:

-25 November 2020, Review with the Legal Policies Board of the Presidency;

-27-28 November 2020 - 4 December 2020, Meetings with representatives of the business world (TÜSİAD,-MÜSİAD, TOBB);

-29 November 2020, Meeting with representatives of non-Muslim communities;

-3 December 2020, Meeting with the Human Rights Inquiry Committee and the Justice Committee of the Grand National Assembly of Turkey;

-8 December 2020, Consultation meeting with the Union of Turkish Bar Associations;

-11 December 2020, Meeting with the Directorate General of Foundations;

-4 December 2020 - 20 December 2020, Meetings with the relevant ministries and institutions to prepare the final draft of the Working Paper for the Action Plan;

-30 December 2020, Meeting with the Presidency of the Court of Cassation;

-15 January 2021, Meeting with the Presidency of the Council of State;

-20 January 2021, Submission to the Presidency of the Republic.

262. Moreover, judges and public prosecutors participated in the seminars held by the Constitutional Court within the scope of "Joint Project on Supporting the Individual Application Mechanism". In this regard;

- 116 persons participated in the seminar held in Antalya between 18 and 20 January 2019,
- 117 persons participated in the seminar held in Antalya between 1 and 3 February 2019,
- 122 persons as participants and 11 persons as trainers attended the seminar held in Izmir between 15 and 17 February 2019,

- 121 persons as participants and 5 persons as trainers attended the seminar held in Istanbul between 1 and 3 March 2019,
- 123 persons as participants and 10 persons as trainers attended the seminar held in Antalya between 16 and 18 March 2019,
- 127 persons participated in the seminar held in Adana between 20 and 22 April 2019,
- 116 persons as participants and 11 persons as trainers attended the seminar held in Izmir between 3 and 5 May 2019,
- 113 persons as participants and 9 persons as trainers attended the seminar held in Bursa between 15 and 17 June 2019,
- 100 persons participated in the seminar held in Adana between 29 June and 1 July 2019,
- 90 persons as participants and 9 persons as trainers attended the seminar held in Trabzon between 14 and 16 September 2019, and
- 61 persons participated in the seminar held in Istanbul between 23 and 24 September 2019.

263. As part of the in-service training programme on "Individual Application" organised by the Constitutional Court;

- 13 judges and public prosecutors were selected as participants to the in-service training programme held at the Constitutional Court between 20 January and 17 April 2020, and
- 13 judges and public prosecutors were selected as participants to the in-service training programme held at the Constitutional Court between 17 April and 17 July 2020.

2. Role of the Justice Academy of Turkey

264. The Justice Academy of Turkey also continues to conduct its trainings and efforts via in-service and pre-service trainings aimed at raising the awareness of judges, prosecutors and candidate judges/prosecutors on the case-law of the Court. In this scope, the Justice Academy offered courses on Preventive Measures and Practices to candidate judges/prosecutors and it will continue to do so in the upcoming terms of trainings. In this scope the following seminars are given regularly within the scope of pre-service training programmes:

- Investigation-Prosecution Procedures,
- Trial Procedures,

- Magistrate Judgship Practices,
- Criminal Court Practices,
- Practices of Public Prosecutor's Office,
- Judicial Ethics, Human Rights and Human Rights' Protection,
- Constitutional Judgment and Individual Application,
- Freedom of expression.

265. Additionally, within the scope of CAS II, the following modules have been prepared as pre-service curriculum and these modules will be taught permanently;

- The Module of Protective Measures,
- The Module of Magistrate Judgship Practices,
- The Module of Practices of Public Prosecutor's Office,
- The Module of Criminal Court Practices,
- The Module of Reasoned Decision Writing in Criminal Law.

266. Lastly, the following HELP Programmes were adopted to Turkish and 300 Judges and Public Prosecutors will benefit from these programmes as in-service training:

- Alternatives to Arrest and Deprivation of Freedom,
- Reasoned Decision in Criminal Procedure,
- Procedural Guarantees and Victim Rights in Criminal Procedure.

I. Consideration of Judgments of the Court and the Constitutional Court in Assessments on the Promotion of Judges and Public Prosecutors

267. By the decision of 4 December 2019 by the General Assembly of the CJP, the following condition was added to criteria of the promotion of the judges and public prosecutors: "*On the basis of the principles of independence of the judiciary and security of tenure of judges, account will be taken of whether the persons concerned caused a finding of violation by the European Court of Human Rights or the Constitutional Court, as well as the nature and gravity of the violation, and the efforts of the persons concerned to safeguard the rights enshrined in the European Convention on Human Rights and the Constitution*". By its Resolutions nos. 675/1 and 675/2, the General Assembly of the CJP made a legal regulation in this respect and set up an examining body for the judgments finding violation delivered by the Constitutional Court and the European Court of Human Rights, under the Promotion Bureau.

268. On 15 January 2020 an amendment to Article 6 entitled "Principles of Promotion" of the "Principle Decision on the Grade Promotion of Judges and Prosecutors" was

promulgated in the Official Gazette. According to this amendment, in the promotion of judges and prosecutors, on the basis of the principles of independence of the judiciary and security of tenure of judges, account will be taken of whether the persons concerned caused a finding of violation by the European Court of Human Rights or the Constitutional Court, as well as the nature and gravity of the violation, and the efforts of the persons concerned to safeguard the rights enshrined in the European Convention on Human Rights and the Constitution.

As judges and public prosecutors will employ more diligence and effort with regard to the present findings of violations by the Court and the Constitutional Court and, in general, the protection of the rights guaranteed under the Convention and the Constitution, this amendment is also intended to be used for measuring professional sensitivity and professional competence.

J. Publication and Dissemination of the Judgments

269. The *Demirtaş v. Turkey* judgment was translated into Turkish and published at HUDOC.

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

IV. CONCLUSION

271. The Turkish authorities will maintain submitting further information on the individual and general measures taken or envisaged to be taken in due process. In this respect, the Committee of Ministers will be kept informed on further developments