SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Contact: Clare Ovey
Tel: 03 88 41 36 45

Date: 13/06/2016

DH-DD(2016)716

Meeting: 1265 meeting (20-22 September 2016) (DH)

Item reference: Updated action plan (31/05/2016)

Communication from Turkey in the Batı group of cases against Turkey (Application No. 33097/96)

* * * * * * * * * * * *

Réunion : 1265 réunion (20-22 septembre 2016) (DH)

Référence du point : Plan d'action mis à jour

Communication de la Turquie dans le groupe d'affaires Batı contre Turquie (Requête n° 33097/96) (***anglais uniquement***)

ACTION PLAN

Batı and Others v. Turkey Group of Cases

(no.33097/96)

I. CASE DESCRIPTION

1. There are currently 119 judgments in total that are being supervised under the *Bati and Others v. Turkey* group of cases including *Okkali* Group of cases. The Turkish Government would respectfully like to recall the Committee of Ministers the information that she provided previously regarding the steps undertaken for the execution of the Batı and Others group of cases (see CM/Del/Dec(2015)1243/H46-23 / 10 December 2015).

2. This group mainly focuses ineffectiveness of investigations and serious shortcomings in the subsequent criminal and/or disciplinary proceedings initiated against members of security forces on account of death of the applicants' next-of-kin or torture or ill-treatment of the applicants (violations of Articles 2, 3 and 13).

A. Principal Violations Concerning Right to Life and Ill Treatment

3. Some cases concern violations of the applicants' right to life and ill treatment within the context of procedural aspects (*ineffectiveness of investigations*) under circumstances engaging the responsibility of the state, including during the transfer of detainees. The European Court found these violations on account of :

i. bligation of public prosecutors to obtain administrative authorisation from local administrative councils to be able to prosecute members of security forces;

ii. Excessive length of investigations conducted by public prosecutors;

4. As to the *shortcomings relating to criminal and disciplinary proceedings* conducted against members of security forces, the Court identified the following shortcomings:

i. Refusal of domestic courts, without reasoning, to hear witnesses requested by the applicants;

ii. Failure to suspend members of security forces from their duties while criminal proceedings against them are pending;

iii. Conviction of members of security forces on account of a crime which provides for a more lenient sentence (e.g. conviction on account of abuse of power instead of ill-treatment or torture);

iv. Suspension of sentences imposed on members of security forces or the suspension of the pronouncement of decisions against them;

v. Amnesty and subsequent release of members of security forces convicted for inflicting torture or ill- treatment;

vi. Dropping of charges against members of security forces on account of the application of prescription periods;

vii. Failure to initiate disciplinary proceedings and to impose disciplinary sanctions.

B. Other Violations

5. The Court also concluded that the excessive length of the applicants' detention in police custody, transferring of applicants in police stations following their provisional detention, authorities' failure to provide compensation on account of the applicants' unlawful detention constituted violations of right to liberty and security under Article 5§3,4 and 5 of the Convention.

6. Violations on account of excessive length of police custody, absence of a remedy and lack of compensation in this respect measures were adopted within the context of *Sakik* group (see ResDH(2002)110).

7. Violations on account of the applicants' transfer to police custody after their detention on remand was ordered by a court, measures were adopted within the context of *Karagöz* case (see CM/ResDH(2007)96).

8. Violations on account of excessive length of detention on remand and the failure of the authorities to provide compensation for unlawful detention are examined under the *Demirel* group of cases.

9. In some of these cases, the Court concluded that the applicants' right to a fair trial was also violated by the public authorities due to the restriction of applicants' or their relatives' right to access to a lawyer, and this kind of violations are examined under the *Salduz* group of cases.

II. INDIVIDUAL MEASURES

10. The Turkish authorities have taken the necessary measures to ensure that the violations at hand are brought to an end and that the applicants are properly redressed for the negative consequences sustained. These measures included redressing the applicants by way of payment of the just satisfaction awarded by the Court.

II.a Just Satisfaction

11. The just satisfaction amounts awarded by the Court in the *Batı and Others* group of cases have been paid within the deadlines, and relevant payment documents have been submitted to the Committee of Ministers.

II.b Reopening of the Proceedings

12. Regarding the issue of the Committee of Ministers raised on reopening of the proceedings, in any of these group of cases, the applicants did not request for reopening of the proceedings in accordance with the amendments introduced in the Code of Criminal Procedure in April 2013. In this regard, the Government considers that it cannot be held responsible for failure of the applicants to submit a request.

III. GENERAL MEASURES

13. The Turkish authorities have envisaged or taken a number of measures aimed at preventing similar violations. These measures are in particular aims at legislative arrangements regarding torture and ill treatment, ensuring effective investigation in cases involving actions of police and gendarmerie, training and awareness-raising measures as well as an array of working on other measures aimed at preventing similar violations.

The Government will mainly focus in this paper on the measures taken in accordance with the interim resolution of CM/Del/Dec(2015)1243/H46-23 / 10 December 2015.

III.a Pre-authorisation For Prosecution

14. The Turkish Government, at the outset, would like to draw attention on some progress made before that decision.

15. As it was explained former action plan, allegations of torture and ill-treatment are taken seriously and diligently by the judicial authorities at all stages of the investigation and trial process. Public prosecutors immediately and *ex officio* initiate investigations concerning allegations of torture and ill-treatment and conduct them in person in accordance with the current Code of Criminal Procedure and the circulars issued by the Ministy of Justice.

16. Previously, if the complaint or the information about an alleged offence of torture concerned a public servant, i.e. a member of the police or the gendarmerie, the public prosecutor was, until January 2003, according to the Law no. 4483 (1999), not permitted to proceed with the investigation without prior permission of the governor or regional governor. This was one of the principle impediments to the prosecution of public officials.

17. In this context, the offence of ill-treatment in Turkish law needs to be explained. Such offences have been foreseen in the current criminal law as aggravated sort of battery which is drawn up in Article 86/1-3.d of the current Criminal Code. As is known, all kind of continuous battery will constitute torture.

18. In January 2003 the Law on the Trial of Civil Servants and other Public Officials, and Article 154 of the Code of Criminal Procedures were amended, lifting the requirement to obtain permission from superiors in order to open investigations on public officials in cases of torture and ill-treatment. In other words, the prosecutor may and must initiate investigation against public officers for the offences of torture and ill-treatment directly without requesting any permission.

19. Furthermore, Article 161 of the Code of Criminal Procedure (Law no. 5271) provides that public officials who are found to be negligent in their judicial duties are subject to direct investigations. In this regard, the fact that the investigation for the acts of torture and ill-treatment committed during a judicial duty is not depend on the administrative permission is stressed once more.

20. Moreover, the Article in question of the same Code also provides that an investigation is conducted in respect of the top senior law enforcement officers for the offences allegedly committed during their judicial duties within the scope of the legislation applied to the judges. Accordingly, the permission for an investigation to be conducted is received from the High Council of Judges and Prosecutors (HCJP). Indeed, the top senior law enforcement officers have the status of representative authority of the location concerned and they do not intervene in the investigative activities such as taking statements or taking into custody due to the nature of their duties. This, therefore, cannot be considered as an administrative permission by its nature, since the allegations are examined by the HCJP which is composed of independent and impartial judges and prosecutors, the majority of whom are elected. The Council is independent in performing its duties and exercising its authority. No organ, authority, position or person can give orders or instructions to the Council. The Council performs its duties in accordance with the principles of fairness, impartiality, justness and honesty, consistency, equality, capability and qualification, by respecting the independence of courts and the security of tenure of judges and public prosecutors.

21. The HCJP issued a Circular showing how the top senior law enforcement officers are investigated. The procedure is entirely independent from the Law no. 4483 (see annex 1).

22. It should be mentioned here that no such offence committed by a top senior law enforcement officer has been encountered so far. In fact, those kinds of personnel do not join any interrogation or similar action.

23. On the other hand, as regards the acts of torture and ill treatment on the part of senior gendarmerie officers, it was reported that administrative investigations had been conducted between 2005 and 2015 in respect of only one military officer for torture and three military officer and one non-commissioned officer for ill-treatment.

24. As regards the senior police officers, it was established that in the last ten years administrative investigations had been conducted in respect of nine security directors for the alleged acts of torture and ill-treatment.

25. Moreover, the Turkish Government would like to inform that studies have been initiated for the purposes of establishing an inter-institutional working group for the assessment of the pre-authorization for prosecution and the status of chief police officers in terms of those provisions which fall in contradiction with the European Convention on Human Rights.

26. In the upcoming period, the Turkish Government will provide further information regarding the outcome of the working group and its consequences.

III.b Measures taken as to effective investigation

III.b.1 Effective, Prompt and Diligent Investigations Into Complaints

27. As a result of the amendments made in domestic law since the year 2000 for the effective investigation of right to life and ill-treatment allegations, the offence has been redefined and significant steps have been taken in the fight against right to life and ill-treatment by increasing the penalty for the said offences. Judicial and administrative

investigations be launched for officials who have allegedly violated rights against the general principles and policies of the Turkish Police, and those who are found guilty are punished.

28. Moreover, amendments were introduced into the Code of Criminal Procedure (no. 5271 -entered into force on 1 June 2005) aimed at ensuring the speedy investigation and, if appropriate, prosecution of alleged offences of right to life or ill-treatment.

29. In this regard, public prosecutor shall initiate an *ex officio* investigation as soon as he/she becomes aware that a crime has been committed (Article 160 of the Code of Criminal Procedure).

30. The Code of Criminal Procedure has introduced effective investigation measures in order to ensure the completion of trials in the possible shortest period as prescribed by the additional Article 7 of the previous Code. The current Code prescribes the completion of a trial in one hearing in principle. Necessary mechanisms were included in the said Law to this end. As regards ensuring the collection of all case-related evidence during the process of investigation, Article 174 provides that courts may remand any indictment which does not have sufficient evidence. Thus, public prosecutors are prevented from preparing an indictment not compatible with the conditions set out in Article 170 and from filing a law-suit without collecting existing evidence that is supposed to affect the establishment of the offence.

31. Moreover, the Circular no. 158 issued by the Ministry of Justice was previously submitted. In this regard, the Government would like to note that a study has been started as to whether the Circular no. 158, which regulates the investigation procedure concerning the torture and ill-treatment allegations, should contain more detailed provisions, taking into account that no body may give order or advice to judges and prosecutors regarding a case file handling by them.

32. The Government would also like to point out that camera surveillance systems, which record on a continuous basis, have been set up in all of the 1.268 police stations throughout the country with a view to fighting effectively against acts of torture and ill-treatment and ensuring that evidence is transmitted to investigative authorities expeditiously.

33. In this respect, as of 2015, there are 2.012 detention rooms in the Internal Security Units of the Gendarmerie General Command, and the installation of camera system has been completed in 1946 detention rooms (97%).

III.b.2 Training Activities in This Respect

34. Many activities have been made in order to carry out a speedy investigation and trial in compliance with the Convention standards.

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

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

37. There are some training projects carried out by the Justice Academy of Turkey in order to raise awareness amongst prosecutors and judges as well as to ensure good practice in judicial authorities;

-"The Development of the Investigation Techniques of the Public Prosecutors and increasing their Effectiveness"

-"The Project on improving the Efficiency of the Turkish Criminal Justice System"

-"Developing the Public Prosecutors' Investigation Capacities"

-"Increasing the Activities of Investigation in the Turkish Criminal Procedure"

38. With those projects, it is aimed to increase the efficiency of public prosecutors in terms of investigation under the Turkish Criminal Justice System in line with the EU standards by developing it in accordance with the international legislation and recommendations.

39. With the EU joint project "Improving the Efficiency of the Turkish Criminal Justice System", it is aimed to provide that the efficiency of the Turkish Criminal Justice System is developed in accordance with the Convention standards and that the human rights standards in the Turkish Criminal Justice System are applied.

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

41. "The Effective Investigation Training Module" was prepared under "The project on the Improvement of the Effectiveness of the Turkish Criminal Justice System", and this module was benefited from during the vocational training of candidates who were trained in the Academy. Furthermore, this module was distributed to the judges and prosecutors during in-service training.

42. Moreover, the Academy has given the course on the ECHR and Turkey which includes violation of right to life and prohibition of torture. The Academy has initiated a distant learning programme. This programme as well incorporates the violations in question.

43. On-site training activities are carried out quarterly with a view to increasing the knowledge level of gendarmerie personnel. In provinces visited during these activities carried out, an on-site inspection in detention rooms is conducted and a conference on the subject of human rights is held for the personnel.

In this context, during "the on-site training activities" carried out between 2009 and 2015, training was provided to 2.522 personnel in total in 34 provinces, and 651 detention rooms were inspected.

44. Vocational and prevocational training activities on the following subjects have begun to be carried out by the Justice Academy of Turkey within the execution of the Batı group of cases;

- the effectiveness of the investigations conducted into the alleged acts of torture and ill-treatment,

- the procedural requirements of Article 2 and 3, such as providing convincing reasons when authorities refuse to hear witnesses that the parties requested in accordance with the applicable legislation during investigations conducted into the alleged acts of torture and ill-treatment and ordering additional medical reports when necessary,

- awareness raising on the judgments of the Constitutional Court for the standard set by the Constitutional Court regarding the characterisation of facts concerning crimes of torture and ill-treatment to be applied consistently.

III.b.3 Publication of documents with respect to increasing the effectiveness of investigations

45. The activities concerning *effective investigation in Turkish Criminal System* were as follows: Establishing a commission by choosing experts from some academics and law enforcement personnel in Turkey and preparing a book regarding how to conduct effective investigation by this commission. In the context of this book, especially:

- Focus on the points proposed and criticized in the EU Progress reports, where the ECtHR found violation,

- Constitute directory which will serve as a valid guide for prosecutors during the criminal procedure as a whole starting from being informed of the crime up to the indictment being issued,

- Give information in order to ensure that the criterion of existence of "sufficient suspicion" to file a criminal case under Article 170 § 2 of the Code of Criminal Procedure is duly understood. This book's copyrights belong to the Justice Academy of Turkey and it is aimed to press 1,000 copies in the first phase for the judge and prosecutor interns who are trained in Justice Academy of Turkey and to present digital version of the book free of charge for judges and prosecutors practicing in Ankara and its provinces.

III.b.4 Project SATURN

46. For the fact that this project sets a period for all sorts of case files to be concluded, it will be relevant for the violation found in this group regarding lengthy proceedings.

47. The CEPEJ, a foundation of the Council of Europe of which Turkey is a member, initiated a study named SATURN Centre (Study and Analysis of Judicial Time Use Research Network) in 2007 with a view to increasing the effectiveness and efficiency of the judiciary in the member states. Having regard to the SATURN guide principles and good practices, Turkey initiated the Project on Time Management in Judiciary (SATURN) Project in 2012.

48. The High Council of Judges and Prosecutors selected as pilots the 5th Chamber of the Ankara Administrative Court and the Amasya and Erzurum Court Houses.

49. A workshop was held in Erzurum with the participation of all judges and prosecutors working in the pilot court houses. The judges and prosecutors determined the case types and durations within the scope of the workshop.

50. Warning follow-up system consisting of three stages was set up in the pilot courthouses through the UYAP system. It was ensured that the Forensic Medicine Institute and the postal administration initiated studies for providing contribution to time management.

51. Regard being had to the results and the practices obtained from the pilot court houses, a working group was established by the Minister's approval in October 2015 with a view to determining the prosecution durations across the country. The working group is still working on the duration of the investigation phase.

III.b.5 Establishment of the Law Enforcement Monitoring Commission

52. The Government would like to note that on 20 May 2016 an independent Law Enforcement Monitoring Commission has been established by the Law no. 6713 with a view to ensuring that the law enforcement complaint system functions more effectively and promptly and improving its transparency and reliability for the purpose of aligning administrative investigation procedures with the standards of the European Union.

53. The Law Enforcement Monitoring Commission is based on a system in which the actions taken or to be taken by administrative authorities in respect of the offences or conducts requiring disciplinary sanctions and allegedly performed by the law enforcement officers are recorded under a central system and monitored and if necessary the request for an investigation to be initiated is made.

54. The duties and authorities of the Commission are explained in detail in Article 4 of the Law no. 6713. Accordingly, the duties of the Commission can be summarised as follows;

-to establish the principles concerning the operation of the law enforcement complaint system and to make suggestions to the administration regarding these principles,

-to request for disciplinary proceedings to be initiated by the competent authorities against the law enforcement officers on the ground of the acts allegedly performed by them,

-to make suggestions to the Ministry of Interior for an inspection and supervision to be carried out related to the operation of the law enforcement complaint system, to assess reports drawn up following these inspections and supervisions, to determine the administrative measures to be taken in relation to shortcomings established and to make suggestions to the Ministry about these measures, and to announce the reports which it considers appropriate to the public,

-to prepare statistics concerning the data and information to be obtained from the central recording system and to announce the results of analyses to the public,

-to request for disciplinary proceedings to be initiated within 30 days in respect of the denouncement and complaints made or denouncements previously made but in respect of which no disciplinary action has been planned to be taken.

55. Article 5/9 of the Law provides that the Ministries and other public institutions and organisations, save for special provisions, are required to submit the information and documents requested by the Commission in the case of a request made by the Commission.

56. A detailed explanation on the preliminary examination and disciplinary proceedings in respect of the law enforcement officers will be given below.

III.c Refusal Of Hearing Witnesses and Ordering Additional Medical Reports When Necessary

57. Under Articles 63 and et seq. of the Code of Criminal Procedure (Law no. 5271), the judge or, at the investigation stage, the public prosecutor is able to freely appoint the experts from whom he or she can request a fresh report following an inadequate report on the ground of alleged acts of torture or ill-treatment. Furthermore, the parties are also entitled to submit to the court or the prosecutor's office the report they receive by making an application to a private expert.

58. Article 67 of the same Code provides that when the expert examination is completed, the public prosecutor, the plaintiff, his representative, the suspect or the accused, his defence counsel or the legal representative are given a time-limit to evaluate it and, if required, to request a further expert opinion or to object to the expert opinion. The court or judges has to render a reasonable decision in three days when the request was rejected.Since the medical reports are also drawn up by experts, it is compulsory for a court to render a reasoned decision in the case of a dismissal of objection to a medical report or a request for a fresh medical report.

59. Moreover, under Articles 67 et seq. of the same Code, an objection may be filed against the interim decisions rendered by a judge or a court. Accordingly, there is an opportunity to file an objection against the refusal of the request for a witness to be heard or a fresh medical report to be drawn up with the same court. The alleged failure to hear a witness or draw up a fresh report are allegations that can be raised at the last stage during an appeal on facts and law..

III.c.1 Establishment of Regional Courts of Appeal

60. In addition, the Government would like to point out that regional courts of appeal will come into effect on 20 July 2016. The Regional Courts of Appeal review the decision of first instance courts in respect of facts, evidence and legal basis under Article 280 of the Code of Criminal Procedure. In this respect, parties are entitled to have a witness heard and request a fresh report to be issued in hearing to be held at the stage of appeal on facts and law.

III.c.2 Case-law of the Court of Cassation

61. The domestic courts have rendered decisions regarding this topic in line with the ECtHR judgment. In a criminal case brought on the ground of acts of torture, the Istanbul Assize Court decided not to hear the witness who could influence the course of the case, and

it acquitted the defendant without taking the statements of that witness. In its judgment of 18 September 2014 the Court of Cassation found the decision of the Istanbul Assize Court contrary to the procedure, and it held that the witness should be heard (see annex 2).

62. Moreover, in its judgment of 10 April 2014 the Court of Cassation stated that as regards whether the report related to the victim, which had been obtained from the Forensic Medicine Institute, accorded with the version of events, a new forensic report had to be taken (see annex 3).

III.c.3 Clarifications of the inconsistent reports

63. Once again, the government would like to underline that under Articles 63 and et seq. of the Code of Criminal Procedure (Law no. 5271), the judge or, at the investigation stage, the public prosecutor is able to freely appoint the experts from whom he/she can request a fresh report in the event that he/she finds the report issued on the ground of alleged acts of torture or ill-treatment inadequate. Furthermore, the parties are also entitled to submit to the court or the prosecutor's office the report they receive by making an application to an expert.

64. In the regard, the Forensic Medicine Institute performs the duties entrusted under the Law no. 2659 since 1982, and it applies the standards it established on the allegations of injury in the light of its experience of many years.

65. Pursuant to Article 20 of the Regulation no. 7076 for the Implementation of the Law on the Forensic Medicine Institute titled "Prioritization of Files", *the files sent to the units attached to the institute for examination are put in order and subjected to examination.* Accordingly, first of all, the files submitted to the Forensic Medicine Institute are examined in detail, medical documents are dealt with, and if appropriate under Article 23/C of the Law in question, the person who is the subject of the report is summoned and medically examined again before the board.

66. As a result of the internal measures taken by the Forensic Medicine Institute, the completion period of the files in the General Board of the Forensic Medicine Institute, the Specialization Boards and the Specialization Departments has shortened significantly in the last two years, and reports are drawn up within a short time, namely two months on an average.

67. The 2nd Specialization Board, which deals with allegations of injury and torture, is able to draw up a report concerning a file within 60 days. The General Board of the Forensic Medicine Institute can draw up a report and submit it to the authority concerned within 180 days in respect of the same allegations and within 75 days in respect of other medical deficiencies.

68. In this respect, the Government would like to stress once more that the period for drawing up a report by the Forensic Medicine Institute has become quite reasonable in the context of the length of proceedings and that the requests made by domestic courts for a report to be drawn up are met in a short time.

69. Moreover, the Government would like to indicate that the Draft Law about the Experts, which was prepared for the purpose of determining the procedures and principles

concerning the qualifications, training, assignment and inspection of experts and forming an effective and efficient institutional structure for expertise, was presented to the Turkish Grand National Assembly on 4 March 2016.

70. According to the Draft Law, for the purpose of ensuring that the experts perform their works under a single supervision mechanism and that the persons having qualified information work as experts, expertise advisory boards across the country, the Department of Expertise within the Ministry of Justice and the regional boards in the judicial locality of the regional courts of justice and regional administrative courts will come into effect. The experts will be responsible before these boards for the acts and actions they performed.

71. Within the scope of the Draft Law in question, the Forensic Medicine Institute Law is also revised, and with a view to ensuring that the board works in a swifter and more qualified manner, it includes that three Supreme Boards will be established instead of a General Board. In the same respect, the number of the specialization boards will be increased to eight from seven; the 2th Specialization Board will only examine the allegations of torture and ill treatment and will draw up a report.

72. In this sense, the Government would like to indicate that the periods during which the forensic reports are prepared have become very reasonable within the meaning of the length of proceedings and that the domestic courts' and prosecutors' requests for reports have started to be met in short periods.

III.d Suspension from Duty of Law Enforcement Officers During Investigations

III.d.1 Police

73. The Government would like to note that in the last ten years it was decided that an officer, 110 officers and 95 officers, against whom administrative investigation on the ground of ill-treatment was initiated, be suspended from duty for 4 months, between 4 and 10 months and between 12 and 24 months respectively. Furthermore, 2 officers, against whom an administrative investigation was initiated on the ground of alleged acts of torture, were dismissed from their posts.

74. In addition, in the course of an investigation initiated against officers under Articles 34 and 35 of the Regulation on Appointment and Transfer of Members of Security Services Class, these officers are appointed to different departments or provinces/districts within the shortest time possible in the interest of the investigation.

75. According to Article 34 of the Regulation in question, upon the proposal of the chief officer, a request for change of place of duty can be made for those against whom an investigation has been initiated and whose performance of their duties at their present location is not convenient. Following an inquiry carried out by an inspector, when considered necessary, place of duty of officers is changed so that these officers work in that area of duty or in a different area of duty.

76. According to Article 35 of the same Regulation, in the event of release of an officer who has been arrested, or where an officer, who has been suspended from duty, takes up his

position again, his place of duty can be changed *ex officio* by the Security General Directorate or upon the proposal of the chief of the department.

77. In this context, place of duty of 1136 officers in total were changed since 2011. Place of duty of 1120 officers were changed under Article 34, and place of duty of remaining 16 officers were changed under Article 35.

78. In this regard, during the assessment of serious allegations in respect of an officer as perpetrator by subjecting him to suspension from duty or change of place of duty on the ground of the alleged acts of torture or ill-treatment, the risks of his performing his present duty are eliminated.

III.d.2. Gendarmerie

79. With regard to the Gendarmerie, it changes the places of duty for the proper conduct of the investigation when necessary, by way of assessing the requests of the unit for changing the places of duty of the personnel against whom investigations are performed for the allegation of torture or ill-treatment.

80. As can be understood from these points, the law enforcement officers in respect of whom investigations are performed are suspended from their duties. Suspension from duty does not have to include the suspension from profession. Indeed, the personnel who are suspended from their duties are deprived of the compensations that they deserve due to their positions, and these kinds of investigations in respect of them are taken into account in their assignment to upper positions. In this regard, the Government notes that the request for the suspension from duty has been fulfilled. The concerns indicated in the Court's judgment can be considered to be eliminated by way of assigning to another position from the existing position.

III.e Application of the case-law of the Constitutional Court by the Domestic Courts

81. The Constitutional Court has played a significant role since it started to receive individual application as of September 2012. There are many judgments regarding ill-treatment and torture, *inter alia*, two of them illustrate the progress in the Conventional standards to show the point of the view of the judicial authorities in Turkey.

82. The court found a violation of right to life and prohibition of torture in the judgments of *Deniz Yazici* (no. 2013/6359, 10 December 2014) and *Cezmi Demir* and others (no. 2013/293, 17 July 2014) in respect of lack of effective and diligent inquest carried out concerning allegations of ill-treatment and/or torture as well as leniency of the punishment for perpetrators of such offences. In these judgments, the Court awarded just satisfaction to the applicant(s) in respect of non-pecuniary damage.

83. In these judgments the court pointed out the case-law of the European Court of Human Rights.

84. The domestic courts have changed their jurisprudence in line with the Constitutional Court's judgment. In its judgment, the Court of Cassation defined the term of torture as the

acts which are performed systematically, do not comply with human dignity, cause physical and mental suffering of the victim, have an effect on his/her perception capability and his/her will and accordingly his/her capacity to submit statements of his/her own free will and cause humiliation (see annex 4)..

85. In its another judgment, the Court of Cassation made clear the limits of torture by way of defining thoroughly the present case in conformity with the Constitutional Court (see annex 5).

86. In its decision, the 3rd Chamber of the Diyarbakır Assize Court found established that the accused killed the deceased in order to make him confess his crime by way of torturing him. In the part of the assessment of evidence, the domestic court acknowledged that the deceased was subjected to a treatment which does not comply with human dignity and pointed out that right to life is a fundamental right which is guaranteed under international treaties. Accordingly, with regard to both right to life and torture, the accused was convicted regard being had to the criteria set out in the case-law of the Constitutional Court and the ECtHR (see annex 6)

87. In another judgment, the 18th Chamber of the İstanbul Assize Court heard the witnesses, made clear the victim's medical status with a forensic report and found that the offence of torture was committed in that the police officer forcefully detained the complainant for three hours who came to the police station as a victim of another armed attack, used statements constituting heavy swears and battered him (see annex 7).

III.f Execution of the judgments of the Constitutional Court

88. The issue of whether the judgments rendered by the Constitutional Court were executed or not is among the expectations of the Committee of Ministers.

89. The Constitutional Court rendered 13 judgments finding violation due to lack of effective investigation within the scope of right to life and torture or ill-treatment.

90. It has been understood that the procedures of re-trial and re-opening of the investigations were started by the Şanlıurfa Chief Public Prosecutor's Office in accordance with the Constitutional Court's judgment on Meral Ekşili (2013/7586), by the 2nd Chamber of the Trabzon Magistrate's Court in accordance with the judgment on Rahil Dink and Others (2012/848), by the Muğla Chief Public Prosecutor's Office in accordance with the judgment on Mehmet Kaya and Others (2013/6979), by the İzmir Chief Public Prosecutor's Office in accordance with the judgment on Fahriye Erkek and Others (2013/4668), by the Ordu Chief Public Prosecutor's Office in accordance with the judgment on Ali Mükerrem Furtun (2013/9020), by the Antalya Chief Public Prosecutor's Office in accordance with the judgment on Cemil Danışman (2013/6319), by the Military Public Prosecutor's Office of the 5th Corps Commandership of the Land Forces Command in accordance with the judgment on Mehmet Karabulut (2013/512), by the Cizre Chief Public Prosecutor's Office in accordance with the judgment on Turan Uytun and Kevzer Uytun (2013/9461).

91. Within the scope of torture and ill-treatment, it has been understood that the Kandıra Chief Public Prosecutor's Office decided to re-open the investigation in accordance with the judgment on Turan Günana (2013/5545). The Antalya Chief Public Prosecutor's Office also

decided to re-open the investigation in accordance with the judgment on Cemil Danışman (2013/6319). The Diyarbakır Chief Public Prosecutor's Office is conducting the investigation in accordance with the judgment on Hüseyin Caruş (2013/7812).

92. In this regard, the Government would like to note that there is no issue concerning the implementation of the criteria established by the Constritutional Court and the case-law of the ECtHR, that the judgments of the Constitutional Court are executed by the national authorities, and that these judgments are binding as regards the courts and prosecutor's offices in conducting re-trial and re-opening of investigation.

III.g Prescription period, Suspension of Sentence and Suspension of Pronouncement of the Judgment

93. The Turkish Government would firstly like to note that prescription periods have been abolished as regards the offence of torture and that procedures of adjournment and suspension of pronouncement of the judgment cannot be applied to this offence given the upper and lower limits of prison sentence prescribed for this act under Articles 94 and 95 of the Turkish Criminal Code.

94. Moreover, the Government would like to draw the Committee's attention to the fact that a working group has been established in order to consider that suspension of the sentences, suspension of pronouncement of the judgment and the prescription periods envisaged for the offences of torture and ill-treatment are not applied to the sentences imposed on law enforcement officers in this group of cases, if they are convicted for these offences.

95. The working group assesses the prescription periods, procedures of suspension of sentences and suspension of pronouncement of the judgment in detail, regard being had to the comparative law practices. The working group performed its second meeting, and comparative law researches are being carried out.

96. The Government notes that it will inform the Committee in detail as regards the outputs of the working group and other developments.

III.h. Disciplinary Investigation Procedure concerning the law enforcement officers

97. The Government would like to note that the issue as to how preliminary examination and disciplinary investigation procedures are implemented has been set out in Article 8 of the Law no. 6713 on Establishment of Law Enforcement Monitoring Commission which entered into force on 3 May 2016.

98. According to Article 8 § 1 of the Law no. 6713, when a report or a complaint is received as to the fact that the law enforcement officers committed a crime, or this fact is directly learned, the authorities which are competent to grant permission for investigation or disciplinary chiefs shall conduct the necessary procedures under the disciplinary legislation which the law enforcement officers are subject to.

99. Under the same paragraph, the civil inspectors from the Ministry of Interior shall conduct the preliminary examinations and/or disciplinary investigations concerning the

offences such as killing, intentional injury, torture and exceeding the limits of use of force allegedly committed by the law enforcement officers. Where preliminary examinations and/or disciplinary investigations concerning the mentioned offences are conducted by the governorships or district governorships, these acts are performed by the officers who are equivalent to the governor or district governor within the bounds of possibility.

100. In the event that the civil inspectors are assigned to conduct the preliminary examinations and/or disciplinary investigations, other preliminary examinations and/or disciplinary investigations launched by the administrative authorities are transferred to the civil inspectors.

101. According to Article 8 § 2 of the Law, the duties other than these ones are not imposed on the inspectors, and they are subject to vocational training concerning their areas of responsibility at regular intervals.

102. According to Article 8 § 3 of the Law, where the public prosecutors launch an investigation against the law enforcement officers due to their personal offences, the offences arising from their duties or which they committed during their duties, they shall notify the Ministry, Governorship or District Governorship in seven working days at the latest. The Ministry, Governorship, District Governorship and the officers performing the administrative investigation shall take necessary measures with a view to protecting the confidentiality of the investigation.

The Gendarmerie Human Rights Violations Examination and Evaluation Center (JIHIDEM):

103. With regard to the allegations concerning human rights violations that may be committed by the gendarmerie personnel during their performance of duties, on 26 April 2003 the Gendarmerie Human Rights Violations Examination and Evaluation Center (JIHIDEM) was established for the purpose of:

- Accepting the complaints and applications on the basis of a system,

- Performing a research as regards these allegations,

- Ensuring a judicial or an administrative investigation to be performed where these allegations are true,

- Providing information to the applicant with regard to the developments and the results of the procedures performed.

104. Any kind of human rights violations are examined in detail and requisite procedures are performed through this center.

105. The Gendarmerie Human Rights Violations Examination and Evaluation Center carries out its activities pursuant to Article 74 of the Constitution, the Law on Petition no. 3071, the Law on the Right to Information no. 4982, the Law no. 5271, the Directive on the Gendarmerie Human Rights Violations Examination and Evaluation Center JGY 27-8(A).

106. In the event that the allegations in the application are determined to fall within the scope of the human rights violations, through Brigade/Regional equal or Superior Unit Command, an administrative investigation board consisting of a superior commissioned officer having sufficient knowledge and experience or personnel having sufficient knowledge about the issue is assigned for necessary examination to be performed. It is taken into consideration that the personnel assigned as the investigator should not be the one complained of or his/her subordinate. The allegations are also investigated through Inspectors for Examining Allegations of Human Rights Violations to be assigned in the Gendarmerie General Command Headquarters, when necessary. As a result of the investigation performed, the application and administrative investigation file are submitted to the relevant Public Prosecutor's Offices for judicial examination, and necessary administrative evaluation is made in respect of the relevant personnel. Subsequent to the examination, the applicant is informed of the results and the developments.

107. 527 applications in total were lodged before the Gendarmerie Human Rights Violations Examination and Evaluation Center with the allegation of human rights violations. A total of 17 personnel were subjected to disciplinary sanctions within the framework of 9 applications lodged with the allegations of human rights violations.

108. The website of the JIHIDEM gives detailed information about the activities on human rights in respect of gendarmerie and is available on:

http://www.jandarma.gov.tr/jihidem/jihidem_eng/home_page.htm

IV. CONCLUSION

109. In light of the measures taken or envisaged, and progresses made, the authorities consider that supervision of this group of cases should be continued under the standard supervision hereafter.

110. The Government shall provide information to the CM in case of further developments.

ANNEXES:

1. High Council of Judges and Prosecutors Circular About Prosecution
2. The 8th Criminal Chamber of the Court of Cassation, Docket no. 2014/12089
3. The 8th Criminal Chamber of the Court of Cassation, Docket no.2013/8657
4. The 8th Criminal Chamber of the Court of Cassation, Docket no. 2013/15223
5. The 8th Criminal Chamber of the Court of Cassation, Docket no. 2013/11882
6. The Judgement of 3rd Chamber of the Diyarbakır Assize Court
7. The Judgment 18th Chamber of the İstanbul Assize Court