

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

Date: 07/08/2026

DH-DD(2026)991

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1569th meeting (September 2026) (DH)

Item reference: Action Report (04/08/2026)

Communication from Türkiye concerning the case of Y.B. AND OTHERS v. Turkey (Application No. 48173/99) (Gencel group)

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1569^e réunion (septembre 2026) (DH)

Référence du point : Bilan d'action (04/08/2026)

Communication de la Türkiye concernant l'affaire Y.B. ET AUTRES c. Turquie (Requête n° 48173/99) (Groupe Gencel) **[anglais uniquement]**

Action Report

Y.B. and Others v. Türkiye (no. 48173/99)

Judgment of 28 October 2004 and final on 28 January 2005

Repetitive to

Closed Gencel v. Türkiye (no. 53431/99, final on 24 March 2004)

I. CASE DESCRIPTION

1. The case concerns a violation of the applicants' (five applicants) right to a fair trial on account of the presence of a military judge on the bench of the State Security Court. The case also concerns a violation of the right to a fair trial on account of the attitude of the law enforcement authorities incompatible with the presumption of innocence, which had entailed a prior assessment of the charges the applicants might face and provided the press with an easy physical means of identifying them (Articles 6 §1 and 6 §2).
2. The applicants, who had been arrested on suspicion of membership of a terrorist organisation, were described as members of an illegal organisation during a press conference held by police officers on 16 January 1997. During this press conference, photographs of the applicants were taken by journalists. The following day a national newspaper published a detailed report on the applicants' activities, alongside their photographs, stating that they had confessed their offences. While giving statements at the public prosecutor's office, the applicants denied the content of their previous statements, stating that they had been obtained under police duress and coercion during their police custody. On 23 October 1997 the Izmir State Security Court convicted the applicants of membership of a terrorist organisation. The applicants Y.B. and H.Ş. were sentenced to eight years and four months' imprisonment, while E.E., K.S. and Ö.K. were sentenced to twelve years and six months' imprisonment. On 22 September 1998 the Court of Cassation upheld the decision of the first-instance court (see §§ 8-17 of the judgment).
3. The Court held that there had been a violation of the applicants' right to a fair trial, finding that the State Security Court which had tried them lacked independence and impartiality due to the presence of a military judge on its bench (see §§ 34-36 of the judgment). Furthermore, taking into account that the applicants had been photographed during their presentation to the press and that these photographs were subsequently published in the media, the Court held that their right to the presumption of innocence

had been violated, finding that the applicants had been portrayed to the public as guilty during the press conference held by the police officers (see §§ 46-51 of the judgment).

II. INDIVIDUAL MEASURES

A. Just Satisfaction

4. The Court awarded each of applicants EUR 1,500 for non-pecuniary damage. The Court also awarded the applicants, jointly, EUR 5,000 for costs and expenses, less EUR 1,260 received as legal aid.
5. The sums awarded by the Court were paid to the applicants within the deadline set forth by the Court.

B. Reopening of the Proceedings

6. In accordance with the former Code of Criminal Procedure (Law no 1412) reopening of the proceedings were applicable in respect of European Court Judgments which became final before 4 February 2003 or judgments rendered in applications lodged with the Court after 4 February 2003. However, because the applications in this case were lodged with the Court before 4 February 2003, that is to say on 17 and 30 March 1999, and that the present judgment became final after 4 February 2003, namely on 28 January 2005, reopening of the impugned criminal proceedings could not be granted to the applicants.
7. Within the context of its examination in the leading case of *Gencel*, the Committee of Ministers repeatedly requested the legal lacuna regarding temporal limitation preventing the reopening of the proceedings to be removed and adequate redress for the applicants to be granted. Namely, in the letters dated February 2005 and April 2006, Interim Resolutions November 2005 ResDH(2005)113, April 2007CM/ResDH(2007)26, December 2007 CM/ResDH(2007)150 and Decisions until 2013 June the Committee of Ministers consistently expressed its requests in this respect.
8. The Turkish authorities responded these requests with the Law no. 6459 which entered into force on 30 April 2013. This amendment filled the legal lacuna regarding temporal limitation that prevented the reopening of the proceedings in respect of the applicants.
9. In its decision CM/Del/Dec (2013)1172 dated 7 June 2013, the Committee of Ministers welcomed the adoption of the said law allowing the reopening of proceedings in the applicants' cases.

10. That being said, the details concerning the reopening of the proceedings in the applicants' cases are explained below.
11. In respect of the applicant Ö. K., the authorities note that the applicant requested a retrial on 26 January 2006. However, the Izmir 8th Assize Court rejected the applicant's request, considering that the legal provisions in force at the time -the details of which are set out above- did not permit a retrial. Nevertheless, as stated above, pursuant to Article 21 of the Law no. 6459, which entered into force on 30 April 2013, the opportunity to request a retrial in accordance with the Court's judgment finding a violation was introduced for the applicant and individuals in a similar position, provided that they applied within three months from 30 April 2013. The applicant, however, did not avail himself of this opportunity and did not request a retrial.
12. In respect of the other applicants, the authorities note that they did not make any request for a retrial following the Court's judgment finding a violation.

C. Conclusion on Individual Measures

13. In the light of the above explanations, the authorities take the view that no further individual measures are required in the present case.

III. GENERAL MEASURES

A. Concerning the violation of the right to be tried by an independent and impartial tribunal (Violation of Article 6§1)

14. The authorities would like to recall that the measures under this heading were taken within the context of the *Gençel* (53431/99) and *Çıraklar* (19601/92) groups of cases.
15. The presence of military judges in state security courts was abolished in 1999, and subsequently, state security courts were completely abolished following the constitutional amendments of May 2004.
16. These measures were considered to be sufficient and the CM closed its final examination in the *Gençel* and *Çıraklar* groups of cases with its final resolutions (see CM/ResDH(2013)256 and ResDH(99)555) respectively).
17. The facts of the present case took place before the general measures explained above.
18. Accordingly, the authorities are of the opinion that no further general measures are required under this head.

B. Concerning the Violation of the Right to be Presumed Innocent (Violation of Article 6§2)

1. Legislative Framework

19. The authorities would like to emphasise that the presumption of innocence is protected at the highest level by Article 38 § 4 of the Constitution of the Republic of Türkiye of 1982, which provides that *“No one shall be considered guilty until proven guilty in a court of law.”*
20. Furthermore, the following provisions under the Code of Criminal Procedure no. 5271 (CCP), which entered into force in 2005 subsequent to the incidents giving rise to the violation, demonstrate that the presumption of innocence is also enshrined in the CCP: Article 147 § 1 (e) regulating the right of a suspect or accused to remain silent and not to be compelled to incriminate oneself; Article 223 § 2 (e) providing for an acquittal where it is not established that the imputed offence has been committed; and Article 157 concerning the confident conduct of the investigation, which is linked to the right not to be labelled as criminal (*lekelenmeme hakkı*).
21. The provision added as Article 158 § 6 to the CCP by the Law no. 7078 dated 1 February 2018, which constitutes one of the reforms carried out under the Judicial Reform Strategy Document and the Human Rights Action Plan with the aim of strengthening the right not to be labelled as criminal, reads as follows:

Where it is clearly evident, without the need for any investigation, that the act forming the subject of the denunciation or complaint does not constitute a criminal offence, or where the denunciation or complaint is of an abstract or general nature, a decision of non-prosecution shall be issued. In such case, the person against whom the complaint is made may not be designated as a suspect. The decision of non-prosecution shall be notified to the person who made the denunciation or the complainant, if any, and an objection to this decision may be lodged in accordance with the procedure set out in Article 173. If the objection is accepted, the Chief Public Prosecutor’s Office shall initiate the investigation procedures. The procedures carried out and the decisions taken pursuant to this paragraph shall be recorded in a dedicated system. These records may only be accessed by the public prosecutor, a judge or a court.”

22. Where a denunciation or complaint is of an abstract or general nature, or does not contain a specific act or fact constituting an offence, the Public Prosecutor issues a “*decision of non-prosecution*” (soruşturmaya yer olmadığına dair karar).
23. This provision aims to prevent the initiation of unnecessary investigation procedures against individuals in circumstances where there is insufficient suspicion that an offence has been committed, thereby contributing to the protection of the presumption of innocence and the right not to be labelled as criminal.
24. More specifically, in direct relation to the incidents giving rise to the violation, the “*Regulation on Arrest, Detention, and Statement-Taking*” was published on the official journal on 1 June 2005, simultaneously with the entry into force of the Turkish Criminal Code.
25. Under Article 27 of the Regulation, ‘*A person’s innocence is fundamental until his/her guilt is confirmed by a judicial ruling, and the investigation phase is confidential. Therefore, during the investigation phase, a person in custody must not be presented to the public as a ‘guilty’ party, displayed before the press, made to answer questions from the media, photographed, exposed, or otherwise showcased—and the investigation documents must not be published under any circumstances.*’

2. Case-Law of the Constitutional Court

26. The authorities would like to note that there is no decision delivered by the Constitutional Court regarding the presumption of innocence in the specific context of the statements used by the law enforcement. However, the Constitutional Court has a Convention-compliant well-established case-law on the presumption of innocence. In this context, the authorities would like to submit the following sample judgments:
27. The judgment of the Constitutional Court in the case of *E.A. (2)*¹ (no. 2017/34336, 15 September 2021) concerns the alleged violation of the presumption of innocence due to the expressions used by persons exercising public power, in the absence of a final conviction. In its examination, the Constitutional Court relied especially on the principles established by the Court in its judgment of *Y.B. and Others v. Türkiye* (nos. 48173/99 and 48319/99, 28 October 2004) and emphasised that the presumption of innocence must be observed not only during the criminal proceedings but also in administrative or judicial acts connected with criminal proceedings. In this context, it

¹<https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/34336>

was assessed whether the language used by the public authorities in their decisions and acts expressed a definitive opinion on the guilt of the person concerned. Referring to the judgment of *Y.B.*, the Constitutional Court stated that administrative and judicial authorities could make assessments regarding certain facts within their respective fields of competence, but these assessments must not be expressed in a manner that attributes criminal liability to the persons or gives the impression that they have committed an offence. In the Constitutional Court's view, portraying a person who has not been convicted by a final judgement as having committed an offence, or presuming their guilt, is incompatible with the presumption of innocence. Therefore, regard should be had not only to the wording of the expressions used but also to the context of the statement as a whole and the overall impression it creates.

In the present case, the Constitutional Court, taking into account the context and nature of the expressions used by the relevant authority and assessing the statement as a whole, criticised that the statements had been made in a careless manner.

28. The case of *Mehmethan Kamburoğlu*² (no. 2019/27554, 31 January 2024) before the Constitutional Court concerned the alleged violation of the right to the presumption of innocence on the ground that the reasoned judgment delivered in an action for annulment of an administrative act contained expressions implying guilt based on the criminal proceedings which had not resulted in a final conviction. The applicant began serving as a trainee gendarmerie specialist sergeant. Subsequently, his contract was terminated as a result of the negative outcome of the security investigation conducted in his respect. The applicant brought an action before the administrative court, requesting the annulment of the act terminating his contract. The administrative court ruled to annul the impugned act. The regional administrative court accepted the appeal filed by the Gendarmerie General Command against the administrative court's decision, and ruled to set aside the decision in question and to dismiss the case. The applicant's cassation appeal was dismissed, with final effect, by the Supreme Administrative Court. In the reasoning of its decision, the regional administrative court pointed out the following with respect to the applicant: "... [it is observed that] the pronouncement of the judgment was suspended; the relevant provision stipulates that the judgment shall entail no legal consequences for the accused person in the event of suspension of its pronouncement; in other words, there is no conviction imposed on the applicant..." However, by using

² <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/27554>

statements such as “...the classification, nature and plurality of the offences which the applicant committed and for which he was sentenced as well as the importance of the public service he is required to perform and the qualifications required for that service”, the reasoning went on to indicate, despite the decision suspending the pronouncement of the judgment, that the applicant had committed the relevant offences and had been sentenced. Considering that the applicant was deemed guilty even though the criminal proceedings against him did not result in a final conviction and that the lawfulness of termination of the applicant’s contract could not be demonstrated on the basis of facts, the Constitutional Court found a violation of the applicant's right to the presumption of innocence. In making this assessment, the Constitutional Court took into account the Court's findings in the cases of *U.Y. v. Türkiye* and *Nadir Yıldırım v. Türkiye* (for judgments in the similar vein, see the Constitutional Court's judgments of *Eyüp Erdem*³ (no. 2022/109266, 7 January 2026) and *Abdülaziz Gökalp*⁴ (no. 2018/23214, 25 February 2021)).

29. The case of *Mehmet Gedik*⁵ (no. 2021/28412, 16 September 2025) before the Constitutional Court concerned the alleged breach of the applicant's right to the presumption of innocence on account of the decision delivered by the administrative court in the action brought by the applicant, who had been dismissed from civil service, following the dismissal of his application seeking reinstatement and payment of his social entitlements. In its judgment in the said case, noting that the trial court referred to the criminal proceedings against the applicant which had been discontinued due to expiry of the statutory limitations and reflected in its decision the opinion that the applicant had committed the acts giving rise to those proceedings and was therefore guilty even though his guilt had not been established by any court ruling, the Constitutional Court found a violation of the applicant’s right to the presumption of innocence guaranteed under Articles 36 and 38 § 2 of the Constitution.
30. The case of *Burak Kaçmazer*⁶ (no. 2021/29090, 14 May 2025) concerned the alleged breach of the presumption of innocence on account of the statements contained in the decision delivered in an action brought against the disciplinary penalty of dismissal from civil service. While the applicant was serving at the Bakırköy Courthouse, an indictment

³ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2022/109266>

⁴ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2018/23214>

⁵ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2021/28412>

⁶ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2021/29090>

was issued against him for the offences of accepting bribe, abuse of office, securing an undue advantage in return for an act which falls outside one's authority, disclosure of duty-related secrets, and forgery of official documents. A disciplinary investigation was also conducted against the applicant for the above-mentioned acts. The disciplinary investigation resulted in a decision dismissing the applicant from civil service. In the course of this process, a conviction was handed down to the applicant in the criminal proceedings against him; however, the conviction was yet to become final. In the meantime, the applicant brought an action before the administrative court, seeking the annulment of the decision on his dismissal from civil service. The administrative court rejected the applicant's action. The reasoning of the administrative court's decision contained the following statements: *"It is observed that criminal proceedings were brought against the plaintiff on the basis of the case file no. E.2011/447 before the Bakırköy 7th Assize Court, that by the decision no. K.2014/126 delivered on 8 May 2014 at the end of the trial, the plaintiff was convicted of and sentenced to imprisonment for the acts of accepting bribe, abuse of office, disclosure of duty-related secrets, and forgery of official documents in addition to trafficking in influence. Accordingly, it has been considered and concluded that from the disciplinary standpoint, the acts attributed to the plaintiff have been established and fall within the scope of the offence of 'engaging in disgraceful and shameful conduct incompatible with the position of a civil servant' which is punishable by dismissal from civil service."* In this connection, noting that the administrative court reflected in its decision the opinion that the applicant had committed the acts giving rise to the criminal proceedings and was therefore guilty in view of the statements contained in the reasoning of its decision and its reliance on the conviction which was not final, the Constitutional Court found a violation of the applicant's right to the presumption of innocence guaranteed under Articles 36 and 38 § 2 of the Constitution.

3. Training and Awareness-Raising Measures for the Police and Gendarmerie

31. An important CoE supported police training programme, the *"Police and Human Rights Programme, 1997-2000"*, was set up to improve knowledge of human rights in the police corps and modernise its structures.
32. With a view to securing the fulfilment of anti-terror services more effectively, efficiently, lawfully and with respect for human rights as protected by the ECHR, the staff serving

in the central and rural units of the Anti-Terrorism Department receive regular in-service training under the coordination of the Anti-Terrorism Department for the prevention of the acts defined as a terrorist offence in the law, for the protection of the rights and freedoms of individuals, for the prevention of disorder, for the maintenance of public security and social peace and in order that the staff fulfil their duties in line with the principles of the rule of law and respect for human rights.

33. In this context, human rights courses are covered in the “*Basic Training Course on the Fight against Terrorism*” in accordance with Article 12 of the Practice Direction on the In-service Training Plan.
34. Moreover, particular importance has been attached to human rights training within the scope of the in-service training activities. In this connection, “*Human Rights*” courses have been added to the trainings on “*Arrest and Placement in Custody Methods*”, “*Investigation Process*”, “*Questioning Methods in the Fight against Terrorism*”, and “*Specialisation*”. Furthermore, a course on the “*Fight against Terrorism and Human Rights*” is provided.
35. Within the scope of vocational trainings, courses on “human rights” were provided to 66,589 persons in 2020, 77,756 persons in 2021, 124,219 persons in 2022, 62,678 persons in 2023, 163,770 persons in 2024, and 77,496 persons in 2025.
36. The following training courses were delivered between 2020 and 2025: “*Human Rights*” to 572,508 persons; and “*Use of Proportionate Force*” to 456,642 persons.
37. Additionally, between 2008 and 2018, “*Human Rights*” classes were provided in the Police Vocational Schools of Higher Education and Police Vocational Training Centres. At present, “*Human Rights*” classes are being provided for two hours a week for a period of 14 weeks during the fall term of the 2nd grade in the Police Vocational Schools of Higher Education; “*Democratic Policing and Social Psychology*” classes (Social Psychology, Social Events and Mass Management, Democratic Policing, Human Rights and Police-People Relations) are being provided for a total of 14 hours to the 1st Group of the 19th Term Special Operation Police Vocational Training Centre; “*Democratic Policing, Human Rights and Police-People Relations*” classes are being provided for a total of 42 hours to the 2nd Group of the 19th Term Special Operation Police Vocational Training Centre and for a total of 76 hours to the 3rd Group of the 19th Term Special Operation Police Vocational Training Centre; and “*Democratic Policing and Human Rights*” classes are being provided for a total of 14 hours during the training at the 22nd Term Special Operation Police Vocational Training Centre.

38. As a part of pre-service and in-service training activities for the staff of the Gendarmerie General Command, courses are provided on “*Human Rights*” (36 hours in total) “*Turkish Criminal Law*” (36 hours in total), “*Criminal Procedure*” (36 hours in total), “*Investigation of Terrorist Offences*” (36 hours in total), and “*Judicial Police Services*” (51 hours in total).
39. In the context of on-site training activities provided by the Headquarters of the Gendarmerie General Command, visits are made to the Provincial Gendarmerie Commands, and the staff are provided with training on human rights and the examination and assessment of human rights violations.
40. Furthermore, 162 gendarmerie personnel were provided with training on the ECtHR and Its Rulings; the European Committee for Prevention of Torture and Its Findings; the Provincial and District Human Rights Board and Its Findings; the Practical Matters to be Taken into Account in Terms of Human Rights; and Criteria on the Performance of Law Enforcement Authorities in Terms of Human Rights and the Law Enforcement Intervention Techniques.
41. In 2024, 16,002 gendarmerie personnel were provided with training on “*Fundamental Human Rights*”, 29 personnel were provided with training on “*Powers of the Law Enforcement Forces and Human Rights*” and 58 personnel were provided with training on human rights in the context of investigations into terrorism-related offences in line with the ECtHR’s rulings.
42. Finally, in order to raise public awareness on the Law Enforcement Monitoring Commission, a total of 7,285 people, including local administrative authorities, personnel in charge of law enforcements’ affairs and actions, law enforcement officers and representatives of public institutions and organisations, participated in the trainings held between 2019 and 2024.

4. Conclusions on General Measures concerning the Violation of the Right to be Presumed Innocent

43. The authorities consider that the incidents in the present case took place in 1997, and that the legislative amendments and awareness-raising activities, as well as the practice of domestic courts, are sufficient to prevent similar violations.

44. In any event, the authorities would like to recall that the issue of violations of the applicants' right to be presumed innocent continues to be examined under the case of *Dicle and Sadak* (no. 48621/07) in a broader context.

C. Translation and Dissemination of the Judgment

45. The judgment was translated into Turkish and published on the Court's official website.
46. In addition, the Turkish authorities ensured that the translated text of the judgment, with an explanatory note, was circulated to the relevant administrative authorities, domestic courts and public prosecutor's offices, the Court of Cassation, the Constitutional Court, the Human Rights and Equality Institution of Türkiye, and the Ombudsman Institution.

IV. CONCLUSION

47. The authorities consider that no further individual measures are required in the present case.
48. The authorities further consider that the general measures put in place, notably the legislative amendments, the current practice of the relevant judicial bodies, the case-law of the Constitutional Court and the raising awareness and dissemination measures are capable of preventing similar violations.
49. In the light of these, Türkiye has complied with its obligations under paragraph 1 of Article 46 of the Convention. Accordingly, the authorities propose the Committee of Ministers to adopt a final resolution and close the examination of this case thereof.