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Communication from Turkey concerning Oyal Group of cases v. Turkey (Application No. 4864/05)

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Réunion :	1419e réunion (décembre 2021) (DH)
Référence du point :	Bilan d'action (29/09/2021)

Communication de la Turquie concernant le group d'affaires Oyal c. Turquie (requête n° 4864/05) ***(anglais uniquement)***

REVISED ACTION REPORT

Oyal v. Turkey
(Application no. 4864/05)
Judgment of 23 March 2010, final on 23 June 2010
and
10 Repetitive Cases[1]

I. CASE DESCRIPTION

1. These cases concern the failure of the Turkish authorities to protect the lives of the applicants or their next-of-kin between 1996 and 2005 on account of medical negligence or medical errors committed by health care providers employed mainly by state-run hospitals.

2. The European Court identified the following issues as regards violations of Article 2 in its substantive aspect:

- Failure to cover fully the applicant's (who was infected with HIV virus after birth) medical expenses despite full liability attributed to the State by decisions of civil and administrative courts; lack of requirement for blood donors to give information about their sexual activity (*Oyal*);

- Refusal to admit patients in critical medical condition to hospitals and/or to provide medical treatment because of the patient's inability to pre-pay hospital fees (*Mehmet Şentürk and Bekir Şentürk*) or because of lack of sufficient number of incubators in a hospital (*Asiye Genç and Aydoğdu*).

- Lack of coordination between hospitals before a patient in an emergency situation is transferred from one hospital to another and the absence of medical assistance during transfer (*Asiye Genç and Aydoğdu*);

3. The European Court identified the following issues as regards violations of Article 2 in its procedural aspect:

[1] The list of repetitive cases is in the table below.

- Failure of domestic courts to examine cases of medical negligence with exceptional diligence and promptness (*Bilinmiş, Nihat Soylu, Süleyman Ege, Tülay Yıldız, Yirdem and Others, Zafer Öztürk, Sayan, İbrahim Keskin, Elvan, Alkan, Eryiğit and Kanal*), in particular on account of excessive delays encountered in the submission of medical reports setting out liability of health care providers, which resulted in exceptionally lengthy proceedings (*Zafer Öztürk and Öney*);

- In the case of *Aydoğdu*, reference is made to the "*Guidelines on the role of court-appointed experts in judicial proceedings of Council of Europe's Member States*" (CEPEJ (2014) 14) published on 12 December 2014 by the European Commission for the Efficiency of Justice (CEPEJ). In this connection, it is recalled that credibility and effectiveness of the regime in question should be preserved particularly by means of an obligation for the forensic medicine experts to duly reason (explain) their scientific opinions.

- Dropping of charges on account of the application of prescription periods in lengthy proceedings or refusal to give administrative authorisation so that proceedings could be initiated against health care providers (*İbrahim Keskin (Article 8), Nihat Soylu, Mehmet Şentürk and Bekir Şentürk, Sayan, Öney, Altuğ and Others, Aydoğdu* and *Mehmet Ulusoy*), insufficient nature of the domestic investigation/not sufficiently thorough and effective investigation (*Asiye Genç and Bilinmiş*);

- Failure to launch disciplinary investigations or impose disciplinary sanctions against the medical professionals or lack of indepence of experts (*Nihat Soylu, Tülay Yıldız and Zafer Öztürk*); the doctors' failure to provide sufficient information to the patient regarding the treatment, unsatisfactory post-operation care and medical follow-up (*Tülay Yıldız*), and in this connection the failure to mention in the expert reports the obligation to inform the patient and obtain consent (*Altuğ and Others*);

- Failure of a domestic court to establish the facts (*Sayan*), the domestic courts' excessively formalistic application of procedural provisions in a manner that deprived applicants of the opportunity to have the merits of their complaints examined, and the delivery of a dismissal with an insufficient reasoning (*Öney*).

4. In *Akkoyunlu* case, the Court observed that the administrative court had made no attempt to verify the accuracy of the applicant's allegation. Furthermore, although there had been

contradictory conclusions contained in the medical report, the administrative court did not try to eliminate them by taking further steps such as obtaining a new medical report. The Court concluded that the Government have failed to discharge their burden of showing that they have complied with their positive obligation to provide the applicant with prompt and appropriate medical assistance for his eye problem (Article 3). Thus, the Court held that, if the applicant so requests, the respondent State is to meet the costs of an ocular prosthesis transplantation and of any subsequent medical treatment associated with the applicant's eye problem.

5. The Court further found in the *Oyal* case that the administrative courts failed in their duty to conduct the compensation proceedings with exceptional diligence in view of the applicant's condition and the gravity of overall situation (violation of Article 6 § 1) and that the Turkish legal system failed in providing an effective remedy whereby the length of the proceedings could successfully be challenged (violation of Article 13). In this case, the European Court held that the respondent State must provide free and full medical cover for the applicant during his lifetime.

6. In *Erdinç Kurt and others, Mehmet Ulusoy and others* and *Erkan Birol Kaya cases*, the Court considered that the applicants had not benefited from an appropriate judicial reaction complying with the inherent obligation to protect right to physical integrity on account of general and insufficiently substantiated nature of the medical expert's report despite the existence of some arguments put forward by the applicants and the refusal by the judicial authorities of the request for a second report (Article 8 in its procedural aspect);

7. The European Court also identified the following violation of Article 8: the excessive length of the proceedings initiated to shed light on the allegations of medical negligence (*İbrahim Keskin, Elvan Alkan and others, Eryiğit)*.

II. INDIVIDUAL MEASURES

8. The Turkish authorities have taken measures to ensure that the violations at issue have ceased and that the applicants are redressed for their negative consequences.

II.a. Just Satisfaction

9. The just satisfaction amounts awarded by the Court in the *Oyal Group of Cases* have been paid within the deadlines, and relevant payment documents have been submitted to the Committee of Ministers (see the list in the annexed table).

II.b. The compensation awarded by domestic courts and reopening of proceedings

10. In the cases of *Oyal*, the applicant also received compensation on account of pecuniary and/or non-pecuniary damages awarded by Turkish civil and administrative courts.

11. Furthermore, below is the latest information on certain cases, in which compensation claims were examined, with regard to reopening of the proceedings:

12. In the judgment of *Mehmet Ulusoy and Others*, the applicants requested the reopening of the proceedings. In view of the fact that the applicant merely requested to award pecuniary compensation in the petition they filed in respect of the reopening of proceedings, the relevant administrative court dismissed this request since it was also assessed that there was no violation on the merits held by the Court. The Government is of the opinion that there is no need to take another measure on this matter.

13. The remedy of reopening of proceedings has not been pursued in respect of the administrative court rulings in the cases of *Erkan Birol Kaya, Sayan* and *Tülay Yıldız* or the civil court rulings in the cases of *Erdinç Kurt and Others, Nihat Soylu, Şentürk, Öney* and *Altuğ and Others.*

14. In *Asiye Genç*, the European Court held that there had been a violation of procedural requirements of Article 2. In this judgment the European Court stress that the Turkish judicial system's response to the tragedy had not been appropriate for the purposes of shedding light on the exact circumstances of the child's death. The investigation had not been complete, because none of the crucial factors specific to the failings in the management of the health service had been the subject of any investigation.

15. The European Court's judgment on the present case became final on 27/04/2015. The Gümüşhane Prosecution Office reviewed the investigation case on the doctor who worked in Gümüşhane Public Hospital on 22/09/2021 and decided that it was no longer possible to reopen the investigations which had become time-barred on 31/03/2010. The Trabzon Prosecution

Office reviewed the investigation case on the doctors who worked in Trabzon Medico-Surgical and Obstetrics Centre on 23/09/2021 and decided that it was no longer possible to reopen the investigations which had become time-barred on 30/03/2010 (see Annex 1).

16. In addition, as stated in the decision of the ECtHR, in the case of Nihat Soylu, complying with the Court of Cassation's quashing judgment, the Civil Court of First Instance issued a decision of non-jurisdiction on 8 March 2013. Following the judgment of the ECtHR finding a violation, the applicant brought an action before the administrative court. With the decision of 5 December 2014, the Samsun 2nd Administrative Court decided to award the applicant compensation for pecuniary and non-pecuniary damages. Upon the appeal against the decision by administration, the Regional Administrative Court examined the case-file and decided to dismiss the objection. In this scope, the authorities would like to state that proceedings brought by the applicant demanding compensation has been concluded and that there are no other measures to be taken individually in this context.

II.c. Life-time compensation of medical expenses

17. In response to the European Court's indication in the *Oyal* case, the Social Security Institution undertook to cover all the medical expenses of the applicant, irrespective of whether or not they were related to his medical condition. It is also recalled that the applicant obtained compensation on account of the decisions of the domestic courts.

18. For the fact that the state-run health institution is responsible for the injury in the *Oyal* case, the Social Security Institution decided to cover the cost of direct and indirect treatment concerning Yiğit Turhan OYAL's disease throughout his life. Besides, the costs of other health service with respect to him, which should not be covered according to our legislation, will also be covered by that Institution and subsequently will be compensated from the relevant persons or institutions causing the incident. Furthermore, the same practice will be performed within the scope of the execution of potential similar judgments.

19. With respect to the situation at issue, a special coverage code under the name of ECtHR was registered into the Healthcare Provision and Activation System (*SPAS*) and Yiğit Turhan Oyal was offered easy access to healthcare services. He was not only provided exemption from patient contribution to medical equipment, medicine and medical examination fees but also the State began to cover his treatment costs.

20. In the case of *Akkoyunlu* (7505/06), the Court also held that -if the applicant so requests, the respondent State is to meet the costs of an occular prosthesis transplantation and of any subsequent medical treatment associated with the applicant's eye problem.

21. Prior to the Court's decision, the Mehmetçik Foundation made a lump sum payment of 3,704,400.000 Turkish liras (TRL) to Hayrullah Akkoyunlu. Since 1 April 2010, the applicant had been on salary in terms of the Law no. 2022 till the date of 30 November 2015 when he carried general health insurance. When it came to his premium debt, pursuant to various decisions of the Council of Ministers, between 1 October 2015 and 31 December 2016 Hayrullah Akkoyunlu was provided access free of charge to the healthcare services offered by the medical facilities owned by the Ministry of Health and its subsidiaries as well as health research and application centres of State universities. Furthermore, by virtue of the decision no. 2018/11769 published in the Official Gazette on 23 June 2018, he was provided the same opportunity for the period from 23 June 2018 until 31 December 2018. Lastly, under the Presidential decision no. 2019/859 published in the Official Gazette on 29 March 2019, he may receive free healthcare under the same conditions throughout the period between 29 March 2019 and 31 December 2019. Likewise, by the Presidential decision no. 2040 dated 7 January 2020, this application had been continued until 31 December 2020. Subsequently, also by decision no. 3432 dated 23 January 2021, it was decided that this would be continued until 31 December 2021. It was understood that by a petition dated 16 June 2021 submitted to the Social Security Institution, Hayrettin Akkoyunlu's lawyer sent a receipt belonging to the Dünya Göz Hospital. However, as it was not understood from the relevant receipt that what the treatment was, it was expressed that on 7 July 2021 the applicant's lawyer was notified by the Social Security Institution, that it was not currently provided feedback and that if the documents are completed, the necessary actions be taken.

22. The Government considers that all individual measures have been taken and no further individual measures are required.

III. GENERAL MEASURES

23. The Turkish authorities have taken a number of measures aimed at preventing similar violations.

III.a. General Measures Taken in Regard to Healthcare Services

III.a.1. Overall Capacity Building Activities

24. When the statistics regarding the medical negligence alleged to have experienced in the health institutions, 824 proceedings in 2014, 992 proceedings in 2015, 1163 proceedings in 2016, 1070 proceedings in 2017, 1285 proceedings in 2018, 704 proceedings in 2019, 663 proceedings in 2020 and 392 proceedings as of July 2021 were brought for the allegation of neglect of duty.

25. Currently, 13 city hospitals (in Adana, Mersin, Isparta, Yozgat, Kayseri, Manisa, Elazığ, Ankara, Eskişehir, Bursa, İstanbul, Konya and Tekirdağ provinces) provide service. The capacity of beds in total is 17,842. In 2021, 5 city hospitals (in Kocaeli, Kütahya, Ankara, Gaziantep and İzmir provinces) are planned to be opened for service.

26. In addition, the number of primary-care family practices (*aile hekimlikleri*) across the country are given below:

Number of Family Practices (Health Statistics Yearbook Data)		
YEAR	Number of Family Practice Units	Average Population per Unit
2015	21,696	3,629
2016	24,428	3,267
2017	25,198	3,207
2018	26,252	3,124
2019	26,476	3,141
2020	26,594	3.144

27. The number of physicians per capita and the number of beds per capita are given in the table below:

Year	Number of Beds per 10,000 People (All Sectors)	Number of Physicians per 10,000 People
2014	26.6	175
2015	26.6	179
2016	27.3	181
2017	27.9	186
2018	27.9	187
2019	28.8	193
2020	30.2	205

28. The latest information in the table below shows certain developments in the health sphere as of 2019:

	2002	2014	2015	2016	2017	2018	2019
Under-five Mortality Rate (All Weeks) (per 1,000 Live Births)	40.0	12.2	12.1	11.8	10.8	11.3	11.1
Maternal Mortality Rate (per 100,000 Live Births)	64.0	15.0	14.6	14.7	14.5	13.6	13.1
AIDS Incidence (per 100,000 People)	0.07	0.17	0.16	0.13	0.16	0.15	0.13
Malaria Incidence (per 100,000 People)	15.4	0.30	0.30	0.26	0.26	0.29	0.34
Tuberculosis Incidence (per 100,000 People)	32.0	16.9	15.9	15.3	14.6	14.1	13.5
Rate of Qualified Beds in Total Number of Beds (%)	11.7	55.3	59.7	61.3	67.2	71.9	74.7
Population per 112 Emergency Care Station	138,050	35,542	33,896	33,256	30,867	29,983	28,813
Population per 112 Emergency Care Ambulance	107,446	20,774	18,584	16,491	16,418	16,701	15,451
Number of Dentists per 100,000 People	25	30	32	33	35	37	40

Number of Pharmacists per 100,000 People	33.6	35	35	34.9	35.3	39.1	40.7
Number of Nurses and Nurse-midwifes per 100,000 People	171	251	261	257	272	301	306

* The Rate of Qualified Beds in Total Number of Beds (%) did not take into account the number of intensive care beds.

29. Below table shows the number of neonatal deaths (0-28 days) and stillbirths in Turkey in the years 2014-2020:

Year	Number of Neonatal Deaths (0-28 days)	Number of Stillbirths
2014	8,713	10,171
2015	8,381	9,707
2016	8,112	9,740
2017	7,502	9,359
2018	7,440	8,845
2019	6,813	8,391
2020	6,080	7,821

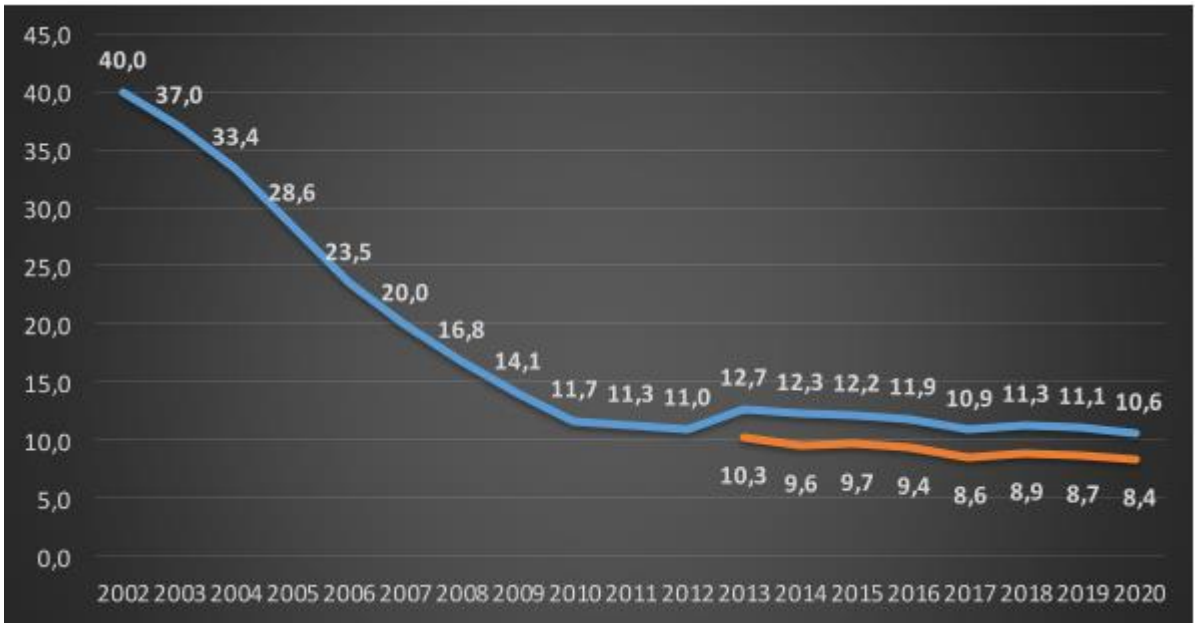
30. The graph below shows the changes in the infant mortality rate from 2002 to 2020:

* The orange line: All The Blue line: 28 weeks and above

*All: The deaths of infants under one-year-old, regardless of gestational week and birth weight.

31. This graph demonstrates that the infant health indicators in Turkey have witnessed highly significant improvements in the recent years. The infant mortality rate has dropped from 31.5 per mille in 2002 to less than 10 per mille today. Our country has been able to achieve in only 8 years the progress made by the OECD countries in 30 years with respect to infant mortality. (Born Too Soon the Global Action Report on Preterm Birth, 2012, WHO).

32. The graph below shows the changes in the child (under 5 years old) mortality rate from 2002 to 2020:



33. In the Levels and Trends in Child Mortality: 2020 Report issued by the Inter-Agency Group for Child Mortality Estimation (UN IGME), Turkey takes in the 3rd place which reduced under-five deaths at most among all countries with an annual rate of reduction of 6.9 % as from 1990.

34. There are a number of programmes underway aimed at further reducing infant mortality and improving the health, including immunisation, enhanced neonatal intensive care, nutrition, scanning, and in-service training programmes.

35. According to a study on the maternal mortality conducted in our country between 2005 and 2006, the maternal mortality rate in 2005 was found 28.5 per 100,000 live births. The 1990-2008 World Health Organization (WHO) Evaluation Report indicated that Turkey achieved annual decline of 6% and became one of the top 10 countries which have decreased the maternal mortality rate by experiencing 23 maternal mortalities per 100.000. In the 1990-2010 Report issued by the WHO, it was noted that our country's success continued and ranked at the 21st among the countries that have experienced the highest decline in terms of maternal mortality in the world. According to the report by the WHO, the maternal mortality ratio of Turkey was estimated 20 per 100,000 in 2010. The 2019 Report has still not been issued by the WHO.

36. "The Maternal Mortality Data System" (*Anne Ölümleri Veri Sistemi*) has been used since 2007, January. Maternal deaths have been monitored on a daily basis via "the Mortality

Notification System" (*Ölüm Bildirim Sistemi*) which has been used since 2013, January. The confidentiality-based approach is used in the data system of this program, and each case is evaluated in detail by the Provincial Maternal Mortality Detection and Prevention Unit (*İl Anne Ölümlerini Tespit ve Önleme Birimi*) and the Provincial Examination Commission (*İl İnceleme Komisyonu*) at the provincial level. At the central level, each maternal death is examined within the framework of the ICD-10 statistical classification of diseases and of three-delay model approaches determined by the World Health Organisation by the Preliminary Examination Commission and Central Examination Commissions.

37. In the three-delay model, maternal deaths are linked to the following reasons: delays in (1) deciding to access medical care, particularly because of the socioeconomic status and level of education; (2) reaching the medical care because of insufficient number of medical facilities, distance to health centres or organisational failure; and (3) receiving adequate care when a medical facility is reached in consequence of lack of caregiver's information and ability in field, and insufficient material and technical equipment, including blood.

38. Thus, preventability of maternal mortality could be estimated. The results are shared by giving feedback to the relevant health institution and health personnel.

39. In order to prevent maternal deaths, women between the ages of 15-49 are monitored twice a year to identify risky situations, and counseling services are provided. By providing premarital counseling services to couples, who apply for medical report, it is aimed to give information about reproductive health, infectious diseases, consanguineous marriages and genetic transient diseases, to identify risky situations before pregnancy and to take early measures. The Reproductive Health In-Service Trainings (*Üreme Sağlığı Hizmet İçi Eğitimleri*) update the information of health personnel. The Pregnancy Information Class (*Gebe Bilgilendirme Sınıfı*) programs provide information and counseling services to the pregnant woman and her family on prenatal, natal and postnatal issues. In this scope, the reproductive health education is provided for 73,896 health personnel between July 2016 and 2021. The number of persons who were provided the public education for reproductive health is 2,604,401 between July 2016 and 2021. In addition, 2,024,456 pregnant were provided training in the pregnancy information classes between July 2016 and 2021.

40. The Guest Mother (*Misafir Anne*) program provides determination and monitoring of pregnant women living in areas with unfavourable weather and transportation conditions, transferring them to safer places when their possible due dates approach and ensuring delivery in hospitals, and taking mother and baby back to their homes after delivery.

41. The Prenatal Care aims to ensure that all pregnant women are medically examined at regular intervals by health personnel, to give counseling, to protect health during pregnancy, and to have a healthy baby. With the Postnatal Care, it is aimed to prevent maternal deaths and to give maternal and nutritional support to mother and her relatives with the follow-up performed by the health personnel during the post-partum period which starts immediately after birth and continues until the 42nd day.

42. The Emergency Obstetric Care Program provides training to gynaecologists and obstetricians since 2011 to prevent emergency obstetric complications, which are the most important causes of maternal deaths. In this scope, 2,287 gynaecologists and obstetricians, 4,721 emergency medicine specialists and practitioners, 374 gynaecologist and obstetrician senior year assistants and 8,274 midwives and nurses were provided emergency obstetric care clinical training between July 2016 and 2021. Besides, 5,699 health managers and 33,354 support personnel were provided emergency obstetric care clinical training.

43. Within the scope of the measures to reduce the maternal mortality due to the bleeding which had important place among the direct causes for maternal mortality, “Advanced Surgical Trainings for Intervention against Emergency Obstetric Haemorrhage” for gynaecologists and obstetricians are provided. In this regard, 80 gynaecologists and obstetricians were provided training.

44. In order to prevent maternal deaths, visits and meetings were held within the framework of “The Provincial Assessment on Maternal Mortality” in Adana-Hatay, Şanlıurfa-Gaziantep-Adana (2013); in Van and Mardin (2014); in Adana, Kayseri, Ankara, Eskisehir, Manisa and Hatay (2016); in Şanlıurfa, Kütahya, Diyarbakır and Trabzon (2017); in Şanlıurfa, İstanbul, Van, Mersin and Bursa (2018), in Trabzon and Rize (2019) and Adana and Gaziantep (2020).

45. Similarly, the following meetings were held on the subject: Istanbul-Yozgat Maternal Mortality Symposium (2013); Workshop on Prevention of Maternal and Infant Mortality (2014);

the meeting in Ankara during which the actions plans were assessed individually for Şanlıurfa, Van, Hakkari, Ağrı, Batman and Kilis having the high maternal mortality ratio; sessions on maternal mortality during Gynaecology Congress; and Workshop on Prevention of Maternal and Infant Mortality (2017).

III.a.2. Developments in intensive care services and neonatal units

46. In *Asiye Genç* case, the public hospital refused to admit the applicant's new born son on the grounds that there were no places available in the neonatal intensive care unit. In addition to that the other hospital where the baby was transferred was lack of incubators as it was the case in *Aydogdu*. Therefore, the Government considers that it is useful to give information on this regard.

47. The practices and acts in the intensive care units are conducted pursuant to the Communiqué on Procedures and Principles of the Practice of Emergency Ward Services in In-patient Healthcare Facilities which entered into force upon being promulgated in the Official Gazette no. 28000 dated 20 July 2011.

48. Within the scope of the area-based health planning studies, the Planning of Health Service Requiring Special Planning in Turkey (2011-2023) were drawn up and started to be implemented as of 8 July 2011. In this context, requests received from provincial health directorates for intensive care services are assessed and replied in line with the legislation and planning. The coordination between the intensive care services in all hospitals in our country is provided by 112 Command and Control Centers.

49. The number of intensive care beds increased by 5% compared to 2018 and reached 38,098. Bu rakam 2019 yılında 39.955 e, 2020 yılında 47.634'e ulaşmıştır. The number of adult intensive care beds increased from 22,728 in 2017 to 25.364 in 2019, the number of paediatric intensive care beds increased from 1,526 to 1778 and the number of newborn intensive care beds increased from 11,986 to 12,813.

50. The Turkish authorities also would like to highlight that pursuant to Article 17 of the Notice on the Procedures and Principles Regarding the Application of Emergency Department Services at Health Facilities with Beds; the health departments, chief doctors at the relevant health facilities and the emergency service doctors are firstly and severally responsible for

setting the emergency service standards, coordinating the emergency health services and executing them effectively in accordance with the provisions of the Notice in question.

51. In view of the above-mentioned capacity building activities in healthcare, the Turkish Government considers that all necessary general measures have been taken for that sort of violation and no other general measures are required.

III.a.3. The admission of patients in critical medical condition to hospitals and/or to provide medical treatment without pre-pay hospital fees

52. The *Mehmet Şentürk and Bekir Şentürk* case concerns the refusal to admit patients in critical medical condition to hospitals and/or to provide medical treatment because of the patient's inability to pre-pay hospital fees.

53. The Turkish authorities would like to indicate that the legislation regarding the admission of patients to hospitals has been modified since the violations in the present cases took place.

54. According to Article 14 of the "Notice on the Procedures and Principles Regarding the Application of Emergency Department Services at Health Facilities with Beds" dated 16 October 2009, regardless of health insurance or solvency, all the public and private health institutions are obliged to admit all patients to the emergency services of the hospitals.

55. According to the Prime Ministry Circular No. 2008/13 about "Presentation of Emergency Medical Services", everyone in the situation that is likely to require an emergency action, has the right to benefit from any health care provider, whether private or public, free of charge. In this scope, the healthcare providers liable to offer emergency care must admit patients and administer any medical intervention necessary without delay or conditions, regardless of whether the patient has insurance or can afford the service.

56. The Prime Ministry Circular no. 2010/16 also introduced additional provisions, which laid down that the healthcare service fees of the emergency patients who do not have health insurance or the ability to pay shall be paid to the healthcare provider by the municipality or the social assistance and solidarity foundation of the place where the provider is located.

57. Besides, even in the cases where a person falling within the scope of the Social Security Institution's (SSI) Communiqué on Health Implementation has fallen behind in

premium payment days or is in premium debt and seeks emergency care from contracted healthcare providers, the patient shall not be required to make any payment in advance. The health services will still be provided and the service fees can be billed afterwards.

58. The facts in *Mehmet Şentürk and Bekir Şentürk* case took place in 2000. In 2006, the Patient Rights Committees under the Ministry of Health were founded in all public hospitals. Thus, any patient who claims that a hospital did not accept him or did not properly treat him may file a complaint with the committee.

59. In addition to this, on 11 December 2018, 862 public health facilities affiliated with the Ministry of Health were instructed to organise "the Patient Rights On-site Assessment Teams". In this regard, the relevant process includes the following practices: (i) to identify situations that may cause problem by communicating with patient and his relatives at emergency care departments and clinics; (ii) to solve problems by responding to cases on-site; (iii) to make hourly visits to the busy polyclinics, and to schedule a program in order to prevent complaints by communicating with patient and his relatives who tend to make trouble; and (iv) to announce this program to patients and health personnel by hanging it at the patient rights units.

60. When the data as from its establishment to July 2021 is examined, 424,745 applications were filed and 402,403 applications of them were concluded with on-site solution and 16,200 of them were sent to the board. It is seen that a violation was found in 2,036 of them, a violation was not found in 12,010 of them, 757 of them are still pending and 2,558 of them were withdrawn. There are 6.787 people using the Patient Rights Application System who have been trained as of July 2021.

61. The Turkish Government therefore considers that all necessary general measures have been taken for that sort of violation and no other general measures are required.

III.a.4. The lack of coordination between hospitals and the lack of medical assistance during the transfer of patients

62. The *Aydoğdu* concerns the lack of coordination between hospitals before a patient in an emergency situation transferred from one hospital to another and the absence of medical assistance during transfer. The *Asiye Genç* concerns the issue of the admission of newborns to the emergency services and the coordination between the neonatal units.

63. With a view to finding an empty bed and starting/resuming treatment more rapidly during the process of transferring a patient to another hospital with a better communication among hospitals, the Hospital Coordination System became operational in 2018, through which the Ministry of Health and 112 Command and Control Centres (*KKM*) have been monitoring the occupancy status of the beds in public, private and university hospitals, as well as incubator and ventilator information.

64. As regards the issue of lack of medical assistance, the Regulation of the Ministry of Health on Ambulance Services dated 7 December 2006 specifies different types of ambulances used for different purposes. Article 7 as amended on 10 April 2012 provides that there shall be at least one medical staff member in addition to the driver in an ambulance used for patient transfers.

65. By the amendment of 20 September 2013 made to Article 5 of "Regulation on Ambulance Services" dated 7 December 2006, features of ambulances and patient transfer vehicle and the staff and equipment they must have were established in detail.

66. According to Article 7 of the same regulation amended on 10 April 2012, a team consisting of at least three staff members works in the immediate aid ambulances. The team includes at least one doctor or one paramedic or emergency medical technician who completed his/her module training determined by the Ministry of Health along with another medical staff member and a driver. In ambulances with special equipment, at least two staff members, namely a doctor or a paramedic along with a medical staff member, work.

67. The Circular no. 2017/2 dated 14 December 2017 of the Ministry of Health contained instructions addressed to relevant units for ensuring the due delicacy in the Provision of Emergency Medical Services and taking the measures necessary. In this scope, with references to relevant provisions of the Prime Ministry Circular no. 2008/13, the Ministry gave instructions for steps to be taken in order to provide medical support to the ambulance staff until arrival at a medical facility and to direct the ambulance to the most appropriate hospital. Accordingly, under the approval of the physician in charge of the Command and Control Centre, the case shall be transferred to the most appropriate and the nearest healthcare facility notwithstanding the regional differences or provincial borders, thereby preventing victimisation of patients.

68. The aforementioned Circular of the Prime Ministry indicated that, in cases where emergency medical intervention is necessary, it is not only a human duty but also a legal obligation to transport the patient immediately to the medical facility capable of providing the appropriate care and, for the hospital receiving the patient, to conduct the emergency interventions necessary as a priority and without any prior conditions. Moreover, Article 6 of the Prime Ministry Circular stated that all medical facilities were obligated to follow the instructions of the command and control centre regarding transfers and admit the patients referred to them.

69. On 6 April 2018 the Governor's Offices of all 81 provinces were sent a letter and asked to show the sensitivity required concerning Inappropriate Patient Referrals. In this connection, the Governor's Offices were informed of the Communiqué on Amendments to the Communiqué on Procedures and Principles of the Practice of Emergency Ward Services in In-patient Healthcare Facilities, which had taken effect on 20 February 2018. Accordingly, unstable patients shall not be referred to another facility unless they have reached a state in which they can keep hemodynamic stability in the circumstances of transportation. However, it pointed out that the patient shall be referred to the relevant health facility after the appropriate conditions are ensured if the patient's emergency care cannot be provided by the current facility. It was further underlined that a referred patient shall be under the responsibility of the referring (sending) facility until he/she is admitted by another medical facility that will administer the treatment. The medical facility to which the patient is being referred (i.e. the receiving facility) shall also be liable to take the measures necessary for the patient's admission and to begin treatment without delay.

70. Moreover, the Communiqué in question stipulated that a Referral Assessment and Inspection Commission set up at the provincial level shall convene at least once a month to review the referrals made within or out of the province and the medical facilities which did not admit an emergency case or kept it waiting in the ambulance. This Commission shall identify the cases where an inappropriate and unnecessary referral was made without indication or where cases were rejected despite the presence of an indication, inquire as to their causes, and resolve the issues. As per the instructions, the district directorates of health shall inspect all medical facilities in the district every other month. The Circular no. 2005/180 dated 16 December 2005 of the Ministry of Health provided that, to prevent unnecessary referrals, the chief physician's office at every hospital shall establish a "referral inspection and control" unit within itself. It

shall convene at certain intervals to review the referrals, and warn the physicians who order referrals unnecessarily. In this context, it shall be possible to hold accountable the chief physicians who tolerate unnecessary referrals.

71. While 112 emergency health services were provided with 4,910 emergency care ambulances in 2018, that number has reached 5,382 in 2019 and that was 5.711 in 2021. 91 of these ambulances serve as intensive care and obese ambulances. In 2018, the emergency care ambulances were used in order to transfer patients in 5,465.503 cases and have been used in 5,713.408 cases by 2019 and 7.404.588 cases by 2020. Air ambulance services are provided by 17 helicopter ambulances and 3 ambulance aircrafts. Patients in 49,574 cases have been transferred from 2008 to 2020. Ambulance boat services are provided by 4 ambulance boats and from 2007 to 2020, patients in 23,626 cases have been transferred.

72. The Government considers that with the amendments and revisions made to the regulation in question have settled the matter of absence of medical staff in ambulance services.

III.a.5. Developments in Blood Transfusion

73. As the *Oyal* case concerns the situation of the applicant who was infected with HIV virus after birth. The Government would like to give some information on the developments in blood transfusion:

74. Because safe blood could only be procured from voluntary and gratuitous donors, in 2005 efforts began in cooperation with the Turkish Red Crescent under the title “Safe Blood Supply Programme” (*Güvenli Kan Temini Programı*) to procure our country’s need for blood and blood components from voluntary and gratuitous blood donors.

75. Since 1992, medical staff working in blood service units have been offered a certificate programme entitled “Blood Banking and Transfusion Medicine Training” (*Kan Bankacılığı ve Transfüzyon Tıbbı Eğitimi*) aimed at ensuring staff competence. The standards of the trainings and the training centres are determined via “the Communiqué on Training and Certification of the Medical Staff to be Assigned to Blood Service Units” which came into effect in 2005.

76. A new Law on Blood and Blood Products was drafted in line with the EU legislation and it was promulgated in 2007, followed by the Regulation on Blood and Blood Products

published in 2008 in connection with this Law. The new legislation introduced the regional blood banking system and adopted the principle of voluntary and gratuitous blood donation. Regional Blood Centres were established and the Turkish Red Crescent has been charged since 2009 with supplying nation-wide needs for blood and blood components by means of collecting blood from voluntary and gratuitous donors.

77. In 2009, the National Blood and Blood Products Guide was published in addition to the Regulation on Blood and Blood Products. This national guide was drafted on the basis of the Council of Europe's 14th Edition of the Guide to the Preparation, Use and Quality Assurance of Blood Components.

78. On 31 December 2009, a revised version of the "Communiqué on Training and Certification of the Medical Staff to be Assigned to Blood Service Units" came into force.

79. The National Blood and Blood Products Guide was revised in 2011 in accordance with the necessity and scientific developments.

80. As blood safety is one of the closing criteria of Chapter 28 on "Consumer and Health Protection" in the negotiation process for accession to the European Union, the "Technical Assistance for Strengthening the Blood Supply System Project" (co-funded by the EU) was conducted between 2012 and 2014 in order to ensure coherent practice across the country in blood services, whose harmonisation with the EU legislation had already been achieved. The project in question included preparation of implementation guides aimed at strengthening the blood supply system, as well as trainings for the staff involved in the chain of transfusion from the collection of blood until its clinical use.

81. The standards of Blood Banking and Transfusion Medicine Training was redefined and put into effect in 2015 within the scope of the "Ministry of Health's Regulation on Certification Training". In total, 6682 staff received training and became certified between 1992 and 2018.

82. Another project co-funded by the EU was the "Technical Assistance for Recruitment of Future Blood Donors Project" conducted from 2014 to 2016. The project's ultimate goal was to ensure access to safe blood and blood component supply when and as much as it is needed by recruiting voluntary, unpaid and regular blood donors. To that end, activities were carried out to

raise awareness in the society, in particular students aged between 6 and 18, and to build the capacity of the staff.

83. As of November 2014, the Turkish Red Crescent began conducting the globally-accepted nucleic acid amplification tests (NAT) for HBV, HCV and HIV in parallel to the serological screening tests (used for HBV, HCV, HIV, Syphilis) with a view to minimising residual risk in infections.

84. In 2015, the National Blood and Blood Products Guide, after undergoing a revision within the Technical Assistance for Strengthening the Blood Supply System Project, was re-published under the title "National Blood and Blood Products Preparation, Use and Quality Assurance Guide".

85. In 2016, three new guides were put into effect within the scope of the Technical Assistance for Strengthening the Blood Supply System Project, namely the National Standards Guide for Blood Service Units, the Quality Management System Guide for Blood Service Units, and the National Haemovigilance Guide.

86. In 2016, the national haemovigilance system was created and launched. This system contained procedures for monitoring the undesired cases and reactions stemming from collection of blood and blood components or their clinical use, as well as assessing those and planning corrective/preventive measures therefor.

87. Between 2016 and 2018, a total of 2,120 medical staff working in the haemovigilance organisation structure received training on haemovigilance.

88. In 2018 and 2019, a surveillance and work process software was prepared in order to be able to monitor and keep a record of all the haemovigilance work processes across the country, including blood and blood component supply, distribution and consumption data and undesired effects and cases observed on the donor or the recipient.

89. On 20 March 2019 the EU-co-funded "Technical Assistance for Improving the Blood Transfusion Management System in Turkey Project" was launched and it will be conducted from 2019 to 2022. This project aims to ensure an appropriate clinical use of blood and reduce the number of redundant blood transfusion practices, optimise the care services for the patients in need of blood transfusion, preventing the potential harms of blood transfusion and, ultimately,

leave a positive impact on the public health as well as contributing to the effective use of blood and blood component supplies.

90. As regards the measures taken in relation to the risk of HIV transmission in blood donation, whether donors are under risk in terms of HIV infection (or other infections which can pose danger for the recipient; HBV, HCV, Syphilis, etc.) is determined by way of informing all the donors at the outset, then questioning them and lastly examining them. The necessary sensitive issues pertaining to the subject in the Donor Information Note and the Donor Questioning Form are firstly shown to the donor and then the donor is requested to mark the option that is suitable to his/her own situation and these options are recorded with the donor's signature. Blood donation is not accepted from those who have had sexual intercourse with someone other than their husband/wife within the last 6 months.

91. Following this stage, the blood of the donors, who are considered to be fit for donation, is accepted as donation. Nevertheless, screening tests (HIV, HBV, HCV and Syphilis) are run for donated blood and it is tested whether the transfer of the blood to someone else would be safe. Subsequent to the tests in question, full blood or blood components received from the donors are put into use. Not only must these tests be of a standard and nature set out in the "National Blood and Blood Products Guide", they also must be applied in a manner that is prescribed in the instrument in question.

92. Furthermore, the NAT systems, which are widely implemented in the Modern Blood Banking by the Turkish Red Crescent, were addressed within the scope of a project and switch has been made to the systems in question, and on 1 November 2014 the implementation of HIV 1-2, HBV, HCV NAT tests through MP-6 method in the Cobas S-201, Roche Diagnostics platform simultaneously with serological tests was initiated. The nature of the NAT tests in question also over-satisfy the standard laid down by the Council of Europe for the NAT tests in the instrument titled "Guide to The Preparation, Use and Quality Assurance of Blood Components" (p. 375). The usage of these tests in conjunction with serological tests decreases the risk in terms of HIV, HBV and HCV to the minimum.

93. On the other hand, a certain amount of time must pass in order to be able to observe the HIV virus in the tests. In the event that the donor does not state the truth regarding the questions in the form, the HIV virus may not be found in the blood tests, if a certain period of

time has not been elapsed from suspicious action either. It is still not possible to decrease this risk to zero through any systems available right now in the world.

III.a.6. Failure to cover fully the medical expenses of patients who were infected with the HIV virus

94. The *Oyal* case concerns the failure to cover fully the applicant's (who was infected with HIV virus after birth) medical expenses despite full liability attributed to the State by decisions of civil and administrative courts.

95. As seen above, it should be reiterated that many general measures had been taken in order to align the domestic blood donation procedures with international standards. These measures will prevent infection of patients with the HIV virus during blood transfusion.

96. The Turkish authorities would like to inform that the Social Security Institution will cover the medical expenses of persons who may face similar incidents of medical negligence as in the Oyal case.

97. Not only costs for the HIV diseases but also for other illness are to be covered by the State; the same practice will be performed in similar issues.

98. The Turkish Government therefore considers that all necessary general measures have been taken for that sort of violation and no other general measures are required.

III.a.7. Requirement of Informing the Patients of the Medical Treatment

99. As regards the doctors' failure to provide sufficient information to the patient regarding the treatment, unsatisfactory post-operation care and medical follow-up (*Tülay Yıldız*), and in this connection the failure to mention in the expert reports the obligation to inform the patient and obtain consent (*Altuğ and Others*), the Government would like to emphasise the following:

100. In Article 70 of the Law on the Practice of Medical Professions (Law no. 1219), it reads as follows: *"Doctors, dental surgeons and dentists obtain the patient's consent - if the patient is minor or underage person, they obtain the consent of his/her parent or guardian- for all kinds of operations. For extensive surgical operations, this consent must be obtained in writing. It is imposed an administrative fine of 250 Turkish Liras against the persons acting contrary to this Law. The administrative fine laid down in this Law is imposed by the local*

administrator." As is understood from this Law, it is necessary to obtain the patient's consent in the medical interventions. However, it is compulsory to obtain this consent in writing for extensive surgical operations.

101. As regards providing information to patient, in Article 26 of the Regulation on Doctor Ethics enacted in 1999, it is stipulated that "*The doctor informs the patient on the issues such as his/her state of health and diagnosis, the type of proposed treatment method, length and prospects of treatment, risks of treatment method for the the patient's health, usage of medication prescribed for the patient and its adverse effects, the results of disease that will be expected in case the patient does not take the offered treatment, probable treatment options and risks. This information should be suitable to the patient's cultural, social and mental state. The information should be provided in a manner that can be understood by the patient. Apart from him/her, the patient chooses the persons who will be informed. All kinds of attempts regarding health are made with the person's free and informed consent. If the consent is obtained with pressure, threat, lack of information or deceiving, it is invalid. In case of emergencies, the patient's being minor or unconscious or being in a state of not giving a decision, the permission of his/her legal representative is obtained. If the doctor thinks that the representative does not give permission for ill-intention and that this situation threatens the patient's life, he/she should obtain permission by informing the judicial authorities. Where this is not possible, the doctor tries to consult his/her colleague or only makes attempts to save the patient's life. In case of emergencies, it is at the discretion of the doctor to make an intervention. As the diseases that are compulsory to make a treatment pursuant to laws are threatened the community health, the necessary treatment is applied even if the informed consent of the patient or the legal representative is not obtained. The patient may take his/her informed consent back whenever he/she requests*".

102. As per Article 24 of the Regulation on Patient Rights, medical intervention is subject to the patient's consent as a prerequisite. It is provided that if the patient is minor or underage person, the consent of his/her parent or guardian is obtained. The patient shall be informed in accordance with Article 15 of the Regulation to be able to obtain his/her consent. Therefore, in obtaining consent, it is imperative that the patient or the patient's legal representative are informed and enlightened about the subject and the consequences of the intervention. Article 15

of the Regulation was amended on 8 May 2014 and the patient's right to be informed was regulated article by article in a detailed manner compared with the former regulation.

103. In Article 18 of the same Regulation, it is provided that "the procedure of providing information" is regulated and the information is provided as simple as possible and in a manner that leaves no room for hesitation and doubt and it should be suitable to the patient's cultural, social and mental state. It is stipulated that the information is provided verbally. In another judgment of the Court of Cassation, the following expressions took place *"In order for a consent to be valid, the person must know his/he state of health, the intervention that will be made and its effects and results, and he should be sufficiently enlightened on this matter and he must be free and not be under duress when he/she states his/her will. In this respect, the consent, which is given with an informed and free will, is only a consent that has legal value.*" and it is emphasized that in order for a consent to be legally valid, the obligation to inform the patient should be fulfilled very well.[2]

104. With the amendment introduced to the Regulation in 2014, it is stated that in the event that there occurs a dispute contrary to what envisaged in the legislation, the aforesaid consent is obtained through filling a form by the health institution or organization for the medical interventions that is medically possible. Whereas a copy of this form is included in the patient's file, another copy is submitted to the patient's relatives. It is also expressed that the health personnel are responsible for the authenticity of information that is submitted.[3]

105. In addition," The Convention on Human Rights and Biomedicine", adopted by the Council of Europe in November 1996, was ratified by Turkey and it entered into force on 3 December 2003. As is known, it bears the force of law pursuant to Article 90 of the Constitution.

106. The provision in relation to the consent in Article 5 of this Convention reads as follows: "*Any intervention in the field of health can be made after the free and informed consent of the person concerned is obtained. (2) The information concerning the aim and nature of intervention as well as its results and risks is firstly provided to this person. (3) The person concerned may always take his/her consent freely back.*"

[2] Judgment of the 4th Civil Chamber of the Court of Cassation dated 7 March 1977 (docket no. 1976/6297 decision no. 1977/2541).
[3] Sample forms: https://kalite.acibadem.com.tr/ ; https://hastane.ksu.edu.tr/Default.aspx?SId=19186 ; https://mecitozudh.saglik.gov.tr/TR,37590/onam-formlari.html; https://www.ordusevgi.com/sks/sks-uygulama-ornekleri/onam-formlari

107. The incidents at issue experienced in 1997 and 2002 and as a result of the aforesaid amendments, there has been no problem arising from this issue recently. Accordingly, it is assessed that the measures above are sufficient to redress this violation.

108. In the event that these allegations are asserted, the courts make proper assessments in compliance with the European Court standards. For instance, in the judgment of the Supreme Administrative Court dated 21 September 2020, it is stated that "*in cases where the risks are explained and the consent of the said person is obtained in writing before administering injection, as the right to be informed and giving consent is taken away from this person pursuant to the above mentioned legislative provisions and it causes concern and sorrow for the plaintiff due to the failure to fulfil this obligation and the failure to duly conduct the health service, the plaintiff's request for non-pecuniary compensation should be assessed by bearing in mind the principle that the non-pecuniary compensation is not a means of enrichment. In this sense, the court did not see any conformity in the defendant authority's decision dismissing the case on the grounds that it rendered the decision with incomplete examination and did not make an examination as to whether the results and possible complications of the injection were explained to the deceased S. Aytemur and whether the informed and written consent of said person was obtained for this procedure.*" (see Annex 2)

109. In another judgment dated 7 September 2020, the Supreme Administrative Court quashed the decision, maintaining that there was similarly no consent form in the patient's file that the plaintiff was not enlightened or informed about the complications of the injection before the injection, that it caused concern for the plaintiff that the health services was not duly conducted and that in this scope, the authority did not fulfil its obligations (see Annex 3).

110. Likewise, in its judgment dated 29 June 2020, the Court of Cassation stated that "*the fact that the damage incurred was a complication did not eliminate the obligation to inform the patient and it was a requirement of the obligation to inform the patient about the complications. Since the authority rendered decision with an incomplete examination and erroneous reasoning, it requires the court to quash the decision dismissing the case as being contrary to the law and procedure that it did not make an assessment as to whether "the Thyroidectomy Permission Form" dated 12 October 2012 in the file had been examined, that the plaintiff had been sufficiently informed about the goiter operation performed and its possible complications, in*

particular esophagus perforation occurred due to the operation performed on the plaintiff and that it did not deliver a decision according to the result." (see Annex 4).

III.b. General Capacity Building Activities in the Expert System and Expertise in Malpractice Cases

111. Pursuant to Article 63 et seq. of the Criminal Procedure Code no. 5271, judge shall be entitled to appoint experts from whom he will request an expertise report on the issue of responsibility for medical errors. The parties can also take assistance from an expert and submit the report they obtain from the expert to the domestic court.

112. The Law no. 6754 on Expertise entered into force after being promulgated on Official Gazette no. 29898 and dated 24 November 2016. According to the first paragraph of Article 6 of the said Law, the Department of Expertise has been established within the Directorate General for Legal Affairs of the Ministry of Justice in order to ensure the effective, arranged and productive conduct of expertise services. In this regard, the Department has been active as of 7 December 2016 (please see http://bilirkisilik.adalet.gov.tr/index.html).

113. With respect to Article 6 of the Law no. 6754, the Department determines the qualifications required to be an expert, depending on their areas of expertise, ethical and directory principles binding while conducting duties the standard of the expertise reports, the procedures and principles for accepting into profession, audit and performance, the lists of experts; supervises the practice and determines the problems and establishes the problems and offers solutions for them.

114. The major institution that may draw up a report regarding medical errors is the Forensic Medicine Institute. Since 1982, the Forensic Medicine Institute has been performing the duties prescribed by the Law no. 2659 and applying the standards established in the light of its experience of many years in terms of medical errors.

115. In order to enhance the capacity in the use of experts in legal proceedings, Improving the Court Expert System Project was conducted from 2013 to 2015. This project focused on the use of experts by civil, criminal and administrative courts. The project's objectives included improving the quality of expert reports so as to reduce the number of additional expert reports, and laying down standards for experts to develop objective criteria in the appointment of experts. Determining proficiency criteria for experts and standard reporting

formats for experts, training seminars, preparing a curriculum regarding ethics of expertise, basic knowledge of law, standard reporting formats and guiding principles, training of trainers, reviewing the legislation, and drafting a secondary legislation were some activities conducted during the Project.

116. Another project which previously conducted from 2011 to 2013, entitled "Strengthening the Court Management System", involved activities on time management in the judiciary, judicial notification, expertise, and relations between the judiciary and the media. The project in question held discussions as to improving the efficiency of civil courts and eliminating delays in court processes via increasing the quantity and the quality of experts and ensuring the enforcement of the sanctions prescribed by the legislation in cases where experts are late to submit their reports.

117. Within the scope of this project, regarding the cases arising from medical errors;

1) Conference on "Use of Experts in Judgments Arising from Medical Errors" in Ankara between 18-19 June 2013,

2) Conference on "Use of Expert in Lawsuits Caused by Medical Errors" in Istanbul on 20 June 2013,

3) Symposium on Expert Practices in Lawsuits Caused by Medical Errors in Istanbul Çağlayan Courthouse on 24-25 November 2014,

4) On 26-27 January 2015, a Regional Study meeting on Expertness in Lawsuits Caused by Medical Errors was held in Ankara. The symposium held in Istanbul has been turned into a book and presented in.

118. Within the scope of the assistant training held regularly in the Forensic Medicine Institute, trainings were provided in many fields such as "the assessment of non-mortal medical malpractice files with sample cases", "the assessment of mortal medical malpractice files with sample cases", "scientific evidences", "research methods and techniques in forensic medicine and science", "Minnesota autopsy protocol", "law of expertise" and "scientific evidences".

119. Whereas 413 specialists in total were serving at the Forensic Medicine Institute in 2016, 549 specialists are currently serving. Accordingly, an increase of 33% was realized in the specialist personnel serving at the Institution within the last five years.

III.b.1. Delays encountered in the submission of medical reports

120. Failure of domestic courts to examine cases of medical negligence with exceptional diligence and promptness, in particular on account of excessive delays encountered in the submission of medical reports setting out liability of health care providers, which resulted in exceptionally lengthy proceedings (*Zafer Öztürk and Öney*).

121. The Turkish authorities noted that in June 2010, the Constitutional Court declared Article 75 of Law No. 1219 on the Practice of Medicine unconstitutional. This article required domestic courts to request medical reports from the High Council of Health which assemble only twice a year (thereby causing delays to the issuing of medical reports).

122. The Government would in the first place like to point out that Article 75 of the Law no. 1219, which strictly required that a report of malpractice be taken from the Supreme Council of Health in the cases brought on account of medical errors and the investigations launched in this respect, was abolished by the Constitutional Court on 3 June 2010. Thus, the Forensic Medicine Institute has been enabled to draw expert report on malpractice. Thanks to these arrangements, investigations are expected to come to a conclusion in a much shorter time in comparison with the past, because the Supreme Council of Health was gathering two times a year and drawing a report was taking a while; however, the Forensic Medicine Institute have been working in full-time work schedule.

123. Thanks to the fact that the Forensic Medicine Institute has been performing the duties since 1982 by applying the standards it set in the light of its experience, the reports will be drawn up timely and satisfyingly.

124. Pursuant to Article 20 of the Regulation no. 7076 for the Implementation of the Law on the Forensic Medicine Institute titled “Prioritization of Files”, the files sent to the units attached to the institute for examination are put in order and subjected to examination. According to this provision, the files sent to the Forensic Medicine Institute shall be subject to a detailed examination, the medical documents shall be discussed.

125. As a result of the amendment to the Law on the Forensic Medicine Institute introduced via the Law no. 6754 dated 3 November 2016, two new Specialisation Boards were established within the Forensic Medicine Institute where the cases concerning medical

malpractice will be resolved. The goal of this step was to facilitate tracking the files concerning alleged medical errors and shorten the time needed for their completion. The aforementioned Boards were formed in a manner that would cover various fields of medicine and their members were appointed to that end within the bounds of possibility. In addition to their members, the Boards were also provided the assistance of rapporteurs. Moreover, in further regard to the time management issue, the General Board of the Forensic Medicine Institute (*Adli Tıp Genel Kurulu*) was replaced with three High Boards of the Forensic Medicine Institute (*Adli Tıp Üst Kurulu*) through an amendment to the Law on the Forensic Medicine Institute. The aim thereof was to deliberate upon objections to medical error cases and submitting opinions to the authorities concerned without any delay. The relevant judicial authorities were informed about the issue, setting standards with the information, documents, analyses that should be included in the judicial files sent in relation to the medical malpractice.

126. The average period for the conclusion of case-file in the judicial reports drawn up for the alleged medical practice that did not result in death is 105 days in the the 7th Specialisation Board of the Forensic Medicine Institute; the average period for the conclusion of case-file in the judicial reports drawn up for the alleged medical practice that did not result in death is 60 days in the the 8th Specialisation Board of the Forensic Medicine Institute and the average period for the conclusion of case-file in the judicial reports drawn up for the alleged medical practice that did not result in death is 180 days in the the 3rd Specialisation Board of the Forensic Medicine Institute.

127. In addition, also in the Human Rights Action Plan, an activity is envisioned under the aim “to ensure speedy resolution of proceedings and prevent further grievances of citizens, the application of the target time-limits will be extended to cover appellate proceedings on points of fact and law, as well as the Forensic Medicine Institute procedures” and a 6-month period is set for this activity. A detailed information on the target time limit and Human Rights Action Plan is provided below.

128. As a result of the internal measures taken by the Forensic Medicine Institute, there has been a significant shortening in the periods during which the Forensic Medicine Institute, Specialization Boards and Specialization Departments examine the files. In this sense, the Government would like to indicate that the periods during which the forensic reports are

prepared have become very reasonable within the meaning of the length of proceedings and that the domestic courts' requests for reports have started to be met in short periods.

III.b.2. Quality of medical reports

129. In the case of *Aydoğdu*, it is underlined that credibility and effectiveness of the regime in question should be preserved particularly by means of an obligation for the forensic medicine experts to duly reason (explain) their scientific opinions. In *Erdinç Kurt and others* and *Erkan Birol Kaya* cases, there had been general and insufficiently substantiated nature of the medical expert's report despite the existence of some arguments put forward by the applicants.

130. The Law on Experts (Law no. 6754) came into force upon its publication in the Official Gazette on 24 November 2016. The Law installed an institutional structure, determined the main and sub-speciality areas, and set out the qualities to be sought in experts with regard to those areas. These arrangements were put in place for the purpose of achieving the accreditation of experts. Main and sub-speciality areas in the fields of medicine and forensic medicine were also laid down, as well as which are the qualities to be sought in experts who will be consulted in disputes stemming from medical negligence or errors.

131. The requirement of minimum 3 years' active work experience and professional seniority sought in experts was increased to 5 years with the Law on Experts. This provision was aimed at ensuring people with more professional experience are appointed as experts. In this scope, the aforementioned Law determined principles and procedures not only on the qualities of experts but also their training, selection and supervision. Article 55 of the Regulation on Experts, which came into force upon publication in the Official Gazette dated 3 August 2017, sets out the aspects that must be followed in the preparation of expert reports and the minimum qualities that must be contained therein. These are "a) the authority making appointment. b) the number of case-file. c) the information regarding the parties of the proceedings. d) the appointment date and period. e) the subject-matter of the examination. f) the observation and examination of material elements sought from him/her. g) the method of examination. h) scientific and technical basis. i) reasoned conclusion. j) the date of issuance of the report. k) if the expert is a real person, his/her name and surname, title, registration and signature. l) if the expert is an entity, his/her trade name, name and surname of the legal representative, name and surname, title, registration and signature of the expert who is a real person drawn up the report on behalf of entity".

Additionally, where multiple experts are appointed and there are different observations, it is stipulated that these observations can be submitted to the court as separate reports. Lastly, it is clearly regulated that the expert cannot make a legal characterization and assessment in his/her report.

132. Besides, on 7 September 2020 “Guide Principles that should be complied by the Experts and Standards that should be available in the Expert Reports” were determined and announced. With the amendment, it is aimed to raise awareness and efficiency regarding the activity of expert and to set a minimum standard that will be valid across the country while drawing reports regarding the expert services and ensure uniformity in the practice in this field. When it is looked in general at the articles included in these standards,

-when making an examination, the expert should draw up his/her report in a manner that answer all the questions asked to him/her by taking maximum care and attention with a conscience to help the judge in the administration of a right and justice,

-whereas the competence of the expert is his/her own information and expertise field in general, it is in particular limited with the questions asked. Even if the authority appointing him/her requested, he/she does not make a comment on them after examining the allegation and defences.

-while preparing his/her report, the expert has to present concrete and specific reasons, which are basis of report, in accordance with the scientific data. The report must include ground based on information and documents.

-it certainly should not be made a discretionary assessment in the expert report, and the discretion should be on the judge aftermath of the clarification of the present case.

-the style, expression and language of expert report should be clear enough to be understood by the court and parties. The expert should draw up his/her report in a precise, brief and clear manner.

-Within the boundaries specifically determined by the court, the expert should entirely deal with material incidents in his/her report and draw up the report by answering the present questions one by one and also explaining the scientific basis in full, clearly and understandably.

133. Moreover, for the first time, the fundamental principles of expertise were prescribed in Article 3 of the Law on Experts, followed by the ethic principles of expertise set forth in Articles 7 to 14 of the Regulation on Experts.

134. According to the Law on Experts and the Regulation on Experts, the experts' behaviour in contravention to the fundamental and ethic principles shall be held subject to disciplinary action by regional expert committees. The expert practices in breach of the said principles shall be sanctioned, depending on the gravity of the act, with up to 1 years' temporary suspension from the roster of experts or permanent removal from the roster and the registry of experts.

135. The decisions of sanctions rendered by the regional boards in respect of experts who were subjected to the disciplinary penalties as a result of their conduct against the fundamental and ethical principles included in the Law on Experts and the Regulation on Experts were removed from personal data and started to publish on the website (www.bilirkisilik.adalet.gov.tr) of the Department of Expertise.

136. When it is looked at the sample decisions, the experts were struck out of the registry for due to the reasons such as submitting report belatedly, the expert's having insufficient information, drawing report contrary to facts, losing the case-file submitted to him/her and having regard to the style he/she used in the report, acting and making legal characterization and assessment in contravention of the ethical principles (Annex-5).

137. Furthermore, as the experts were sentenced to imprisonment, even though these decisions did not become final, they were also struck out of the list and registry due to the reasons such as acting contrary to the ethical principles titled "reputation and confidence", misconduct due to charges offending the accuseds' personal rights in the expert report, keeping a case-file 2-months waiting without any reason and then return it and acting in contravention of the principle of impartiality (Annex-6).

138. As per the Law on Experts, every expert was given a registration number and a personal record was created for each expert in a registry. Plans for the expert registry envisage to include information on the experts' professional experience, their in-service trainings, education, discipline, their report output, number of their reports taken as basis for a court ruling, and supervision and performance, which will be accessible by judges and public prosecutors. The

preparations in this regard are currently under way on the National Judiciary Informatics System (*UYAP*).

139. The Forensic Medicine Institute also carries out detailed examination of cases. With an amendment to the Law on the Forensic Medicine Institute, two separate specialisation boards were established within the Institute particularly for assessment of cases concerning medical malpractice. The aim pursued in this development is to further improve, with the collaboration of new members from a number of different branches, the quality of the opinions drafted for cases concerning allegations of medical malpractice.

III.c. Measures Taken with respect to Domestic Proceedings

III.c.1. Lack of diligence and excessive length of judicial proceedings regarding medical negligence cases

140. *Bilinmiş, Nihat Soylu, Süleyman Ege, Tülay Yıldız, Yirdem and Others, Zafer Öztürk, Kanal*, *İbrahim Keskin, Elvan Alkan and others and Eryiğit* cases concern failure of domestic courts to examine cases of medical negligence with exceptional diligence and promptness.

141. The Committee of Ministers adopted final resolution in the *Ormancı v. Turkey* (43647/68) group of cases which concerned excessive length of proceedings and lack of an effective remedy in this respect (CM/ResDH (2014)298, adopted in December 2014). The statistics presented in the Action Report to the Committee demonstrated an important decrease in the length of proceedings. The authorities further referred to four judgments of the Constitutional Court (*Halil Kaya and others* (no. 2013/7318, 10 June 2015), *Salih Ülgen and others* (no. 2013/6585, 18 September 2014) *Mehmet Karadağ* (no. 2013/2030, 26 June 2014) and *Ahmet Acartürk* (no. 2013/2084, 15 October 2015) and noted that the applicants in those cases were awarded just satisfaction on account of their complaints regarding excessive length of proceedings. One of the judgments (*Ahmet Acartürk*) concerned medical negligence.

142. In addition, it was started to the application of target time-limit in the judiciary. The target time-limit application in the judiciary is a case management system that aims to find solutions with the purpose of accelerating the cases and investigations, which are not completed in target time, by envisaging target time for each case and investigation and in this manner to

shorten the length of proceedings and investigations. Whereas the target time-limit application in the judiciary started on 3 September 2018 in the ordinary and administrative first-instance courts, tax courts, it started on 1 October 2018 in the Chief Public Prosecutor's Offices of the ordinary first-instance courts.

143. On the other hand, the application of notifying the parties of case in relation to the target time-limit of investigation, prosecution and proceedings came into effect on 1 January 2019. By the approval of the Ministry dated 22 January 2019, the Target Time-Limit Monitoring and Assessment Board was formed. The Board gathers at certain intervals, evaluates the reports and data measured in relation to the target time-limit application and identifies the shortcomings occurred at the judicial system within the context of the target time-limits and also deliver decisions with a view to finding solution towards the problems established. Working Groups were set up in order to strengthen target time-limit application and to evaluate the reports that are sent by 137 Chief Public Prosecutor's Offices, Presidencies of Commissions in the end of each January pursuant to the decision no. 2020/3 dated 9 January 2020 of the Target Time-Limit Monitoring and Assessment Board.

144. The Target Time-Limit Monitoring and Assessment Board held its 4th meeting on 17 December 2020. In line with the observations and proposals submitted by the board working groups, the decisions were taken for the update of the length of some cases, the update of reasons for delays and making a number of changes in relation to the system. Besides, it was decided to start attempts toward the initiation of target time-limit application in the regional courts of appeal and regional administrative courts. Moreover, the attempts will be made toward the initiation of target time-limit application that will be determined for the works and actions by the Forensic Medicine Institute within the field of its activity.

145. In addition, the cases of medical negligence concern with the negligence-based cases, and the European Court and the Constitutional Court state that the effective domestic remedy is the remedy of compensation (*Vo v. France* [GC], no. 53924/00, § 90, 8 July 2004; *Tülay Yıldız v. Turkey*, no. 61772/12, § 90 et seq.; and the Constitutional Court's decision of Turgay Çamlı, no. 2012/1266, §§ 40-50). In this scope, full remedy actions set out in Article 12 of the Code of Administrative Procedure (Law no. 2577) are described as actions "brought by

persons whose personal rights were directly violated due to administrative acts and actions, and these actions are seen as an effective domestic remedy.

146. Within the scope of the target time-limit application in judiciary in relation to the full remedy actions, the target time-limit in the first-instance courts specified for the cases in respect of "health legislation" is 360 days. According to the pending cases before the court, an additional time may be granted and the adaptation ratio to target time-limit for the said types of case is about 80%.

147. Furthermore, when all the full remedy actions in the administrative courts are taken into consideration, it was reached a ruling regarding 13,792 cases in 2015, 15,176 cases in 2016, 15,186 cases in 2017, 16,341 cases in 2018, 15,980 cases in 2019, 14,542 cases in 2020 and 8,086 cases as of June 2021. These files did not just concern the medical negligence but they included all the files in relation to the loss of right originated from the act or action conducted by the administration. The average length of proceedings in these cases is as follows: 286 days in 2015, 291 days in 2016, 264 days in 2017, 256 days in 2018, 271 days in 2019, 303 days in 2020 and 253 days as of June 2021. When the average length of proceedings in these files is taken into account, it is seen that they are in conformity with the aforementioned target time-limit.

148. Regarding the scrutiny of the decisions, as stated in the Other Measures titled III.d.; training activities for judges, prosecutors and candidates are included and an effort is made to raise awareness by including cases regarding medical malpractice in this context.

149. When the aforementioned points are taken into account, it is assessed that the measures taken for the violation in question are sufficient.

III.c.2. Dropping of charges on account of the application of prescription periods or refusal of administrative authorisation to initiate criminal proceedings

150. *İbrahim Keskin, Nihat Soylu, Mehmet Şentürk and Bekir Şentürk, Sayan, Öney, Altuğ and Others, Aydoğdu* and *Mehmet Ulusoy and others* cases concern the issue of the application of prescription periods in lengthy proceedings or refusal to give administrative authorisation so that proceedings could be initiated against health care providers.

151. In some cases, the European Court found a violation due to the fact that the administrative authorisation procedure was applied under the Law no. 4483 for the investigations

initiated in respect of the cases of medical negligence. First of all, as is also stated in the Court's decisions, if it is incurred damage involuntarily against the corporeal integrity of the individual, it does not necessarily require to bring criminal proceedings. In Turkish Law, apart from bringing criminal proceedings in such cases, it is also provided the opportunity to bringing a full remedy action before the administrative courts against the Ministry of Health to which the hospital and health personnel that involved in the case is affiliated. Besides, it is possible, *inter alia*, to request the initiation of the disciplinary investigation for the identification of the personnel concerned in this Ministry.

152. The aim of the Law on the Prosecution of Civil Servants and Public Officials (Law no. 4483) is to determine the competent authority and the procedure to be followed for trial of the public officers due to the offences they committed during their service. This Law involves all the public officers such as police officers, prison guards, gendarmerie personnel as well as doctors and teachers. These provisions are applied for the offences committed by any public officer during his/her service. The authorities would like to recall that the issues under this heading are being examined under the *Batı and others* (33097/96) group of cases.

153. In addition, the authorities do display due diligence in the exercise of Law no. 4483 and the attention is paid to the probable faults/negligences committed by the health personnel in relation to the medical negligences, and in this context, sample decisions are as follows:

154. As regards the failure to grant permission for the investigation, many decisions were quashed by the regional administrative courts. For instance, in a decision dated 4 July 2019, as to the incident that the complainant's spouse being hospitalized for heart surgery, that he lost his consciousness aftermath of surgery and that his referral to the intensive care unit, in view of the facts that there was an allegation that the complainant verbally learnt about the failure made during the surgery, that the authorities did not provide sufficient information and that the detailed surgery reports were not provided despite the request, the permission for investigation was granted, maintaining that a preliminary investigation or criminal prosecution could only establish whether there was any medical shortcoming or fault (see Annex 7). In another case, as regards the allegations that the medical examination and treatment was applied late to the complainant, his request for ambulance was denied and that there was a loss in his ability to see due to being late in the hospital he went, on 14 April 2021 the permission for investigation was granted,

maintaining that an investigation or criminal prosecution could only establish whether there was any negligence in relation to the medical intervention (see Annex 8).

155. In a decision dated 10 July 2020, the İzmir Regional Administrative Court upheld the decision not to grant permission for investigation about the doctor, finding that the injection leading to drop foot syndrome in the patient was not administered by the doctor, the medication was only determined by the doctor and that there was not fault at the medication applied. However, it revoked the decision not to grant permission for investigation about the nurse who administered the injection, maintaining that an investigation should be conducted as to whether the nurse had any negligence (see Annex 9).

156. In a decision dated 5 February 2019, the İzmir Regional Administrative Court decided to grant permission for investigation and criminal prosecution for the establishment of the fact as to whether there was any negligences in respect of doctors in the late realising of the injection, maintaining that the necessary medical examination and treatments applied to the child for the swelling on his knee resulted from falling and his being discharged from hospital, that subsequent to the physical treatment, the infection was noticed by another doctor after the doctor requested another medical examination for the probability of an infection and that a full recovery was not realised (see Annex 10).

157. Similar to these decisions, the regional administrative courts render decisions to grant permissions for many allegations (see Annex 11).

158. The issue of having been decided to the discontinuation of the proceedings due to unreasonable length of detention and thus its being resulted in impunity for the perpetrators are being examined in detail in the *Batı and others* (no. 33097/96) group of cases and it is assessed that it is appropriate to examine the measures taken on these issues under the relavant group.

159. As regards another issue, in the case of *Mehmet Şentürk and Bekir Şentürk*, the Court established that the criminal proceedings appear to have been characterised by an initial omission, namely the failure to commence prosecution of S.Ö., and that this situation persisted until 2008, when charges were dropped. In the relevant decision, upon being granted permission for investigation, the first-instance court which is the trial court recognized that S.Ö., who was among the accuseds, had never been mentioned in the indictment, and therefore, it requested the Public Prosecutor’s Office to clarify as to whether the charges had been dropped against S.Ö. or

whether there had been an error and that, in the latter case, the omission ought to be rectified. The Public Prosecutor's Office stated that charges had not been dropped against S.Ö. and that there may have been an error and accordingly, the measures would be taken in this regard. However, in this process, the first-instance court delivered a decision without waiting the result of the proceedings initiated against S.Ö. Subsequently, the Public Prosecutor's Office rendered a decision of non-prosecution in respect of S.Ö.

160. The Government maintains that the violation regarding lack of investigation revealed by this judgment has an isolated character and that the publication and dissemination of the Court's judgment are therefore sufficient to prevent similar violations in the future. This judgment rendered by the ECtHR resulted from the faulty practice of the relevant prosecutor office and it does not indicate the existence of a structural problem.

161. In addition, the Government draws the Committee's attention to the following points:

162. In investigation procedure is governed by Article 157 and some other Articles of the Code of Criminal Procedure ("CCP"). Under the principle of "the statutory obligation of investigation", as soon as he is informed, either through a denunciation or any other way, of a situation which creates the impression that an offence has been committed, the public prosecutor shall immediately initiate an investigation in order to render a decision as to whether the filing of a criminal case is required. This point is set out in Article 160 of the Code of Criminal Procedure. According to the provision in question, as soon as the public prosecutor is informed of a fact that creates the impression that an offence has been committed, either through a notification of crime or any other way, he/she must immediately investigate the factual truth in order to render a decision on whether to instigate criminal proceedings."

163. The offences prosecuted upon complaint are set forth in the relevant articles of the Turkish Criminal Code ("TCC"). According to this provision, where a person, being competent to do so, has not filed a complaint within six months of in respect of an offence where the investigation and prosecution of such is subject to a complaint, no investigation or prosecution shall be conducted (Article 73 of the TCC).

164. If it is not articulated in the law that the prosecution of an offence is subject to a complaint, this offence is investigated *ex officio* by the Public Prosecutor's Office. For instance, it is not articulated in the law that the prosecution of an offence is subject to a complaint such as

a simple state of the offence of intentional injury, reckless injury, threat, violation of inviolability of the domicile and insulting etc., the Public Prosecutor's Office is required to initiate investigation *ex officio*. For instance, intentional killing, committing intentional killing with negligence, misconduct etc. In these offences, the Public Prosecutors take action *ex officio* without seeking the victim's complaint.

165. In an offence is subject to a complaint, it is possible to waive the right to complain. However, if the waiver of the right to complain is not expressly stated by the person, it does not mean that it is also waived from civil proceedings that can be brought in relation to an offence is subject to a complaint (Article 73 of the TCC).

166. Lastly, as is also stated in Article 158 of the CCP, it is stated that after it has been understood that the offence is subject to a complaint in the prosecution stage following the investigation process, the proceedings will be continued in case the victim does not withdraw his/her complaint.

167. In the light of these provisions, also in view of the violation's isolated nature, it is assessed that the measures taken are sufficient.

III.c.3. Imposition of disciplinary sanctions and their effectiveness

168. The cases of *Nihat Soylu*, *Tülay Yıldız* and *Zafer Öztürk* concern the failure to launch disciplinary investigations or impose disciplinary sanctions against medical professionals.

169. In cases where there is a report/complaint concerning a medical professional's acts or behaviour, an inspector shall be assigned to inquire as to the matter. In this scope, disciplinary investigations shall be launched immediately. At the end of the disciplinary investigation, the medical professional may be imposed one of the disciplinary sanctions set out in Article 125 of the Law on Civil Servants (Law no. 657), namely warning, reprimand, deduction from salary, deferment from advancement, or dismissal from civil service. The disciplinary sanction imposed shall also be added to the personal record of the medical professional. If the act or behaviour giving rise to the disciplinary sanction is repeated within 5 or 10 years, the severity of the sanction to be imposed shall be 1 level higher; thereby, the administration shall follow up the effectiveness of sanctions.

III.c.4. Failure of the consideration of events and evidence by domestic courts and the issue of reasoning

170. In *Erdinç Kurt and others* and *Mehmet Ulusoy*, the Court stated that the Civil Court of General Jurisdiction faced with the inadequate reasoning of the report in question and the applicants' objections, did not see fit to accede to their request for a second expert report, considering the first report to be sufficient.

171. By virtue of Article 31 of the Code of Civil Procedure (Law no. 6100), the judge is under an obligation to shed light to the case. In this context, where the elucidation of the dispute so requires, the judge may ask questions to the parties or have the parties make explanations or present evidence in relation to matters which he/she finds materially or legally uncertain or contradictory. As per Article 266 of the Code in question, the court shall order an expert opinion and vote, upon request of one of the parties or of its own motion, where the resolution of a dispute necessitates special or technical knowledge outside the law.

172. Similarly, Article 281 § 1 of the same Code stipulates that the parties may, within two weeks from notification of an expert report, request the court to have the expert complete the points deemed inadequate in the report and provide explanations in regard to any uncertainties. The parties may also request a new expert to be appointed. Furthermore, the second paragraph of this Article provides that, for the purpose of clearing up any deficiency or uncertainty in an expert report, the court may order an additional report from the expert by means of posing new questions or have *ex officio* the expert make oral explanations during a hearing. By virtue of the last paragraph of the same Article, the court may order another expert report by appointing a new expert if it deems necessary for discovering the facts.

173. In addition to that, according to article 63 of the Code on Criminal Procedure (no.5271), criminal courts may appoint experts for establishing fault in medical negligence complaints. Parties to the proceedings may also submit expert reports. Regulation on Implementation of the Law on Forensic Medicine Institute provides that files sent to the Forensic Medicine Institute shall be subject to a detailed examination and, if necessary, the patient shall be summoned and examined.

174. In *Akkoyunlu* case, the Court observed that the administrative court had made no attempt to verify the accuracy of the applicant's allegation. Furthermore, although there had been

contradictory conclusions contained in the medical report, the administrative court did not try to eliminate them by taking further steps such as obtaining a new medical report. The case of *Sayan* contained criticisms that bodies of the administrative justice had failed to shed light on certain matters of the case and that certain issues had not been explained. Therefore, the Government finds it useful to point out the following:

175. First of all, in the case of *Akkoyunlu*, the trial was conducted by the Supreme Military Administrative Court. The Supreme Military Administrative Court was abolished by the Constitutional amendments of 2017. The cases pending before it was transferred to either the Court of Cassation or the Council of State (Supreme Administrative Court).

176. Article 141 of the Constitution requires that any decision rendered by any court shall be written with a reasoning. In addition, Article 24 of the Code of Administrative Procedure (Law no. 2577) sets out that the decisions shall contain, *inter alia*, the legal reasons on which the decision is based as well as its justification and the ruling. Article 31 of the Code of Administrative Procedure refers to the Law no. 6100 with respect to matters such as experts, on-site inspection, discovery of evidence, etc., which are not provided for in this Code. In the particular context of experts, provisions of the Law on Experts and the Law no. 6100 apply.

177. In addition, as regards the training activities provided specifically for the applications of expertise to trainee judges and prosecutors,

-during the pre-service and in-service training activities in 2017, information trainings were provided for 391 judges and Public Prosecutors and 1,280 ordinary and administrative trainee judges and prosecutors. Besides, trainings were provided for 114 registrars and court clerks serving at the labour courts as to the Law on Experts and the Regulation on Experts.

-during the pre-service and in-service training activities in 2018, information trainings were provided for 2,140 judges and Public Prosecutors and 3,462 ordinary and administrative trainee judges and prosecutors.

-in 2019, whereas training programmes were provided for 1,676 trainee judges and prosecutors in pre-service training activities as to the applications of expertise, the programmes were provided for 1,800 ordinary judges and 2,475 members and head of regional courts of appeal during in-service trainings.

178. The authorities would like to note that the issue of lack of reasoning is examined under *Deryan* (41721/04) and *Batı* (33097/96) group of cases.

179. In addition, the Court, in the case of *Öney*, found a procedural violation under Article 2 of the Convention. When its reasoning is taken into consideration, although the applicants' lawyer stated via fax that he could not attend the hearing due to his health problems, the court did not accept this request and decided to discontinue the file under Article 40 of the former Code of Civil Procedure as they did not submit the report physically. A set of hearings were heard following the reopening of the file. Subsequently, upon the applicant's lawyer stated via phone that he would be late for the hearing due to traffic jam, the judge asked the other party whether they would like to follow the file. After they stated that they did not would like to follow, it decided again to discontinue the file. Therefore, as there was not any possibility to reopen the file that was discontinued two times, it was decided that the file had not been opened. The Court held that as the judge acted in very formalistic manner, it did not enable to make an examination whether the doctors had responsibility in the death of the applicants' daughter or to punish the possible negligence that could have been established.

180. During the incident in question, the former Code of Civil Procedure was in force. In 2011, the Code of Civil Procedure entered into force. In Article 150 of the Code of Civil Procedure, in the event that the parties do not attend the hearing, the procedures to be pursued are specified. The Code of Civil Procedure involves similar expressions with the previous regulation and this problem in the application was eliminated. Indeed, the Court did not make an examination to the extent that the violation concerned legislative regulation; on the contrary, it mentioned about the judge's application being very formalistic.

181. In our country, the National Judiciary Informatics System (UYAP) has already been used at the courts. With UYAP, the lawyers can upload their petitions and requests to the system and the courts can quickly access to these documents. That is to say, the system is mainly being conducted over this programme. Additionally, on 5 April 2018 the Ministry of Justice put the mobile application of CELSE into service. With this application, the lawyers had the possibilities of listing and questioning enforcement and case files, viewing party, lawyer and case file cover information, listing the hearings on the date that is picked, viewing instant, daily and monthly,

listing the hearings belonging to court unit that is picked and in this way, instantly following all the hearings in all the courthouses.

182. The lawyers can upload their petitions of excuse to the system over the application and the court can quickly access them. With these applications in the recent period, it is assessed that the violation at issue would not be experienced in the future. In addition, as regards the judge's assessment procedures in relation to the petitions of excuse (in terms of being formalistic), the Court of Cassation has delivered many judgments on this issue. In this scope, the authorities would like to draw the Committee's attention to the following facts:

183. In a judgment dated 15 February 2017 in respect of a case, the General Assembly of the Court of Cassation in Civil Matters examined as to whether the case's being counted as discontinued had complied with the law and the procedure on the ground that the petition of the applicant's lawyer dated 15 April 2013 had not been accepted since he had hearing at another place in the labour courts where simple trial procedure applied on the same date. The following points are mentioned in the decision: *As is known, the rules on civil proceedings are brought to hold regular proceedings and to realize the aim of administering justice as quick as possible. The rules, which are instruments for administering justice in business, can find a field of application in the presence of concrete duty that is suitable to aim. Otherwise, if there is not real and solid link between the instrument and the aim desired, it paves the way for meaninglessness (formalism). The aim of the courts is to reach the conclusion by determining the right within the limit of positive law but not put the disputes out of the way at all events. For this reason, by thinking justice delayed is justice denied, the procedural rules that were brought for prolonging the case or preventing this prolongation should be used suitable for the purpose of the law and they should not be counted as an instrument for dismissing the case.*"

184. The Court of Cassation stated that the excuse in question is a rightful excuse, that there was not a legal interest in prolonging the case on behalf of the plaintiff by the nature of the case and that it was clear that the dismissal of the excuse was contrary to the spirit and nature of procedural rules since the excuse should be accepted on the ground that the priority should be the determination of the disability of plaintiff at first in the relevant occupational accident cases (see Annex 12).

185. In addition, in its judgment dated 26 December 2016, the Court of Cassation regarded a reason for quashing the decision of the first-instance court dismissing the excuse on the ground that the lawyer did not inform the excuse that he had another hearing (see Annex 13).

186. Similarly, in its judgment dated 11 June 2020, the Court of Cassation stated that even if the lawyer did not state a reason, the petition of excuse should be accepted as valid and the proceedings be continued (see Annex 14).

187. As is also understood from these judgments, the Court of Cassation stated that the procedural rules should be applied suitable to the law and that it should not be assessed as an instrument for dismissal of the case, referring to the importance of applying the procedural provisions.

188. When these developments are taken into consideration, the Government would like to state that the violation at issue will not be experienced again, that it is an isolated case when it is assessed that there is no such a complaint before the Court and that the necessary measures were taken.

III.c.5. The case-law of the High Courts

III.c.5.1. The Constitutional Court

189. The Turkish authorities would also like to indicate here that, in 2012, legislative amendments were adopted to introduce a possibility of an individual application before the Constitutional Court in respect of violation of human rights. The Turkish authorities would like to observe that an individual in the applicants' situation could today pursue the avenue of lodging an individual application to uphold his or her Convention rights, including in the present group. In this respect, the Turkish authorities would like to recall that the European Court indicated in *Hasan Uzun v. Turkey* (10755/13) case that the individual application to the Constitutional Court should be considered as an effective remedy as of 23 September 2012.

190. The Constitutional Court has also played a significant role since it started to receive individual applications. There are many judgments regarding excessive length of proceedings regarding right to life, inter alia, three of them illustrate the progress in the Convention standards to show the point of view of the judicial authorities in Turkey.

191. The Constitutional Court found a violation in the judgments of *Halil Kaya and others* (no. 2013/7318, 10 June 2015), *Salih Ülgen and others* (no. 2013/6585, 18 September

2014) and *Mehmet Karadağ* (no. 2013/2030, 26 June 2014) in respect of excessive length of proceedings concerning allegations of right to life. In these judgments, the Court awarded just satisfaction to the applicant(s) in respect of non-pecuniary damage.

192. Moreover, it is observed that constructive judgments taking the case-law of the ECtHR as basis have been issued particularly in respect of the issues of malpractice. The Constitutional Court found a violation in the judgments of *Ahmet Acartürk* (no.2013/2084) concerning allegations of right to life. Likewise, above, in this judgment, the Court awarded just satisfaction to the applicant in respect of non-pecuniary damage.

193. In its judgments on the individual applications of *Engin Karabaşlar and Esra Karabaşlar* (no. 2016/4790, 4 July 2019), *Ü.B.K.* (no. 2015/2536, 4 July 2019), *Mehmet Gürbüz and Others* (no. 2015/9093, 8 May 2019), *Eyüp Kurt* (no. 2015/6926, 4 April 2019), *Eliçe Aydın and Others* (no. 2015/5228, 20 March 2019), *Emrah Egeç* (no. 2015/9714, 11 December 2018), *Zümrüt Ağapınar* (no. 2015/3747, 26 December 2018), *Fındık Kılıçaslan* (no. 2015/97, 11 October 2018), *Bircan Çelik and Meryem Çelik* (no. 2015/8572, 12 September 2018), *Menekşe Alkan and Mehmet Cemal Alkan* (no. 2014/13327, 8 March 2018), and *Mehmet Çolakoğlu* (no. 2014/15355, 21 February 2018), the Constitutional Court found violations of the applicants' right to protect and improve his/her corporeal and spiritual existence, guaranteed under Article 17 of the Constitution, due to medical negligence. Thus, these case files were remitted to the competent judicial authorities for retrial.

194. In an individual application lodged with the Constitutional Court due to the dismissal of an action for compensation brought upon loss of kidneys due to a failure to timely detect health problems during mandatory military service, the Constitutional Court similarly found a violation of Article 17 of the Constitution (*Fetullah Özbek*, no. 2014/1581, 23 January 2019). The case file was accordingly remitted to the competent judicial authority for retrial.

195. In the individual applications of *Hamdullah Aktaş and Others* (no. 2015/10945, 19 July 2018), *Ahyat Uğurlu and Mustafa Uğurlu* (no. 2014/17485, 25 January 2018), *Kamile Can and Kenan Can* (no. 2014/14328, 26 October 2017), and *Ahmet Sevim* (no. 2013/474, 9 September 2015) concerning medical error/negligence, the Constitutional Court found violations of the right to a trial within a reasonable time under Article 36 of the Constitution due to the excessive length of the proceedings in question, which had lasted for 8 years 2 months and 21

days, 12 years, over 12 years, and 7 years and 11 months, respectively. The applicants were also awarded compensation in these cases. In the case of *Cavide Sevinç and Others* (no. 2014/10703, 5 October 2017), the full-remedy action brought due to a death following a medical error had not been concluded for nearly 8 years. Having found the length of the proceedings unreasonable, the Constitutional Court held that the right to life enshrined in Article 17 of the Constitution had been violated in its procedural aspect in the said case. In a similar case (*Aysun Okumuş and Aytekin Okumuş*, no. 2013/4086, 20 April 2016), the applicants had filed a full-remedy action due to a death as a result of medical error, which had been dismissed. In the ensuing individual application concerning the inferior courts' allegedly insufficient examination, the Constitutional Court found a violation of the right to life with regard to its procedural aspect and remitted the case file to the competent judicial authority for retrial.

196. The individual application of *İlker Başer and Others* (no. 2013/1943, 9 September 2015) concerned a case where a child's congenital disability could have been detected during pregnancy but this detection had not been made due to the doctor's fault. The Constitutional Court arrived at the conclusion that, taken as a whole, the length of the proceedings, which had lasted nearly 10 years, had been excessive and it did not satisfy the requirement under Article 17 of the Constitution for speedy and sufficient examination. It therefore found a breach of the obligation to conduct an effective investigation as stipulated by the right to life guaranteed under Article 17 of the Constitution. Accordingly, the applicants were awarded non-pecuniary compensation. Similarly, in the case of *Yusuf Baykal* (no. 2017/32663, 16 September 2020) the Constitutional Court found a violation of Article 17 of the Constitution due to the compensation proceedings that lasted over 14 years, and it ordered to pay the applicant non-pecuniary compensation.

197. In the case of *Selahatdin Akgüre* (no. 2013/2515, 20 November 2014) concerning the death of the applicants' relative during military service, which had been caused by a spoiled (expired) serum given to the victim at the infirmary. The Constitutional Court held that the investigation into the incident could not be considered to have been effective, namely capable of accurately establishing the facts and events leading to the death, identifying the persons potentially responsible and ensuring their punishment. It accordingly concluded that the State had failed to fulfil its procedural obligation to conduct an effective investigation within the meaning of Article 17 of the Constitution.

198. In the case of *Oğuzhan Koç* (no.2018/2851, 26 May 2021), the Constitutional Court found a violation that there was not an assessment in the expert report to the process that E.K. referred to the ultrasound service during the trial, his being arrested when he returned to the service he was hospitalized and his death even though the expert reports, in general, had information regarding the treatment process.

199. In the case of M.U. (no. 2017/17753, 10 February 2021), the Constitutional Court expressed that the board report which was taken as basis for the decision both in the criminal proceedings and the full remedy action had included many shortcomings. In the report, it was found a violation, maintaining that an examination was not made over the documents as to whether the injection was administered inaccurate place and that the contradictions were not removed between two reports.

III.c.5.2. The Council of State

200. The Human Rights Commission of the Council of State, established in 2013, holds regular meetings every month and presentations are made during meetings on various topics. In a meeting held in 2019, a presentation was held on “the Right to Improve the Corporeal and Spiritual Existence in the Context of Medical Negligence” which included discussions about national and international legislation and aimed to raise awareness about the case-law of the ECtHR.

201. Furthermore, the decisions concerning administrative justice are published on the official sharing platform of the Superior Courts Network (SCN), of which the Supreme Administrative Court is a member, and are accessible by all judges and prosecutors.

202. As regards the Supreme Administrative Court’s practice as to pecuniary and non-pecuniary compensation claims, for example, in its decisions dated 29 May 2019, 8 May 2019, 7 May 2018, 7 May 2018, 3 October 2018, 27 November 2018, 8 April 2019, 21 February 2019, 6 February 2019, and 18 June 2019, it quashed the administrative court judgments that had been rendered after an incomplete examination based on experts reports which were not sufficient for resolution of disputes concerning pecuniary and non-pecuniary compensation claims due to service faults in hospitals (see, respectively, the docket no. 2019/7286, decision no. 2019/4521; docket no. 2019/3457, decision no. 2019/3705; docket no. 2013/10821, decision no. 2018/4516; docket no. 2016/32, decision no. 2018/6606; docket no. 2018/2878, decision no. 2018/7900;

docket no. 2019/1194, decision no.2019/2636; docket no.2015/3824, decision no.2019/952; docket no.2015/226, decision no.2019/400; and docket no.2019/6217, decision no.2019/4903).

203. On the other hand, in its decisions dated 19 June 2014, 13 May 2014 and 21 May 2014 (see, respectively, docket no. 2013/4109, decision no.2014/5561; docket no.2013/4299, decision no.2014/3649; and docket no.2013/4126, decision no.2014/3953), it quashed the inferior court judgments by concluding that it was not in line with the law for the administrative courts to have dismissed the non-pecuniary compensation claims in those cases concerning deaths caused by service faults at hospitals. In the above-mentioned decisions, the Supreme Administrative Court found that the service had clearly been provided in a poor fashion in each case and the administration had been at fault. In addition, since non-pecuniary compensation is an instrument of redress for moral damage and other methods of redress were either absent or insufficient, the Supreme Administrative Court concluded that the non-pecuniary compensation should be calculated in monetary value.

204. In its decision dated 10 December 2015 (docket no. 2015/407, decision no.2015/8736) concerning a case where the claimant had been rejected for various reasons by all the hospitals he had applied to and had been forced to pay for a private healthcare facility, the Supreme Administrative Court established that there was a causal link between the inaction of the administration which had failed to conduct the necessary medical intervention and the pecuniary damage suffered by the claimant due to the payment made to a private facility. Concluding that the claimant had to be awarded as pecuniary compensation any amount he had paid, the Supreme Administrative Court quashed the [inferior] administrative court's dismissal of the pecuniary compensation claim. Furthermore, in the decisions dated 12 March 2014 and 26 December 2018 (see, respectively, docket no. 2013/3865, decision no. 2014/1691 and docket no. 2014/6640, decision no. 2018/8514), it quashed the administrative court's dismissal of the case due to lack of any service fault. In these cases, the Supreme Administrative Court held that the evidence in the case files pointed to presence of service faults in the incidents. It followed that the judgments reviewed were legally inappropriate because the first-instance courts had dismissed the claimants' cases while they should have instead inquired into the damage incurred and ruled on pecuniary and non-pecuniary compensation.

III.c.5.3. The Court of Cassation

205. In a case concerning a doctor's criminal liability, the 12th Criminal Chamber of the Court of Cassation decided on 7 May 2019 (docket no. 2019/773, decision no. 2019/5789) to quash the first-instance court's judgment. Though the first-instance court had acquitted the doctor, the Court of Cassation held that the doctor should have been convicted for his negligence and delay in fulfilling the requirements of his duty with regard to the treatment of the deceased, on whom the doctor -a neurosurgeon- had decided to operate on the basis of a herniated disk diagnosis.

206. In a decision dated 15 January 2019 (12th Criminal Chamber, docket no. 2017/4983, decision no. 2019/578), the Court of Cassation emphasised that expert reports should be used when determining a doctor's criminal liability. The accused doctor in this case had been acquitted by the first-instance court; however, the Court of Cassation quashed this judgment on account of insufficient inquiry. It held that the accused person's legal status should have been assessed and determined based on the findings of an expert report to be prepared on the question whether there was a causal link between the accused doctor's act and the outcome and, in this connection, whether he had been at fault. As regards the need for expert reports in the determination of the criminal liability of other accused medical professionals, the 12th Criminal Chamber of the Court of Cassation held on 9 January 2019 (docket no. 2017/3940, decision no. 2019/292) that, to be able to establish beyond any doubt whether there was any causal link between the act of the defendant -a nurse at obstetrics department- and the resulting death, a report should have been obtained from the General Board of the Forensic Medicine Institute in addition to the previous reports.

207. The General Assembly of the Court of Cassation in Civil Matters held on 20 March 2013 that an expert report should be sufficient and capable of establishing the fault and liability of the hospital and the doctor (docket no. 2012/13-1049, decision no. 2013/383). In its judgment dated 16 February 2021, the Court of Cassation made the following assessments: "*the second report does not satisfy the objections raised by the plaintiff and in this manner, it does not seem as enlightening and explanatory role as to the issue whether defendant doctor and hospital in the present case are responsible. For this reason, in view of the facts that it should be set up an expert board with persons, who are expert in their fields and have academic career, from*

universities and particularly involvement of the plaintiff's pregnancy in the passing weeks, the previous pregnancy and birth history, the diagnosis made when applied to the defendant hospital at first and second time, the actions taken in relation to this diagnosis and its compatibility, the route pursued for the patient follow-up both for the plaintiff and the baby when hospitalized and all the medical features in relation to uterus rupture developed in the plaintiff, it requires the court to decide that a ruling in writing were contrary to the law and the procedure as it should be delivered a decision by drawing a report suitable to the Court of Cassation and review of parties (docket no. 2020/7986, decision no. 2021/1514).

208. In its decisions dated 25 January 2018, 5 July 2017, 20 December 2017, and 3 May 2017 concerning actions for pecuniary and non-pecuniary compensation (see, respectively, docket no. 2015/39412, decision no. 2018/603; docket no. 2016/5064, decision no. 2017/8070; docket no. 2015/17154, decision no. 2017/12914; and docket no. 2015/43151, decision no. 2017/5449), the 13th Civil Chamber of the Court of Cassation similarly underlined the need for an expert report which is capable of reviewing and explaining with reasons whether there was any fault attributable to the respondent doctors and hospital.

209. In its decisions dated 8 November 2016, 6 December 2016 and 14 March 2019, the 4th Civil Chamber of the Court of Cassation found the contradiction between the expert reports in the case files and subsequently determined the experts from whom new reports should be obtained for elimination of the insufficient examination (see, respectively, docket no. 2016/180, decision no. 2016/10944; docket no. 2016/6722, decision no. 2016/11936; and docket no. 2016/5065, decision no. 2019/1462). In the decision dated 14 March 2019, it held that, due to the contradiction between the reports obtained during criminal and administrative proceedings, a report should be ordered from the General Board of the Forensic Medicine Institute to determine if there is a causal link and, if any, the fault rates.To cite from the Court of Cassation's practice in the context of the obligation to inform the patient, the 13th Civil Chamber of the Court of Cassation held on 4 July 2018 (docket no. 2016/25663, decision no. 2018/7615) that the case file did not contain any evidence to indicate that the claimant had been informed about potential post-surgical complications and had accordingly given and informed consent. It emphasised that the document submitted into the case file under the title of "consent form" (*muvafakatname*) only bore a consensual nature but it did not contain any informative feature. Because the medical

intervention on the patient had thus become unlawful, the Court of Cassation concluded that the respondents were liable not only for non-pecuniary but also pecuniary damages.

210. The convictions rendered by criminal courts are also binding for civil courts in the determination of fault. For instance, on 27 March 2012 the 4th Civil Chamber of the Court of Cassation decided (docket no. 2011/2944, decision no. 2012/4985) that, since the respondent doctor had been convicted of the offence of causing death and the conviction had become final, the doctor could not be said to have no fault. Therefore, it ruled that the doctor must be found at fault at a certain rate in the action for compensation and the judgment must be rendered on the basis of a calculation of the damages.

III.d. Other Measures

III.d.1. Training Activities and Projects

211. The Justice Academy which is the sole institution for pre-service and in-service training of judges and prosecutors was established in 2003 with a legal entity and scientific, financial and administrative autonomy. The Academy has been providing in-service and pre-service trainings since its establishment.

212. Between 28 and 30 June 2019, the Justice Academy held a training seminar in İstanbul for judges. In this module, 80 participants were informed about actions for pecuniary and non-pecuniary compensation originating from tort and traffic accidents, as well actions stemming from insurance law.

213. The Academy has given the course on the ECHR and Turkey which includes violation of right to life and prohibition of torture. The Academy has initiated a distant learning programme in cooperation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. This programme as well incorporates the violations in question.

214. On 31 May 2021 an online training programme entitled “Criminal Liability Arising from Medical Intervention (Tıbbi Müdahaleden Kaynaklanan Cezai Sorumluluk)” was provided and 18 judges and prosecutors attended this programme. On 27 June 2021 a live training video was shot on YouTube on the same matter and this video was uploaded to the account of Turkish Justice Academy of Turkey. Besides, a training video entitled “Determination of Fault in the Negligence and Applications of Conscious Negligence (Taksirde Kusurun Tayini ve Bilinçli

Taksir Uygulamaları) was uploaded to the online training materials part of the distance learning platform and 611 judges and prosecutors viewed 1,086 times the content of this video.

Effective investigation and trial

215. *Asiye Genç* and *Bilinmiş* cases concern the insufficient nature of the domestic investigation/not sufficiently thorough and effective investigation.

216. In this regard, many activities have been made in order to carry out investigations and trials in compliance with the Convention standards by the judicial authorities.

217. In respect of this, the training of law enforcement officials on human rights issues has continued and new initiatives have been taken.

218. In relation to the professionalism and competence of the judiciary, the Ministry of Justice and the Justice Academy continued to provide extensive training on the Criminal Code in force and the Code of Criminal Procedure, on effectiveness of the judicial process.

219. There are some training projects carried out by the Justice Academy of Turkey in order to raise awareness amongst prosecutors and judges as well as to ensure good practice in judicial authorities: “The Development of the Investigation Techniques of the Public Prosecutors and increasing their Effectiveness”, “The Project on improving the Efficiency of the Turkish Criminal Justice System”, “Developing the Public Prosecutors’ Investigation Capacities”,“Increasing the Activities of Investigation in the Turkish Criminal Procedure”.

220. Vocational retraining seminar was organized on “Effective Investigation Techniques” on 1-3 December 2014, and presentations were made on such issues as the prohibition of torture and inhuman treatment in national and international law, right to life, the general principles of effective investigation, launching investigation, the principle of comprehensive and effective investigation, carrying out the investigation with the principle of promptness and reasonable diligence in the light of ECHR to the public prosecutors who participated in the program.

221. “The Effective Investigation Training Module” was prepared under “The Project on the Improvement of the Effectiveness of the Turkish Criminal Justice System”, and this module was benefited from during the vocational training of candidates who were trained in the

Academy. Furthermore, this module was distributed to the judges and prosecutors who were trained.

222. As regards Effective Investigation and Questioning Techniques, a total of 293 judges and prosecutors participated in trainings held in Afyonkarahisar, Antalya and Samsun provinces on 2-3 April 2018, 1-2 October 2018, 26-28 October 2018 and 10-11 December 2018.

223. The Project on Improving the Effectiveness of Investigation of Allegations of Illtreatment and Combating Impunity was conducted by the Council of Europe and Ministry of Justice collectively between December 2017 and May 2019. The primary aim of the Project was to contribute to the improvement and strengthening of the judges and prosecutors' capacity to effectively conduct investigations to combat ill-treatment and impunity.

224. In this regard, the Project implemented a successful series of; conferences and international workshops in order to raise awareness about challenges, new procedures, distribute specific information to a broader audience on effective investigation against ill treatment and respective ECtHR- case-law. In total 128 participants actively attended in the international workshop and international conference. 4 round tables were organized. The training of trainers (ToT) program on effective investigation and combatting impunity was completed in September 2018. 22 new trainers joined the pool of trainers of the Justice Academy to transfer their knowledge and skills to their peers. Three (3) pilot training (in-service) programs were delivered to the judges and prosecutors in Ankara, İstanbul and İzmir in 2019. New trainers trained total of 67 judges and prosecutors. The trainers will be benefited by the Justice Academy for pre-service and in-service training activities.

225. Within the scope of the said Project, study visits to the Council of Europe Headquarters (Strasbourg) and Russia to provide first-hand experience and facilitate exchange of information on effective investigation against ill-treatment allegations in line with the European Court of Human Rights' standards. In total 28 judges and prosecutors including trainers and representatives of the MoJ enhanced their knowledge and awareness on effective investigation on Article 3 of the ECHR and ECtHR case-law through exchanges with the ECtHR staff, and other country practices. The project trainers prepared two reference books (consisting of European Court of Human Rights' and Turkish Constitutional Court's case-law on all forms of ill treatment. A guidelines booklet on effective investigation and combatting impunity on ill

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

226. Between 2018 and 2021 courses on investigation procedures were provided for approximately 50 hours to 2,681 trainee judges and public prosecutors, courses on trial procedures were provided for approximately 30 hours to 2,764 trainee judges and public prosecutors, and courses on practices of prosecutor's offices were provided for approximately 50 hours to 1,215 trainee judges and public prosecutors.

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

228. The judges and public prosecutors are routinely provided in-service trainings concerning human rights. Participation to these courses is compulsory.

229. Within the scope of vocational trainings, between 2018 and 2019 courses on "effective investigation-trial" were provided to 394 judges and prosecutors. Moreover, between 2020 and 2021 courses on effective investigation and questioning techniques were provided through distance training to 45 judges and public prosecutors. Likewise, between 2020 and 2021 online courses on complaint institution, denunciation institution, and procedures required to be carried out by public prosecutors in relation to incident scene investigation were watched on the distance training platform by a total of 899 judges and prosecutors as well as trainee judges and prosecutors. Furthermore, written documents concerning the obligation to conduct an effective investigation and the offence of intentional homicide were viewed by a total of 1,027 judges and prosecutors as well as trainee judges and prosecutors.

Lengthy proceedings

230. The other Project "SATURN" set a period for all sorts of case files to be concluded, it will be relevant for the violation found in this group regarding lengthy proceedings.

231. In order to strengthen the confidence in the judiciary in our country, increase the efficiency of courts and public prosecutor's offices and, in particular, ensure that the parties are able to foresee when the proceedings will come to an end, the "target time limit" (*hedef süre*)

practices for trials in accordance with the types of cases were initially launched in 2013 in pilot courts located in Erzurum, Amasya and Ankara provinces.

232. Joint workshops were held in pilot courthouses and processes were laid down with respect to proceedings in certain principal case types. In this context, the average trial durations were ascertained accordingly and these target time limits were shared with the public. A three-step alert tracking system was created for the pilot courthouses on the National Judiciary Informatics System (*UYAP*). The Forensic Medicine Institute and the postal service were also invited to begin working towards contributing to the time management.

233. In the light of the positive results and practices observed in the pilot courthouses, a working group was formed in October 2015 for the purpose of determining trial durations across the country. The working group held its first meeting in November 2015.

234. The working group was divided into subgroups of "civil proceedings", "criminal proceedings" and "administrative proceedings", each of which conducted an effective study on its respective area of focus and calculated the target time limits depending on case types and consequently submitted its preliminary report. These reports were sent to all civil and criminal courts of first instance, public prosecutor's offices, administrative courts of first instance, the Court of Cassation, the Supreme Administrative Court, the Council of Judges and Prosecutors, and the Union of Turkish Bar Associations for their opinions and recommendations. The preliminary study took its final form in the light of the contributions submitted by the aforementioned stakeholders. These endeavours were disclosed to the public in a symposium held in Erzurum on 21-23 March 2016.

235. The regulation on the practice of target time limits in the judiciary was published in the Official Gazette (no. 3015, dated 23 June 2017) and came into effect on 1 September 2017.

236. A survey was conducted through the *UYAP* system with the participation of all first-instance criminal, civil and administrative judges as well as public prosecutors with a view to collecting feedback on the target time limits and recommendations for determining target time limits. Efforts are still continuing for determination of target time limits based on the incoming opinions and recommendations along with the survey's results (http://www.sgb.adalet.gov.tr/projeler.html).

237. Within the scope of the SATURN project, the target periods to conclude cases regarding malpractice in criminal, civil and administrative courts are determined as;

a) In civil cases, under the title of "Compensation" and up to 450 days;
b) In administrative judicial proceedings, under the title of "Full Remedy Action" and up to 360 days;
c) In criminal cases, it is found under the heading "Malpractice" and is up to 120 days.

III.d.2. Judicial Reform Strategy 2019

238. The Judicial Reform endeavours started as of 2009 when the Judicial Reform Strategy was first prepared. The second reform document was prepared in 2015. Although important developments have been realized, there is still a need for reform aimed to ensure the rational functioning of the system.

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

240. The main objectives set outing the document can be listed as follows strengthening the rule of law, protecting and promoting rights and freedoms more effectively, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial in a reasonable time.

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

242. The other main objective in the Strategy report is to raise awareness and sensitivity for human rights in the judiciary. In this regard the main actions will be to monitor and inspect

the compliance of the Constitutional Court and the ECtHR, organize training courses on human rights.

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

244. Judge and prosecutor assistantship will be brought into existence and the procedure for admission to the profession will be changed.

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

246. The number of judges, public prosecutors and judicial personnel will be increased in proportion to the workload. To this end, the number of judges, prosecutors and judicial personnel will be increased taking into consideration the per capita average and the actual workload of these offices in the Council of Europe Member States. The principle of gender equality will continue to be looked after in the recruitment of judges, prosecutors and staff. The number of professionals such as psychologists, sociologists and experts working in courthouses will be increased.

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

III.d.3. Human Rights Action Plan

248. On 2 March 2021, the new Human Rights Action Plan was announced by the President of the Republic. The Human Rights Action Plan includes 9 goals, 50 objectives and 393 activities[4]. The plan will be implemented over the course of the next two years and will focus on many issues including improving the standards of freedom of speech and right to meeting and assembly.

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

- ✓ A points-based expert performance system will be introduced, according to which those who display over a certain degree of performance by means of contributing to the outcome and pace of the proceedings with their reports will be able to maintain their place in the registry and the lists.
- ✓ Any insufficient or erroneous expert reports detected at the stage of appellate review will be noted in the relevant expert's record in the registry of experts, which will be taken as basis for performance evaluation and, if the issue becomes repetitive, to strike the expert out of the list of experts.
- ✓ Regional expert committees will be restructured to be rendered more effective.
- ✓ Registered experts who avoid rendering expert services without a valid reason or act in contravention of ethical principles will be struck out of the registry and list of experts.
- ✓ Measures necessary will be taken to secure the effective application of the quota system which determines the maximum number of cases to be handled by an expert.
- ✓ Cases will be distributed automatically to the next expert in line.
- ✓ An expert who has failed to submit its report by the deadline will not be assigned a new case file.

[4] https://inhak.adalet.gov.tr/Resimler/SayfaDokuman/532021194956161496244158 0_insan-haklari-EP-v2_eng.pdf

- ✓ The basic training offered to experts regarding the information which needs to be included in the expert report and the performance of expertise activities will be strengthened.
- ✓ An Expert Appointment Guide will be prepared and integrated in the UYAP system in order to concretise the service expected of the expert.
- ✓ The sensitivity adopted towards the criteria set by law in respect of expert appointment will particularly be taken into account in the promotion and inspection of judges and prosecutors; also, a practical guide will be prepared in this regard.
- ✓ 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.
- ✓ Forensic medicine experts and doctors will be offered trainings in order to ensure compliance with the Istanbul Protocol and international standards in forensic/judicial medical examination and reporting procedures.
- ✓ A Forensic Medicine Institute group presidency will be established in every location where there is a regional court of appeal; also, the field of forensic science, in which the Forensic Medicine Institute provides services, will be expanded.
- ✓ 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.
- ✓ The training support concerning public relations will be increased for the personnel assigned to patient reception and referral services.
- ✓ Measures necessary will be taken in an effective manner in order to reduce the infant and child mortality rates.

250. Within a short period of time after the announcement of the Action Plan, the schedule for its implementation was also announced and periods of no more than 2 months were set for the performance of the aforementioned activities. 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. The relevant committee will hold a meeting once every 6 months and the reports on implementation will be announced to the public.

III.d.4. Publication and dissemination measures

251. The Turkish authorities ensured that the European Court's judgments have been translated in Turkish and published on its official website which have been made available to the public and legal professionals alike (https://hudoc.echr.coe.int).

252. The Turkish authorities also ensured that the European Court's findings have been disseminated among the competent bodies to ensure that similar violations are prevented. To this end, the European Court's judgments have been transmitted together with an explanatory note on the European Court's findings to the Ministry of Health and the domestic courts involved in this case, as well as, to other relevant courts such as the Constitutional Court, the Supreme Administrative Court and the Court of Cassation.

IV. CONCLUSION

253. In light of what the Government has submitted in terms of the individual and general measures about how the applicants were redressed for the negative consequences of the violation and how the probable future violations are to be prevented, the Government considers that all necessary general and individual measures which Turkey is obliged to take under Article 46 § 1 of the Convention have been properly taken. Taking those all into account, the Committee of Ministers is respectfully invited to close its examination thereof.

The List of Cases

No	Title	App Number	Judgment Date	Final Judgment Date
1	OYAL v. Turkey	4864/05	23/03/2010	23/06/2010
2	MEHMET ULUSOY v. Turkey	54969/09	25/06/2019	04/11/2019
3	ONEY v. Turkey	49092/12	15/01/2019	15/04/2019
4	NIHAT SOYLU v. Turkey	48532/11	11/12/2018	11/03/2019
5	TULAY YILDIZ v. Turkey	61772/12	11/12/2018	11/03/2019
6	ERKAN BIROL KAYA v. Turkey	38331/06	23/10/2018	23/01/2019
7	ERDINC KURT AND OTHERS v. Turkey	50772/11	06/06/2017	06/09/2017
8	ASIYE GENC v. Turkey	24109/07	27/01/2015	27/04/2015
9	AKKOYUNLU v. Turkey	7505/06	13/10/2015	13/01/2016
10	ALTUG AND OTHERS v. Turkey	32086/07	30/06/2015	30/09/2015
11	SENTURK v. Turkey	13423/09	09/04/2013	09/07/2013

Informative Table as to the Payment of Just Satisfaction

No	Title	App Number	Pecuniary Damage	Non-Pecuniary Damage	Costs and Expenses
1	OYAL v. Turkey	4864/05	x	x	x
2	MEHMET ULUSOY v. Turkey	54969/09		x	x
3	ONEY v. Turkey	49092/12		x	
4	NIHAT SOYLU v. Turkey	48532/11		x	x
5	TULAY YILDIZ v. Turkey	61772/12	The applicant's claim for just satisfaction was dismissed.		
6	ERKAN BIROL KAYA v. Turkey	38331/06		x	
7	ERDINC KURT AND OTHERS v. Turkey	50772/11		x	x
8	ASIYE GENC v. Turkey	24109/07		x	
9	AKKOYUNLU v. Turkey	7505/06		x	
10	ALTUG AND OTHERS v. Turkey	32086/07		x	x
11	SENTURK v. Turkey	13423/09		x	x