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Meeting: 1419th meeting (December 2021) (DH)

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Communication from Turkey concerning the case of Kavala v. Turkey (Application No. 28749/18)

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Communication de la Turquie concernant l'affaire Kavala c. Turquie (requête n° 28749/18) (**anglais uniquement**)

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17 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ankara, November 2021

UPDATED ACTION PLAN

Kavala v. Turkey (no. 28749/18)

I. CASE DESCRIPTION

1. This case concerns a violation of Article 5 § 1 (right to liberty and security), a violation of Article 5 § 4 and a violation of Article 18 of the European Convention on Human Rights (“the Convention”) taken in conjunction with Article 5 § 1 of the Convention.

2. The European Court of Human Rights (“the Court” or “the European Court”) held that there has been a violation of Article 5 § 1 of the Convention on account of the lack of reasonable suspicion that the applicant Mehmet Osman Kavala (“the applicant”) had committed an offence; that there has been a violation of Article 5 § 4 of the Convention on account of the lack of a speedy judicial review by the Constitutional Court; and that there has been a violation of Article 18 of the Convention taken in conjunction with Article 5 § 1 on account of the fact that the restriction of the applicant’s liberty was applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence.

II. INDIVIDUAL MEASURES

A. Legal Grounds for the Applicant Mehmet Osman Kavala’s Current Detention

-Background

3. The Turkish authorities have summarised and submitted detailed and updated information as to the legal grounds for the applicant’s current detention in the action plan dated 19 January 2021 and the updated action plan dated 16 July 2021 to the Committee of Ministers (“CM”). The Turkish authorities reiterate these explanations in this regard.

4. Under the investigation (no. 2017/96115) initiated by the Istanbul Chief Public Prosecutor’s Office, on 1 November 2017 the applicant was placed in pre-trial detention by the Istanbul 1st Magistrate Judgeship in Criminal Matters pursuant to Article 100 § 3 of the Code of Criminal Procedure (“CCP”) for “attempting to overthrow the constitutional order of the Republic of Turkey through force and violence” (Article 309 of the Turkish Criminal

Code) as regards his role in the July 15 coup attempt and for “attempting, by the use of force and violence, to abolish the government of the Republic of Turkey or to prevent it, in part or in full, from fulfilling its duties” (Article 312 of the Turkish Criminal Code) as regards his role in the Gezi events. In its decision, the Magistrate Judgeship noted that there existed a strong suspicion that the offence in question had been committed, that the suspect could abscond, and that a measure of judicial control including conditional bail would be insufficient.

5. On 5 February 2019 the Istanbul Chief Public Prosecutor’s Office decided to disjoin the investigations on the ground that there is no *de jure* and *de facto* connection between the imputed offences with a view to conduct the investigation in a more effective way. Accordingly, it was decided to disjoin the investigation (no. 2017/96115) into the accusation under Article 309 of the Turkish Criminal Code (attempting to overthrow the constitutional order) as regards the applicant’s role in the July 15 coup attempt from the investigation (no. 2018/210299) into the accusation under Article 312 of the Turkish Criminal Code (attempting to overthrow the Government) as regards the applicant’s role in the Gezi events.

6. The investigation conducted on the file no. 2018/210299 due to the applicant’s acts as to the Gezi events was completed and a bill of indictment was lodged by the Istanbul Chief Public Prosecutor’s Office on 19 February 2019. On 4 March 2019, the Istanbul 30th Assize Court accepted the indictment and, accordingly the criminal proceedings were initiated requesting the applicant’s conviction for the offences of having attempted to overthrow the Government by force and violence within the meaning of Article 312 of the Turkish Criminal Code (“TCC”), and of having committed numerous offences disturbing public order – damaging public property within the meaning of Article 152 of the TCC, profanation of places of worship and of cemeteries within the meaning of Article 153 of the TCC, unlawful possession of dangerous substances within the meaning of Article 174 of the TCC, looting, etc. (see the judgment of *Kavala v. Turkey*, §§ 47 and 56).

7. In the meantime, following the decision of disjoin of the investigation files, the Istanbul Chief Public Prosecutor’s office maintained the investigation with respect to Article 309 of the Turkish Criminal Code (attempting to overthrow the constitutional order) as regards the applicant’s role in the July 15 coup attempt under file no 2017/96115. The applicant was released for charges under Article 309 on 11 October 2019.

8. The Istanbul 30th Assize Court conducted the trial in respect of the applicant, and on 8 February 2020, ruled on the acquittal and release of the applicant on the ground that

lawful, concrete and definite evidence could not be obtained sufficiently for his conviction for the imputed offences.

9. The Istanbul Chief Public Prosecutor's Office filed an appeal against this decision pursuant to Article 272 of the CCP.

10. Upon this appeal, on 23 January 2021, the 3rd Chamber of the Istanbul Regional Appeal Court quashed the judgment of the Istanbul 30th Assize Court, which had acquitted the applicant from the offence of abolishing the government. This accusation was based on the Gezi events and the subject matter of the Court's judgment.

11. Accordingly, the detention order which is the subject matter of the Court's judgment finding violation was lifted on 18 February 2020, and the applicant was released in this respect.

12. Concerning the examination initiated with respect to the judges of Istanbul 30th Assize Court, the authorities would like to note that the first chamber of the Council of Judges and Prosecutors, an independent body, has given permission for an examination and investigation and handed over the file to the inspection board of the Council. The process of investigation and examination is pending.

-Other Investigation Against the Applicant

13. On 18 February 2020, the applicant was taken into custody by the order of the Istanbul Chief Public Prosecutor's Office under Article 91 of the CCP within the scope of the on-going investigation (no. 2017/96115) initiated for the offence of "attempting to overthrow the constitutional order of the Republic of Turkey through force and violence" (Article 309 § 1 of the TCC) due to his acts related to the coup attempt on 15 July 2016.

14. Upon the request of the Istanbul Chief Public Prosecutor's Office, on 19 February 2020 the Istanbul 8th Magistrate Judgeship ordered the applicant's detention on the ground that there existed strong suspicion that he had committed the offence of "attempting to overthrow the constitutional order of the Republic of Turkey through force and violence (Article 309 § 1 of the TCC)"

15. On 25 February 2020 the applicant's lawyers filed an objection against the detention order. After the examination of the objection, on the same date the Istanbul 8th Magistrate Judgeship, which ordered the detention of the applicant on 19 February 2020, rejected the objection and sent the file to the Istanbul 9th Magistrate Judgeship for the examination of the objection. On the same date, the Istanbul 9th Magistrate Judgeship rejected the objection in question.

16. Pursuant to Article 108 § 1 of the CCP, on 20 March 2020 the Istanbul Chief Public Prosecutor's Office lodged an application to the Istanbul Magistrate Judgeship on duty for a review of the detention order dated 19 February 2020. The Chief Public Prosecutor's Office expressed the opinion as to the applicant's release on the ground that two years lapsed since the applicant's detention in the investigation conducted for the offence of attempting to overthrow the constitutional order of the Republic of Turkey through force and violence (Article 309 § 1 of the TCC)

17. On 20 March 2020 the Istanbul 3 Magistrate Judgeship ordered the applicant's release in respect of the said offence on the ground that the term of pre-trial detention at the investigation stage shall not exceed two years according to the provision introduced by the Law no. 7188 on Article 102 § 4 of the CCP, which came into force on 24 October 2019 and limits the period of detention during the investigation stage (see § 44 below). The Magistrate Judgeship noted the following in its decision:

“Having regard to the existing reports, the suspect's defence submissions, witnesses' statements, criminal reports and whole content of the file, there are pieces of evidence indicating that there exists a strong suspicion that the suspect committed the imputed offence of attempting to overthrow the constitutional order. However, the suspect has been detained over 2 years for the imputed offence and the maximum length of detention for this offence is 2 years within the meaning of Article 102 § 4 of the CCP. Having regard to the fact that the suspect has been detained for another offence, that the evidence was collected, that there exists no possibility that the applicant would tamper with the evidence, and that the time he has spent in detention; it is considered that the detention measure would be severe. Accordingly, it is decided to accept the opinion of the Istanbul Chief Public Prosecutor's Office as to the applicant's release for the offence of attempting to overthrow the constitutional order, and to release the suspect immediately unless he has been detained or convicted for another offence...”

18. Consequently, the applicant's detention for the offence of *attempting to overthrow the Government* (Article 312 of the TCC) in the detention order dated 1 November 2017 was ended on 18 February 2020, which was subject matter of the Court's judgment, and his second detention started on 19 February 2020 for the offence of *attempting to overthrow the constitutional order* (Article 309 of the TCC) was ended on 20 March 2020.

-The Applicant's Detention for the Offence of 'spying on political and military affairs'

19. As indicated in previous explanations, the applicant's current detention is based on the decision of İstanbul 10th Magistrate Judgeship dated 9 March 2020 pursuant to Article 100 of the CCP due to the existence of a strong suspicion that the applicant had committed the offence of "obtaining information which is classified on the grounds of national security concerns or foreign political interests with the intention of spying on political and military affairs" (Article 328 § 1 of the TCC).

20. The Istanbul Chief Public Prosecutor's Office completed the investigation in respect of the applicant and issued a bill of indictment on 28 September 2020, charging the applicant with the offences of "Obtaining Classified Information for Purposes of Political or Military Espionage (Article 328 of the Turkish Criminal Code)" and "Attempting to Overthrow the Constitutional Order (Article 309 of the Turkish Criminal Code)". The Istanbul Chief Public Prosecutor's Office filed the indictment in question to the Istanbul 36th Assize Court.

21. It should also be noted that although the indictment requested that the applicant be punished under both the Articles 309 and 328 of the TCC, the applicant is only detained under Article 328 of the TCC.

22. On 8 October 2020 the Istanbul 36th Assize Court assessed the indictment in question and accepted it. On the same day, the Assize Court issued a preliminary proceedings report whereby it dismissed the applicant's lawyers request for release and ordered the applicant's continued detention, indicating that an objection may be filed against this decision. In its decision, the Assize Court pointed out to the existence of strong criminal suspicion of the applicant's having committed the imputed offence and held that detention was proportionate in view of the classification and nature of the imputed offence and the lower and upper limit of the sentence stipulated by the law for the offence in question. In accordance to the preliminary proceedings report, the Assize Court reviewed the applicant's detention on 6 November 2020 and, on 4 December 2020. The first hearing was held on 18 December 2020 and the Assize Court ordered the applicant's continued detention. According to the said hearing, on 8 January 2021, the applicant's detention has been reviewed and the Assize Court ordered the applicant's continued detention.

23. On 5 February 2021, the last hearing was held and the Istanbul 36th Assize Court ordered again the applicant's continued detention. At this hearing, the İstanbul 36th Assize Court also assessed the quashing decision of Istanbul Regional Appeals Court. In accordance with the said decision, the İstanbul 36th Assize Court decided to merge the case files with the İstanbul 30th Assize Court and transmitted the case file to the latter. Therefore, the casefile before the Istanbul 36th Assize Court has been closed.

-Current Situation

24. On 28 January 2021, upon the quashing decision of the Istanbul Regional Appeal Court, the Istanbul 30th Assize Court issued a preliminary proceedings report and on 21 May 2021 the first hearing was held. At the end of the hearing the Assize Court decided the applicant's continued detention by majority vote (2-1). After that, the Assize Court reviewed the applicant's detention on 15 June 2021, 12 July 2021, 27 September 2021 and decided his continued detention by majority vote (2-1).

25. After the decision of the Court of Cassation, on 12 July 2021, the first hearing was held before the 13th Assize Court of Istanbul with the docket number 2021/178. The last hearing was held on 8 October 2021. The Assize Court reviewed the applicant's detention in this hearing and decided by majority vote (2-1) that his detention to be continued. Further, it has been decided that the next hearing will be held on 26 November 2021.

26. On 13 October 2021 the applicant's lawyers filed an appeal with the 14th Assize Court of Istanbul against the 13th Assize Court's decision on continuation of detention dated 8 October 2021, the 14th Assize Court examined the appeal on the case file and dismissed the objection on 26 October 2021.

27. The applicant's detention has been reviewed on 5 November 2021 and the Assize Court stressed that; *"Having regard to the fact that, in the present case, by taking into consideration the quality and nature of the offence imputed to the accused Mehmet Osman KAVALA, the current stage of the trial, the examination on HTS records and the base station data in the file, the reports drawn up as a result of the examination on digital materials, the existence of the concrete evidence demonstrating strong suspicion for the imputed offences in view of the MASAK report, the upper limit of the sentence prescribed for the imputed offences by the law, it has been understood that the judicial supervision measures will remain insufficient (...)"*

28. Lastly, it should be noted that, merger of the cases does not mean that these cases resulted from different legal qualification of the same facts. The subject matter of the

judgment at hand is the applicant's acts in relation with Gezi events. His current detention is ordered under different criminal proceedings, notably the offence of political or military espionage. In this respect, the authorities would like to reiterate that the applicant's detention, which was the subject matter of the judgment at hand, has already ended. Additionally, the last merger of the cases aimed at a comprehensive determination of the legal status of all accuseds within the scope of the Gezi Events.

B. Individual Application of the Applicant Lodged with the Constitutional Court on 4 May 2020

29. As submitted by the Turkish authorities in previous Communications to the CM, on 4 May 2020 the applicant's lawyer lodged an individual application with the Constitutional Court upon the rejection of the objection filed against the detention order and the Constitutional Court has promptly started to examine the applicant's individual application in question.

30. The Constitutional Court, in its judgment of 16 July 2020 by which the application was sent to the Section from the Commission, held that;

- As the proceedings against the applicant was still pending with regard to his allegation that his right to a fair trial had been violated; and as he had recourse to legal remedies with regard to his complaints concerning the allegations that the rights and principles were violated in the course of the proceedings against the applicant and had an opportunity to have such complaints reviewed if he had used these legal remedies, these allegations were inadmissible for *non-exhaustion of domestic remedies*,
- The allegations regarding violations of his right to life and the prohibition of ill-treatment on account of the fact that the conditions of the pandemic constituted a risk for his health in the penitentiary institution where he was being held were inadmissible for *non-exhaustion of domestic remedies* as he first must apply to the Penitentiary Institution and, if necessary, submit the issue to the Execution Judgeship (*İnfaz Hâkimliği*),
- The alleged violation of the principle of equality due to the fact that the detainees could not benefit from the amendments made in the Law on the Execution of Penalties and Security Measures introduced for convicts due to pandemic conditions was inadmissible as the applicant had not made any

statements as to the reason why he had been discriminated against and as these allegations were *manifestly ill-founded* for they had not been substantiated.

31. The Constitutional Court decided to transfer part of the application to the Section as the allegation that the applicant's right to liberty and security had been violated on account of the unlawfulness of his detention and the excessive duration of detention required a judgment from the Section.

32. Upon the submission of the above-mentioned bill of indictment to the Assize Court, the First Section of the Constitutional Court postponed the examination, which had previously declared to take place on 29 September 2020 in the agenda of the Constitutional Court, concerning the individual application of the applicant dated 4 May 2020 in order to examine the bill of indictment in question.

33. On 29 December 2020, the Constitutional Court -as Grand Chamber- delivered its judgement with respect to this application. Although the judgement has not been published via the website (*Anayasa Mahkemesi Karar Bilgi Bankası*), as can be seen from the Court's agenda on its mainpage of website, The Constitutional Court held that:

- Regarding the allegation that the applicant's detention is unlawful, the right to liberty and security of the applicant guaranteed under the third paragraph of Article 19 of the Constitution is not violated,
- Regarding the allegation that the detention period of the applicant exceeded the reasonable time, the right to liberty and security of the applicant within the context of the seventh paragraph of Article 19 of the Constitution was not violated,

C. Just Satisfaction

34. Since the applicant did not submit any claim for just satisfaction to the Court, the Court did not make any award to the applicant in this respect.

III. GENERAL MEASURES

A. Legislative Arrangements Concerning Pre-trial Detention

-Violation of Article 5/1 of the Convention

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

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

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

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

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

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

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

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

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

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

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

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

46. In addition to the above-mentioned legislation, Turkey has taken an additional step to reduce the length of detention. Namely, with the Law no. 7188 which came into force on 24 October 2019 (added as Article 102 § 4 of the CCP), the period of pre-trial detention

during the investigation period was reduced. In the case of crimes within the jurisdiction of the assize courts, this period is one-year maximum¹ and in the case of crimes that are not within the jurisdiction of the assize courts, this period is six-month maximum. However, in terms of the crimes defined in the Fourth, Fifth, Sixth and Seventh Chapters of the Fourth Section of the Second Book of the TCC, crimes within the scope of the Anti-Terror Law and crimes committed collectively, this period is one year and six months maximum, and may be extended for another six months by describing the reason. Accordingly, the public prosecutors have to finish the investigation within these periods in cases where the suspect is in pre-trial detention. Otherwise, the suspect shall be released.

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

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

-4th Judicial Package of 8 July 2021

49. Lastly, the 4th judicial package was presented to the parliament on 18 June 2021 and the bill of legislation was adopted on 8 July 2021². As a result, Article 100 of the Code of Criminal Procedures was amended. This amendment introduced a further safeguard as to the detention on remand on the basis of catalogue crimes.

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

51. Further, due to the amendment in Article 110 of the Code of Criminal Law, it has been made mandatory for the judicial authorities to periodically examine the issue of whether the continuation of the conditional bail obligation will be necessary during both the investigation and prosecution phases. That is to say, during the investigation phase, a decision will be made by the magistrate judge upon the request of the public prosecutor, at intervals of

¹In case of some certain –severe- crimes this period is one year and six months and might be extended for six months.

² <https://www.tbmm.gov.tr/kanunlar/k7331.html>

4 months at the latest, on whether the suspect's obligation to continue conditional bail is required. During the trial phase, the court will decide ex officio whether the accused, who has a conditional bail decision, will continue this obligation or not, within 4 months at the latest.

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

53. Furthermore, every 2 days spent under the obligation not to leave the residence, will be taken into account as 1 day in the deduction of the penalty. Further, the grounds for increasing the penalty in crimes of "deliberate killing", "deliberate injury", "torture" and "deprivation of liberty" committed against the spouse will also include the divorced spouse.

54. 4th Judicial Package had also included significant change with regard to objection procedure to the decisions of detention and conditional bail rendered by Magistrates Judgeships³. Previously, a Magistrate Judgeship's decision of detention (or conditional bail) was objected to the next Magistrate's Judgeship or other Magistrate's Judgeship. However, due to the change in legislation by the 4th Judicial Package, Criminal Court of First Instance was determined as objection authority for the decisions of Magistrate's Judgeships. Thus, a more effective appeal mechanism was put in power.

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

-Violation of Article 5 § 4 of the Convention

56. At the outset, the Turkish authorities would like to note that the Court's finding that the proceedings carried out by the Constitutional Court while ruling on the legality of the applicant's detention were not compatible with the "speediness" requirement laid down in Article 5 § 4 of the Convention is an isolated situation. That is to say, the aforementioned judgment is the first judgment delivered by the Court in this context. Therefore, this violation is not a systemic or structural problem. Moreover, in the cases of *Mehmet Hasan Altan* (no. 13237/17, §§ 161-167, 20 March 2018), *Şahin Alpay* (no. 16538/17, §§ 133-139, 20 March 2018) and *Akgün* (dec.) (no. 19699/18, §§ 33-45, 2 April 2019), the Court found it justifiable as the review by the Constitutional Court could take a long time, taking into account the great increase in the workload of the Constitutional Court after the July 15 coup attempt.

³ This amendment will be in force as of 1/1/2022.

57. After the July 15 coup attempt, there has been a dramatic and unpredictable increase, in terms of both quality and quantity, in individual applications to the Constitutional Court, notably concerning the right to liberty and security.

58. According to the statistics⁴ published by the Constitutional Court, the number of applications submitted since 2015 and the number of applications concluded are shown in the table below:

	2015	2016	2017	2018	2019	2020	2021/November
Applications Submitted	20,376	80,756	40,530	38,186	42,971	40,402	40,286
Applications Decided	15,368	16,089	89,651	35,356	39,385	45,414	30,372

59. As can be seen from the table above, the workload of the Constitutional Court increased almost fourfold in 2016 compared to the previous year due to the reasons explained above, and the increase in the number of applications compared to the previous years continued in the following years. The authorities would like to note that this dramatic increase resulted from extraordinary developments.

60. In addition, as stated in the Court's decision on *Akgün* (cited above, §§ 54), the Turkish authorities immediately took measures to reduce the workload of the Constitutional Court.

61. Within the scope of these measures, as per the Decree-Law No. 685 published in the Official Gazette on 23 January 2017, the State of Emergency Procedures Investigation Commission was established to examine the proceedings carried out within the scope of the state of emergency. The Constitutional Court has reduced its workload to a certain extent by transferring the relevant files pending before it to the Commission.

62. Subsequently, the Law no. 7145 published in the Official Gazette on 31 July 2018, which provided for the transfer of individual applications pending before the Constitutional Court concerning the length of proceedings or the execution of court decisions to the Compensation Commission established by the Law no. 6384 (Law on the Resolution, By Means of Compensation, of Certain Applications Lodged with the European Court of Human Rights), was introduced.

⁴ Please see https://www.anayasa.gov.tr/media/7602/bb_istatistik_2021-3.pdf

63. With such measures, the Turkish authorities took immediate actions to reduce the workload of the Constitutional Court. As a result of these measures, there has been a constant decrease in the number of applications to the Constitutional Court since 2017. Moreover, the increase in the number of applications it concludes every year despite its growing workload indicates that the Constitutional Court works diligently and devotedly.

64. Compared to the previous years there is a relatively low decrease in the numbers of cases where a decision rendered. The authorities would like to note that the Constitutional Court adopted new procedures with respect to the case management. For this reason, such a decrease occurred. This is a temporary situation. As from the year-end, it is aimed to reach the numbers in the previous years.

65. In addition, as indicated in the table above, the Constitutional Court prevented further increase in the workload with the number of applications it decided.

66. On 29 December 2020, the Constitutional Court delivered its judgment with respect to the applicant's concerned individual application dated 4 May 2020. When it is considered that the period before the Constitutional Court lasted less than 8 months, it can be concluded that measures taken with respect to violation at hand are capable of providing an effective redress.

67. As regards the priority policy of the Constitutional Court, the authorities would like to state that the applications made by the Constitutional Court within the scope of the alleged violation of the right to liberty and security of the applicants with the complaint that the detention is unlawful or exceeded a reasonable time is examined with priority. The admissibility examination of the applications made with the alleged violation is carried out immediately by the Commissions Rapporteur from the moment of the application. Later, the applications that pass the admissibility stage are forwarded to the Department by the decision of the Commission. Applications made by the departments within this scope are considered urgent and concluded with priority.

B. Impartiality and Independence of the Judiciary and Violation of Article 18 Taken in Conjunction with Article 5 § 1 of the Convention

1) Current Situation

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

68. The importance of an impartial and independent judiciary has been stressed in the Constitution of the Republic of Turkey, the Law no. 6087 on the Council of Judges and

Prosecutors, the Law no. 2802 on Judges and Prosecutors and many decisions made and delivered by the Council of Judges and Prosecutors (“CJP”).

69. Article 9 of the Constitution provides that judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation. In 2017, by the Law no. 6771, the expression of “and impartial” was added after the expression of “independent” in Article 9 of the Constitution; and thus the fact that the judicial power belongs to independent and impartial courts is guaranteed by the Constitution and it is emphasized that independence also embodies impartiality. Article 138 of the Constitution provides that judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming to the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

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

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

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

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

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

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

c) The “Declaration of Turkish Judicial Ethics”

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

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

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

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

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

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

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

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

d) The “Istanbul Declaration on Transparency in the Judicial Process”

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

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

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

a) The Eleventh Development Plan (2019-2023)

80. The Eleventh Development Plan (2019-2023) (“the Plan”) approved by the Grand National Assembly of Turkey on 18 July 2019 includes a separate part concerning the judiciary under the heading of “Rule of Law, Democratization and Good Governance”⁵.

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

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

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

⁵ For detailed information please see https://www.sbb.gov.tr/wp-content/uploads/2019/11/ON_BIRINCI_KALKINMA-PLANI_2019-2023.pdf (Turkish version) and https://www.sbb.gov.tr/wp-content/uploads/2020/03/On_BirinciPlan_ingilizce_SonBaski.pdf (English version).

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

- In line with the requirements of the rule of law and supremacy of law, ensuring fast, fair, efficient functioning of the trial process, predictability, facilitating access to justice and increasing confidence in the justice system are the main objectives.

- Access to justice as one of the basic conditions of supremacy of law principle will be facilitated; the right to defense will be strengthened.

- The Development Plan contains important objectives with a view to improving the independence of the judiciary. Accordingly; it will be ensured that the appointment, transfer and promotion of judges are carried out on the basis of objective and predetermined criteria and of qualifications.

- The disciplinary process about judges and prosecutors will be rearranged on the basis of objective criteria, and the rights of judges and prosecutors in relation to the relevant process will be strengthened, and the disciplinary decisions will be announced to the public, which will ensure that the process becomes transparent, on condition that the personal data is protected.

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

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

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

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

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

b) The Judicial Reform Strategy Document

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

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

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

90. Furthermore, it should be noted that the Human Rights Action Plan, for which the preparations are currently on-going, will amplify the reform process and particularly serve as a complementary factor in further strengthening fundamental rights and freedoms.

-Judicial Reform Strategy 2019⁶

91. The activities within the scope of the 23th Chapter titled “the Judiciary and Fundamental Rights” that is an important part of the negotiations on membership to the

⁶ For detailed information please see

https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/23122019162949YRS_ENG.pdf

European Union have been carried out under the responsibility of the Ministry of Justice in coordination with the relevant institutions. In this respect, the 1st Judicial Reform Strategy Document was published in 2009 and the 2nd one in 2015.

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

93. The Judicial Reform Strategy Document has been prepared with a contributive understanding, and the objectives and activities included in this Document have been adopted with the main purpose of protection and improvement of rights and freedoms. The main objectives set out in the Document are strengthening the rule of law, protecting and promoting rights and freedoms more effectively, strengthening the independence of the judiciary and improving impartiality, increasing the transparency of the system, simplifying judicial processes, facilitating access to justice, strengthening the right of defence and efficiently protecting the right to trial within a reasonable time.

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

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

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

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

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

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

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

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

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

- Geographical guarantee shall be brought for the judges and public prosecutors with a certain professional seniority,
- Promotion system of the judges and prosecutors shall be restructured taking into account of qualifications and performance,

- The power of the Minister of Justice to assign judges to another jurisdiction in case of urgency shall be revoked,
- Disciplinary procedures regarding the judges and public prosecutors shall be restructured,
- Disciplinary penalties set forth in the Law on Judges and Prosecutors shall be redefined with more objective criteria,
- The rights of judges and public prosecutors during the disciplinary processes shall be extended, and judicial review mechanism for the disciplinary decisions of the CJP shall be extended,
- Publicity of the decisions of CJP
- Within the scope of strengthening the judicial conduct, principles of ethics shall be determined, which will be closely monitored and supervised; and professional conduct shall be included in pre-service and in-service training,
- When legislative proposals are prepared, representatives of relevant beneficiaries shall be involved, while the culture of participation and negotiation shall be improved in the judiciary,
- When identifying the need for legislative amendment, regulatory impact analysis reports shall be prepared and these reports will be shared with the public,
- Involvement of the relevant institutions, bodies, civil society and academia will be ensured,
- The scope of the activity reports in civil and administrative judiciary shall be extended and the public recognition shall be raised.

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

102. The objectives and activities included in the Judicial Reform Strategy Document have been rapidly achieved⁷. 122 out of 256 activities indicated in the Document were put into effect. The application rate of the Document, which covers the years 2019-2023, is approximately 50% in its second year. After the relevant Document was announced to the public, by the Law no. 7188, known as the first reform package, important steps have been taken within the scope of the objectives in question. In the relevant package and the following, some of the steps taken with the purpose of improvement of the fundamental rights and freedoms, namely, the freedom of expression, are as follows:

⁷ <https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/5102020133816eylemlani.pdf>

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

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

- A separate maximum period of detention for the investigation stage has been set in order to prevent lengthy detentions until the indictment is issued, and it has been ensured that the detention be ended by law if the relevant period is exceeded.

- It has been adopted that the detention period for juveniles be shortened in every process.

- It has been ensured that the decisions of blocking access be applied not for the entire internet site in question, but only for the publishing, part or section giving rise to the violation. Thus, the negativity of blocking access to the areas apart from the publishing, part or section giving rise to the violation has been removed.

- The ethical principles to be followed by the member of the Judiciary have been established in line with the standards of the United Nations and the Council of Europe, and on 11 March 2019 “the Declaration of Judicial Ethics in Turkey” was announced to the public.

- By the amendment made to the paragraph 6 of Article 9/A of the Law no. 2802, it has been ensured that the interview for candidate judges and prosecutors be carried out by a board established on the basis of a broad representation.

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

this respect and set up an examining body for the judgments finding violation delivered by the Constitutional Court and the European Court of Human Rights, under the Promotion Bureau.

- In the first reform package and the others, various procedures and methods, namely, developing alternative methods of settling disputes have been introduced in order to conclude the processes within a reasonable time; the provisions lengthening both criminal and civil proceedings have been reviewed.

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

- Under the heading of “Protection and improvement of rights and freedoms”:
 - Training courses on human rights, mainly freedom of expression and press shall be organized.
 - Training courses on reasoning of decisions, especially reasoning of decisions on detention, shall be organized.
- Under the heading of “Improving the independence, impartiality and transparency of the Judiciary”:
 - Principles of professional conduct shall be included in pre-service and in-service trainings.
- Under the heading of “Increasing the quality and quantity of human resources”:
 - It shall be ensured that human rights law will be a part of pre-service and in-service training programs.
 - Legal methodology and legal argumentation programs shall be included in pre-service and in-service training courses.

c) The Human Rights Action Plan

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

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

with them. The opinions and proposals gained as a result of these meetings were assessed diligently.

106. The Human Rights Action Plan includes 9 goals, 50 objectives and 393 activities⁸. The plan will be implemented over the course of the next two years and will focus on many issues including improving the standards of freedom of speech and the right to meeting and assembly.

107. 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:

- legislation on the right to liberty and security will be reviewed within the framework of the principle of proportionality, and an analysis report will be prepared. In line with the principles of "proportionality in detention", the scope of catalogue crimes will be narrowed down and the principle that detention is an exception will be strengthened by introducing the "requirement to rely on concrete evidence" in terms of catalogue crimes regulated as a reason for detention.
- A vertical objection procedure will be introduced against the magistrate judges' orders for detention and other preventive measures and a minimum threshold of seniority requirement will be introduced for assignment as a magistrate judge.
- Specialisation of magistrate judges will be ensured in applications submitted against decisions on administrative sanctions.
- The legislation related to personal liberty and security will be reviewed within the framework of the principle of proportionality and an analysis report will be prepared in this regard.
- The scope of catalogue offences will be narrowed down in accordance with the principle of “proportionality in detention”.
- The “requirement to rely on concrete evidence” will also be rendered applicable in respect of catalogue offences prescribed as grounds for detention, thereby strengthening the principle that detention is an exceptional measure.
- The provisions of law that restrict the right to meet with the defence counsel will be reviewed.
- Regular trainings will be offered to magistrate judges and prosecutors with regard to detention and judicial supervision measures.

⁸ https://inhak.adalet.gov.tr/Resimler/SayfaDokuman/5320211949561614962441580_insan-haklari-EP-v2_eng.pdf

- Practice-related grievances and uncertainties in cases of decision of non-jurisdiction (subject-matter or territorial) or during process of determination of the competent authority stemming from the examinations of objections against detention and review of detention will be eliminated.
- A speedy compensation will be provided, via a new administrative remedy to be established, for the damages incurred due to unjust application of detention or certain other preventive measures.
- The judicial supervision measure will be reviewed at certain intervals and new reforms will be put in place such as setting a maximum length of time for the measures and enabling fulfilment of the signature duty by using technological means.
- The deduction of the time spent in the during the “home detention” (house arrest) from the final sentence will be made possible.
- It will be ensured that compensation to the persons victimised by the erroneous or unjust imposition of a judicial supervision measure or certain other preventive measure be awarded.
- Steps will be taken to ensure that an individual, who has been arrested outside the business hours on the basis of an arrest warrant for the purpose of taking a statement and releasing thereafter, may be released on the condition that they agree to present themselves to the judicial authorities within a reasonable time.
- Within the context of the execution of arrest warrants, in order to eliminate the grievances caused by the inability of taking statement out of business hours, it will be ensured that these procedures are performed on a 24/7 basis at courthouses.
- The bill of indictment and any orders to forcibly bring witnesses or complainants before the court will be notified the persons concerned via text message sent to their telephones.
- A legislative work will be conducted to enable discontinuation of criminal proceedings if the complainant fails to appear at the hearing without an excuse despite the notification of a plenary summons inviting them to testify in cases concerning offences prosecuted upon complaint.
- Measures will be taken to prevent arresting or forcibly bringing an individual, who fails to appear despite a summons, before it is established that the notification process has indeed been completed in due form.
- geographical guarantee will be provided for judges and prosecutors. The procedure of

disciplinary crimes and penalties against judges and prosecutors will be reviewed in accordance with the criteria of objectivity, foreseeability and proportionality.

- The judges' and prosecutors' access to the legal assistance of an attorney during disciplinary investigations will be clearly prescribed and the procedural guarantees will be reinforced with regard to defence and statutory limitation periods.
- The promotion system of judges and prosecutors will be restructured on the basis of an objective set of performance criteria, such as compliance with the target time-limit, sufficiency of the reasoning in their decisions, accuracy rates in decisions, and sensitivity to human rights.
- In order to ensure that judges and prosecutors better perform their functions and that judicial impartiality prevail, the effectiveness of the inspection system will be increased on the basis of objective criteria.
- The Justice Academy of Turkey will be restructured on the basis of pluralist, participatory and transparent norms, and its independence will be strengthened.
- The structure and functioning of sports arbitration boards will be revised in consideration of, inter alia, judgments of the ECtHR.
- Pre-service and in-service trainings will be organised to ensure that the decisions issued by courts and public prosecutors are sufficient, convincing and comprehensible in a manner that also satisfies the standards laid down by the judgments of the Constitutional Court and the ECtHR.
- The in-service training programmes for judges and prosecutors will be planned according to the results of a performance-based needs analysis.
- Steps will be taken to ensure that the findings made by the regional and high courts regarding undue delays in the proceedings or lack of reasoning, will be submitted to the Council of Judges and Prosecutors for consideration in promotion and discipline reviews.
- The criminal chambers of the regional courts of appeal will be afforded further powers to quash first-instance judgments due to manifest lack of reasoning or restriction of the right of defence.
- The fundamental principles as regards the individuality of criminal responsibility and punishment and the presumption of innocence will be effectively implemented in judicial and administrative affairs and acts.
- The scope of the right of individuals not to have their honour and reputation tarnished

will be broadened and the amendment will be implemented effectively.

- Awareness-raising activities will be conducted for public officers and media workers in order to ensure that the public is informed of investigations and proceedings with utmost respect for the presumption of innocence.
- in order to conclude the trials quickly and to prevent the grievances of the citizens, the target time application will be expanded to include the appeal proceedings and the procedures of the Forensic Medicine Institute.

108. Within a short period of time after the announcement of the Action Plan, the schedule for its implementation was also announced. A report to be issued for the monitoring and assessment of the Action Plan will be submitted to the Ombudsman Institution and the Human Rights and Equality Institution of Turkey (TİHEK) and will also be monitored by a committee set up by many State officials under the presidency of the President of the Republic. The relevant committee will hold a meeting once every 6 months and the reports on implementation will be announced to the public.

-Monitoring of the Implementation of Human Rights Action Plan

109. On 30 April 2021, a circular has been released by the President in Official Gazette⁹. According to this circular, certain time limits (schedule) for the goals in the said Action Plan have been envisaged and a monitoring body for the implementation of the Human Rights Action Plan has been established.

110. According to the The Action Plan on Human Right and Implementation Schedule¹⁰:

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

⁹ <https://www.resmigazete.gov.tr/eskiler/2021/04/20210430-9.pdf>

¹⁰ <https://insanhaklarieylemplani.adalet.gov.tr/Sayfa/actionplan>

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

- The monitoring and evaluation of the Action Plan shall be performed by the “The Action Plan on Human Rights Monitoring and Evaluation Board” formed **under chairmanship of President** and comprised of delegates below:
 1. *Vice President,*
 2. *Ministers of Justice, Family and Social Services, Labor and Social Security, Foreign Affairs, Treasury and Finance, Interior*
 3. *Vice President of the Legal Policies Council*
- The Board shall coordinate and monitor the working of public institutions with the aim of implementing the Action Plan effectively and monitoring it in a transparent manner.
- The secretarial services of the Board shall be performed by the Ministry of Justice.
- The ministries and institutions responsible for the activities prescribed by the Action Plan will prepare their implementation reports at intervals of four months and send them to the the Ministry of Justice.
- Ministry of Justice shall draft the “*Annual Implementation Report*” on the Action Plan and submit it to the Monitoring and Evaluation Board for approval.
- The Annual Implementation Report shall be assessed by the Human Rights and Equality Institution of Turkey and the Ombudsman Institution, of which the results shall be submitted to the Presidency of the Republic and the Grand National Assembly of Turkey.
- The Annual Implementation Report shall be announced to the public by the Presidency of the Republic.

112. In accordance with the principal decisiveness of the balance of liberty and security, which is the fundamental criterion in terms of human rights policies and practices, the Action Plan sets the following goals and activities under the aim of “Strengthening Personal Liberty and Security”¹¹:

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

Institution Responsible: Ministry of Justice

¹¹ For detailed information:

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

Term: 3 Months

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

Institution Responsible: Council of Judges and Prosecutors

Term: 6 Months

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

Institution Responsible: Ministry of Justice

Term: 3 Months

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Term 3 Months

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

Institution Responsible Justice Academy of Turkey

Term Permanent

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Institution Responsible Ministry of Justice

Term 1 Year

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Institution Responsible Ministry of Justice

Term 1 Year

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Institution Responsible Council of Judges and Prosecutors

Term 3 Months

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

Institution Responsible Ministry of Justice

Term 3 Months

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

Institution Responsible Ministry of Justice

Term 1 Year

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

Institution Responsible Justice Academy of Turkey

Term Permanent

113. The Authorities would like state that to succeed above mentioned goals and activities, required steps are taken in accordance with the time frame. For example, activities 5.1.a., 5.1.f, 5.2.a., 5.2.b. and 5.3.1 took place in the bill of legislation which was adopted on 8 July 2021.

C. High Level Political Messages

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

115. In particular, on 1 September 2021, during the opening of the judicial year, the following statements of the President of the Republic were delivered as significant messages:

“The independence and impartiality of the judiciary, its representation, and the fair decisions it will deliver as a result, are the guarantees for ensuring justice. If we were to summarise this with a quote: ‘Religion of the state is justice.’ If there is no justice in a state, it will not matter in which system it is governed, by whom it is ruled, and to what religion or nationality its citizens belong: only cruelty will have reign over there. Yes, justice is the reason for a state’s existence.

The most important lesson to be derived from what happened in the past is the fact that judicial independence and impartiality and adherence to justice are crucial for our democracy and the rule of law.

Court decisions are, of course, binding for everyone. Nevertheless, the independence and impartiality of the judiciary does not necessarily mean that their decisions cannot be criticised under any circumstances.

In the new judicial year, we are going to add momentum to our judicial reform efforts, which will relieve the burden on both our judicial organisation and our nation. With the awareness that the range of humanity's pursuit of justice will continue until the end of days, we are going to resume these efforts without stopping."

116. Additionally, in his speech during the announcement of the new Human Rights Action Plan, the President stressed the followings¹²:

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

...

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

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

...

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

117. During the 2021 budget discussions, the Minister of Justice emphasised similar points and stated that the exercise of judicial power belonged exclusively to the judiciary, that the judiciary received no orders, instructions, recommendations or suggestions from any person, institution or organ, that the ultimate aim of the instruments such as the Judicial Reform Strategy Document and the Human Rights Action Plan was strengthening the rule of

¹²In order to see whole speech, please visit: <https://www.tccb.gov.tr/assets/dosya/2021-03-02-insanhaklari.pdf>

law and that significant results had been obtained thanks to realisation of the aims one by one since the announcement of the Judicial Reform Strategy Document despite the pandemic ¹³.

118. On 27 October 2021 in a TV programme he attended, the Minister of Justice said that *“In the millions of case files before them, Judges and Prosecutors deliver their decisions according to the evidence. They close their ears to the indoctrination. The figure of justice wears a blindfold. The figure of justice does not look at the identity or the perpetrator in the case file relating to the accused. It delivers decisions according to the evidence included in the case file. Therefore, it is not right to accept the generalisations on this matter and, with an overall approach, the accusations against the judiciary on this matter”, underlining that “Turkish judiciary will not act under the pressure of anybody.”* The Minister of Justice stressed that everybody should pay respect to the judicial processes.¹⁴

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

D. Isolated Nature of the Violation

120. In respect of the violation of Article 18 taken in conjunction with Article 5 § 1 of the Convention, the Court has not particularly indicated that there is a systemic or structural problem with respect to independence of the judiciary. In this respect, it appears that the violation in question has an isolated nature. The authorities would like to highlight that the Court’s findings are completely related to the specific facts concerning the certain judicial practices conducted during the criminal investigation and proceedings.

121. Moreover, the Turkish authorities would like to reiterate that the Court did not make any examination or reach any findings with respect to Article 6 of the Convention in the judgment of *Kavala v. Turkey*. The violation in question is that of Article 18 taken in conjunction with Article 5 § 1 of the Convention. As it is known, Article 18 of the Convention has no independent existence; it can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that a member State has undertaken to secure to those under its jurisdiction.

¹³ For detailed information please see <https://basin.adalet.gov.tr/adalet-bakanligi-2021-butcesi-plan-ve-butce-komisyonu-nda-kabul-edildi>

¹⁴ For detailed information please see <https://basin.adalet.gov.tr/bakan-gul-yargi-turk-milletinin-hepimizin-yargisi-goz-bebegimiz-gibi-korumamiz-gereken-bir-kurum>

122. The Turkish legal system provides sufficient legal guarantees to protect the fundamental rights and freedoms set in the Constitution and the Convention and to examine and settle the complaints that these rights and freedoms have been violated by the administration or third persons.

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

124. Moreover, the most concrete example indicating the independence and impartiality of the judiciary is the acquittal decision delivered in respect of the applicant by the Istanbul 30th Assize Court.

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

126. Therefore, the Turkish authorities would like to indicate that the Committee of Ministers should not expand its supervision of execution of the judgment finding violation of Article 18 taken in conjunction with Article 5 § 1 of the Convention to an extent to include the supervision of execution in respect of Article 6 of the Convention.

E. Remedy of Individual Application before the Constitutional Court

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

improvement of the case-law of the Court in Turkey in respect of all rights guaranteed under the Convention and Constitution including the right to liberty and security.

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

129. In a judgment dated 29 November 2019, the Constitutional Court examined a complaint about the alleged unlawfulness of an applicant's detention¹⁵. In the said judgment, the Constitutional Court firstly noted that the applicant's detention had a legal basis. Further, before the examination of whether the detention measure, which was understood to have legal basis, pursued a legitimate aim and was proportionate, it noted that an assessment was necessary as to whether there was a strong suspicion that the offence had been committed, which is the pre-condition of the detention. Within the framework of the principles laid down in its previous judgments, the Constitutional Court examined whether there was strong indication that the applicant had committed an offence in the said case. Consequently, the Constitutional Court held that the authorities had not been able to sufficiently establish the existence of strong indication that the applicant had committed an offence in the said case. It thus concluded that there had been a violation of the right to personal liberty and security,

¹⁵ Individual application no. 2017/17432.

emphasising that there was no need to examine whether there had been grounds for detention or whether the detention measure had been proportionate.

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

F. Projects and Awareness-Raising Activities

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

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

- Moreover, the Justice Academy of Turkey has taken action to make the legal argumentation a part of the pre-service and in-service trainings. The relevant action has been taken in cooperation with universities.

- The course on Judicial Ethics has been included in the pre-service trainings of the candidate judges. Between May 2019 and 28 August 2020 the Justice Academy of Turkey provided pre-service training on Judicial Ethics to 4785 candidate judges and prosecutors.

- Although Covid-19 Pandemic, The Justice Academy of Turkey maintained its programmes in so far as possible.

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

- On 15 January 2021, “*Duties of the public prosecutor in criminal proceedings relating to the trial stage*” programme was performed with 59 participants (10 Judges, 49 Public Prosecutors),

- On 19 March 2021, “*Effective Investigation and Interrogation Techniques*” programme was performed with 33 participants (9 Judges, 24 Public Prosecutors),

- On 27 April 2021, “*Hearing Management and Decision Writing Techniques in Criminal Procedure*” programme was performed with 34 participants (31 Judges, 3 Public Prosecutors),

- On 24 May 2021, “*Claims for Compensation Due to Protective Measures*” programme was performed with 32 participants (27 Judges, 5 Public Prosecutors).

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

1. Projects and Trainings

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

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

this scope, the project titled “*Strengthening the Criminal Justice System and the Capacity of Justice Professionals on Prevention of the European Convention on Human Rights Violations in Turkey (CAS II Project)*” was officially launched. The beneficiaries of this project are the Directorate General for Criminal Affairs of the Ministry of Justice and the Justice Academy of Turkey. The project will be conducted in coordination with the Department of Human Rights, while the Constitutional Court, the Court of Cassation, the Council of Judges and Prosecutors, the Financial Crimes Investigation Board, the Directorate General of Police and the Union of Turkish Bar Associations will participate as stakeholders. The duration of the project is 36 months and it will end in March 2022. The project is co-financed by the European Union and the Council of Europe¹⁶.

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

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

137. To strengthen institutional capacity:

- Plans include conducting needs assessment activities, developing manuals and guides, developing training modules and materials, training trainers, conducting study visits, and forming an electronic library.

- Needs assessment activities will be carried out in two paths:
- The legislative needs assessment group will review not only the current legislation but also relevant strategy and policy papers. At the end of its activities, this group will prepare an assessment report on what could be done to mitigate the violations of fundamental rights in criminal law.

- The training needs assessment group, on the other hand, will look at the existing training curriculum and materials particularly with respect to the subjects constituting the

¹⁶ For detailed information please see <http://www.cas.adalet.gov.tr/eng/index.html>.

project's main focus. Further, this group will draft the efforts needed for improving the training modules and materials.

- The working groups to be formed after the needs assessment will develop guides, checklists and handbooks that can be used by law professionals and relevant experts in three main focal points of the project in criminal law. The developed guides, checklists and handbooks will be distributed to the institutions concerned.

- Following the needs assessment to be conducted in coordination with the Justice Academy of Turkey, efforts will be launched to update and improve the pre-service and in-service training modules and materials. The activities in this respect will include updating, revising and complementing the existing training modules and materials on the main areas of focus of this project. Along with the training modules and materials to be developed, a pool of trainers will be established by means of offering a training of trainers to a group of professionals who will be selected among magistrate judges as well as judges and prosecutors specialising in cybercrime and financing of terrorism. This will contribute to improving the Justice Academy's institutional capacity.

- An electronic library will be formed for the Ministry of Justice with 100 online academic materials in Turkish, English and French languages.

- Study visits will be conducted to several European countries with a view to observing best practices in criminal justice.

- Training seminars, roundtable meetings and workshops will be held in order to improve the knowledge and skills of the human resource and law professionals. Training modules and materials to be developed within the scope of the project will be used in pre-service and in-service trainings in coordination with the Justice Academy. The goal is to have 600 candidate judges and prosecutors and 1,500 active judges and prosecutors benefit from face-to-face trainings.

- Regional roundtable meetings will be organised in several cities with the participation of judges, prosecutors, attorneys and experts. The topics to be covered in these meetings will include providing reasons for decisions in detention orders and reviews of detention, legal examination of the detention measure, use of alternative measures, the authority ordering the detention, admissibility of evidence, adversarial proceedings, and procedural guarantees in criminal proceedings.

- Furthermore, international workshops will be held on the same topics in order to exchange views regarding best practices among Turkey and other members of the Council of Europe with respect to the implementation of the European Convention on Human Rights.

- As part of the awareness-raising and cooperation activities between institutions, coordination meetings will be held and an awareness-raising campaign will be carried out.

- In the framework of the information campaign to be launched for the purpose of better informing the public on the functioning of the criminal justice system, open days will be organised in courthouses and information leaflets will be prepared. The materials and resources to be formed within the scope of the project will be disclosed for public access through a website which will be developed under the auspices of the Ministry of Justice.

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

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

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

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

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

142. What is more, certificate-awarding distance learning activities are conducted via the “HELP (Human Rights Education for Legal Professionals) E-learning Platform” with the aims of enhancing the knowledge of law professionals serving under the Ministry of Justice in the field of human rights, equipping and enabling them to reflect the Convention on their daily professional practices in the best way possible, and raising their awareness and level of knowledge about the Court’s judgments and decisions in their fields of interest.

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

144. In addition, the Justice Academy is conducting HELP trainings for candidate judges and prosecutors. More than 300 trainee judges and prosecutors attend the Council of Europe HELP course Introduction to the European Convention on Human Rights and the European Court of Human Rights launched in both English and Turkish. The course will be implemented over a one-month period and it was implemented in the framework of the HELP in Turkey project, in close cooperation with the Justice Academy of Turkey¹⁷.

145. A group of 538 trainee judges and prosecutors, lecturer and rapporteur judges and the Head of the Department completed the HELP online course Introduction to the European Convention on Human Rights and the European Court of Human Rights and a certificate award ceremony was organised in Ankara¹⁸.

146. After the summer break and under the Covid-19 pandemic situation, on 29 September 2020, HELP Online course Introduction to the European Convention on Human Rights and the European Court of Human Rights in its Turkish version was launched for 229 clerks working at the first instance courts¹⁹.

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

¹⁷ For detailed information please see <https://www.coe.int/en/web/help/-/four-council-of-europe-help-courses-on-human-rights-launched-in-turkey-for-legal-professionals-in-january>.

¹⁸ For detailed information please see <https://www.coe.int/en/web/help/-/help-course-launches-and-certificate-award-ceremonies-for-legal-professionals-in-turkey>

¹⁹ For detailed information please see <https://www.coe.int/en/web/help/-/help-course-launches-and-certificate-award-ceremonies-for-legal-professionals-in-turkey>

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

-Freedom of Expression, Freedom of Expression,

-Violence Against Women and Domestic Violence,

-Reasoning of Criminal Judgments.

148. 193 participants from the institutions of the University of TOBB ETU, Faculty of Law and Justice Academy of Turkey (JAT) as Trainer Judges and prosecutors (Mixed Group); university law students; judges and public prosecutors took place in the said courses.

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

150. Lastly, Turkey is in the second place among other member States in respect of the number of users in the HELP learning platform²⁰ and 1320 Candidates of Judge and Public Prosecutors have completed their HELP programmes with 97 percent success rate.

c. Other projects and awareness-raising activities

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

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

- Guide on Article 5 of the European Convention on Human Rights, entitled Right to Liberty and Security, which was published by the Court and updated on 31 August 2020,

²⁰ For detailed information please see <https://www.taa.gov.tr/haber/avrupa-konseyi-help-egitimlerinde-turkiye-avrupa-ikincisi-oldu>

- Guide on Article 6 of the European Convention on Human Rights, entitled Right to a Fair Trial (criminal limb), which was published by the Court and updated on 31 August 2020,
- Guide on Article 6 of the European Convention on Human Rights, entitled Right to a Fair Trial (civil limb), which was published by the Court and updated on 30 April 2020.
- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 01 December 2020-15 January 2021,
- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 15 January 2021-02 February 2021,
- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 3 February 2021- 10 March 2021,
- Bulletin of ECtHR and Turkish Constitutional Court Decisions dated 15 March 2021- 15 June 2021.
- Compilation of court statistics since 1959.

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

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

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

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

155. Judges and public prosecutors participated in the meetings held by the Directorate General for Criminal Affairs of the Ministry of Justice as part of the “Project on Strengthening the Criminal Justice System and the Capacity of Justice Professionals on

Prevention of the European Convention on Human Rights Violations in Turkey”. In this regard;

- 55 persons participated in the in-service training programme held in Ankara on 3 October 2019,
- 106 persons participated in the online meeting of the working group about “Reasoning of Judgments in Criminal Proceedings in the Scope of the Right to a Fair Trial”, which was held on 24 June 2020,
- 84 persons participated in the online meeting of the working group about “Lawfulness of Pre-Trial Detention and Its Alternatives in Criminal Proceedings”, which was held on 5 October 2020, and
- 5 persons participated in the online meeting of the working group about “Procedural Safeguards”, which was held on 19 October 2020.

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

- 25 November 2020, Review with the Legal Policies Board of the Presidency;
- 27-28 November 2020 - 4 December 2020, Meetings with representatives of the business world (TÜSİAD, MÜSİAD, TOBB);
- 29 November 2020, Meeting with representatives of non-Muslim communities;
- 3 December 2020, Meeting with the Human Rights Inquiry Committee and the Justice Committee of the Grand National Assembly of Turkey;
- 8 December 2020, Consultation meeting with the Union of Turkish Bar Associations;
- 11 December 2020, Meeting with the Directorate General of Foundations;
- 4 December 2020 - 20 December 2020, Meetings with the relevant ministries and institutions to prepare the final draft of the Working Paper for the Action Plan;
- 30 December 2020, Meeting with the Presidency of the Court of Cassation;
- 15 January 2021, Meeting with the Presidency of the Council of State;
- 20 January 2021, Submission to the Presidency of the Republic.

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

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

158. As part of the in-service training programme on “Individual Application” organised by the Constitutional Court;

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

2. Role of the Justice Academy of Turkey

159. The Justice Academy of Turkey also continues to conduct its trainings and efforts via in-service and pre-service trainings aimed at raising the awareness of judges, prosecutors and candidate judges/prosecutors on the case-law of the Court. In this scope, the Justice

Academy offered courses on Preventive Measures and Practices to candidate judges/prosecutors and it will continue to do so in the upcoming terms of trainings. In this scope the following seminars are given regularly within the scope of pre-service training programmes:

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

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

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

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

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

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

162. On 15 January 2020 an amendment to Article 6 entitled "Principles of Promotion" of the "Principle Decision on the Grade Promotion of Judges and Prosecutors" was promulgated in the Official Gazette. According to this amendment, in the promotion of judges and prosecutors, on the basis of the principles of independence of the judiciary and security of tenure of judges, account will be taken of whether the persons concerned caused a finding of violation by the European Court of Human Rights or the Constitutional Court, as well as the

nature and gravity of the violation, and the efforts of the persons concerned to safeguard the rights enshrined in the European Convention on Human Rights and the Constitution.

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

H. Publication and Dissemination of the Judgments

164. The *Kavala v. Turkey* judgment was translated into Turkish and published at HUDOC.

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

IV. CONCLUSION

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