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Communication from Turkey concerning the Oya Ataman group of cases against Turkey (Application No. 74552/10)

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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Plan d'action

Communication de la Turquie concernant le groupe d'affaires Oya Ataman contre Turquie (Requête n° 74552/10) (***anglais uniquement***)

ACTION PLAN

Oya Ataman v. Turkey Group of Cases

(no.74552/10)

I. CASE DESCRIPTION

1. There are currently 51 judgments supervised under the *Ataman* 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 Ataman group of cases (11 September 2007 (*Şahin and others v. Turkey*), 21 April 2008, 29 July 2010, June 2013, 3 July 2014 and 31 December 2014, 15 July 2015 (Ataykaya)).

2. These cases concern violations of the applicants' right to freedom of peaceful assembly and/or ill-treatment of the applicants by the law enforcement officers on account of the force used by the law enforcement officers to disperse demonstrations. Certain cases also concern the failure to carry out an effective investigation into the applicants' allegations of ill-treatment or lack of an effective remedy in this respect (violations of Articles 3, 11 and 13 of the Convention).

3. In some of these cases, the Court observed that the demonstrations at issue were considered to be unlawful under domestic law. However, the fact that the demonstrations were unlawful could not justify an infringement of freedom of assembly since there was no evidence to suggest that the demonstrators had represented any danger to public order or had engaged in violent acts. In the Court's view, where demonstrators did not engage in acts of violence it was important for the public authorities to show a degree of tolerance towards peaceful gatherings.

4. The Court also found that the force used by the police to disperse demonstrations was disproportionate and excessive. In particular, the Court noted that the use of tear gas, paint sprays and pressurised water, particularly the use of a gas bomb in hospital premises (in the case of *Disk and Kesk*) were disproportionate and unnecessary, in particular when the demonstrators did not present any danger to public order, had already been apprehended (see the case of *Ali Güneş*) or had not engaged in violent acts.

5. In addition, the Court found that the national authorities failed in their duty to carry out effective investigations into the applicants' allegations of ill-treatment notably, on account of the lack of promptness and diligence in the criminal proceedings brought against law enforcement officers.

6. The Court found that it was necessary to reinforce the guarantees on proper use of tear-gas (or pepper spray) and tear-gas grenade in order to minimise the risks of death and injury, by adopting more detailed and clearer legislative and/or statutory instruments. The Court also found that it was necessary to ensure that law enforcement officers act in compliance with the Convention requirements and the CPT's recommendations when resorting to use of force. In this respect, the Court held that it was crucial to set up a system that guaranteed adequate training of law enforcement officers as well as their control and

supervision during demonstrations. The Court further considered that it was necessary to ensure an effective after-review of the necessity, proportionality and reasonableness of any use of force, especially against people who did not put up violent resistance. In this context, it was indispensable to ensure that judicial authorities conducted effective investigations so as to guarantee the accountability of senior police officers.

7. It held in the *Ataykaya* case that the use of force with potentially fatal weapons was inappropriate and fresh investigative measures ought to be taken into the death of the applicant's son.

II. INDIVIDUAL MEASURES

8. 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 reopening of the impugned investigations which will lead to establishment of the relevant facts and if appropriate will bring the responsible to justice as well as redressing the applicants by way of payment of the just satisfaction awarded by the Court.

II.a Just Satisfaction

9. The just satisfaction amounts awarded by the Court in the *Ataman* 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

II.b.1 Cases of which applicants did not request for reopening of the proceedings

10. As for totally 42 cases the applicants did not request for reopening of the proceedings. In this regard, the Government considers that it cannot be held responsible for failure of the applicants to submit a request.

11. With this regard, in Oya Ataman (74552/01), Pekaslan and Others (4572/06), Canlı Cemalettin - No. 2 (26235/04), Gülizar Tuncer Güneş (32696/10), İbrahim Ergün (238/06), Çelik - No. 3 (36487/07), Aşıcı - No. 2 (26656/04), Saya and Others (4327/02), Izgi (44861/04), Gülizar Tuncer (23708/05), Nisbet Özdemir (23143/04), Uzunget and Others (21831/03), Ahmet Akman (33245/05), Yılmaz Serkan and Others (25499/04), Ümit Erdem (42234/02), Yıldız (4524/06), Aldemir Nurettin and Others (32124/02), Biçici (30357/05), Gülizar Tuncer (12903/02), Aşıcı and Others (17561/04), Kop (12728/05), Karatepe and Others (33112/04, 36110/04, 40190/04, 41469/04, 41471/04), Dur (34027/03), Arpat (26730/05), Özalp Ulusoy (9049/06), Timtik (12503/06), Güler and Öngel (29612/05, 30668/05), Emine Yaşar (863/04), Balçık and Others(25/02) Turan Biçer (3224/03) Samüt Karabulut (16999/04), and Açık and Others (31451/03) cases, no request for reopening of the proceedings has been made within the time limit of prescription period. In those incidents, prescription period has been expired and the suspects will benefit from grandfather clause.

12. Although the statute of limitations has not expired in the cases of DISK and KESK (38676/08), İzci (42606/05), Abdullah Yaşa and Others (44827/08), Taşarsu (14958/07), Akgöl and Göl (28495/06, 28516/06), Subaşı and Çoban (20129/07), Gazioğlu and others (29835/05), Ekşi and Ocak (44920/04), Tüfekçi (52494/09), and Ali Güneş (9829/07); no request for reopening of the proceedings has been made so far.

II.b.2 Cases in which applicants' requests for reopening of the proceedings are still pending before the domestic courts

13. In the cases of *Gün and Others (8029/07), İşeri and Others (29283/07) and Kemal Baş (38291/07),* the requests for reopening of the proceedings were accepted, but the proceedings are still pending.

II.b.3 Cases of which time-limit for requesting for reopening has not been expired

14. The Court judgments on Özbent and Others (56395/08) and Akarsubaşı (70396/11) became final on 9 September 2015 and 12 December 2015. According to Article 311/f of the Code of Criminal Procedure Law no. 5271, the applicant has the right to request for reopening of the proceedings before the relevant court within one year as from the date on which the judgment became final if the request is on behalf of the suspect in question. The Government therefore notes that the applicant who has that condition has the right to request for reopening of the proceedings and sufficient legal safeguards are provided in this regard.

II.b.4 Cases of which applicants' request for reopening of the proceedings admitted

15. In the Lütfiye Zengin and Others (36443/06) case, the application lodged for reopening of the proceedings was admitted by the domestic court, and the applicants were acquitted of the alleged accusations.

II.c Explanations concerning the reopening of the investigations in some cases

İşeri and Others Case (no. 29283/07):

16. A decision of non-prosecution was rendered on 01 September 2006 in respect of the investigation initiated by the Ankara Chief Public Prosecutor's Office into the allegations of the complainants Murat İŞERİ, Hüseyin GÖLPINAR, Fevzi AYBER and Abdurrahman DAŞDEMİR that the police threatened, attacked, kicked the trade union members and hit them with truncheons. Upon the application lodged by Murat İŞERİ with the European Court of Human Rights, the case file was re-opened. Those CDs containing the pictures of the crime scene were submitted to the expert. On the color printout CD images, the complainants Fevzi AYBER, Murat İŞERİ and Hüseyin GÖLPINAR identified three police officers. Upon which it was understood that the investigation continued in respect of the identity verification aiming at determining the clear identities of the three police officers in question.

Ataykaya Case (no. 50275/08):

17. During the incidents which commenced starting from 28 March 2006 as a result of the incitement of the terrorist organisation PKK, 3 people died, and 69 police officers, 1 soldier and 10 citizens got wounded, and a great number of public buildings and workplaces were damaged until 30 March 2006. The autopsy carried out on 30 March 2006 on the body

of Tarık ATAYKAYA, who died as a result of the incidents at issue, revealed that the death had been caused by a haemorrhage and brain damage inflicted by a firearm projectile. The black cylindrical object was sent to the forensic laboratory reporting to the Diyarbakır police headquarters. The forensic report indicated that the said object was a plastic cartridge from a tear-gas grenade of type no. 12, and that the cartridge did not bear any characteristic markings from which the firearm in question could have been identified. In respect of the incident, statements of the father of the deceased and witnesses were taken. Upon order of the Diyarbakır Public Prosecutor, 23 police officers in charge of using tear-gas grenade launchers at the place of incident have been disclosed by the police department. The Diyarbakır provincial governor's office was asked to open an administrative investigation in respect of the said police officers. Statements of the witnesses and the police officers were resorted to within the framework of the administrative investigation which was sophisticatedly conducted by the Diyarbakır Police Disciplinary Board on account of the extensive nature of the events. The Diyarbakır Public Prosecutor observed that the multilateral investigation carried out with a view to identifying the perpetrator or perpetrators of the lethal shot fired against Tarık ATAYKAYA and that the case is pending.

18. Further information regarding the outcome of the investigations will be provided.

II.d An explanation on the statute of limitations: *Impossibility of reopening of the proceedings*

19. The right to legal certainty is one of the components of the well-established principle of legality or *nullumcrimen sine lege*, which includes the prohibition of retroactive law. Most domestic legal systems (Germany, Constitution, Art. 103; the Netherlands, Criminal Code, Art. 1 and Constitution, Art. 16; the United States of America, Constitution, Art. I, Sec. 9(3): 'No Bill of Attainder or ex post facto law shall be passed.'), as well as a number of international instruments (ICCPR, Art. 15(2); ECHR, Art. 7(2); Charter of Fundamental Rights and Basic Freedoms, Art. 40(6); 1998 ICC Statute, Art. 24.), contain a provision providing for the principle of legality. Therefore, the principle of legality prohibits retroactive legislation by the legislature, as well as its application by the judiciary.

20. The principle of legal certainty provides for a serious obstacle to reopening cases involving already prescribed crimes. In particular, where ordinary crimes are concerned, citizens have the right to rely on rules provided for by law, including statutes of limitation. (see, Ruth A. Kok, *Statutory Limitations in International Law*, T.M.C. Asser Press, the Hague, 2007, particularly Chapter VII, Imprescriptibility and Retroactivity, p. 263) In a society based on the rule of law, the right to legal certainty should carry more weight than the interest of society in prosecuting crimes committed in the distant past.

21. This is related to both the principle of legality or *nullumcrimen sine lege*, as well as a more general fundamental principle of legal certainty or the rule of law. It will be interpreted whether these principles prohibit a retroactive application of provisions providing for the non-applicability of statutory limitations to already prescribed crimes.

22. The case-law of the European Court of Human Rights establishes that it is permissible on the occasions that the limitation period has not expired at the time of the

amendment, if the domestic law of the state regards a limitation law as procedural rather than substantive, to amend a limitation law so as to extend the limitation period with retroactive effect with regard to crimes. The European Court of Human Rights has not decided whether a retroactive extension is permissible in the case of crimes where the prescription period has already run.

23. Some scholars consider a statute of limitations as an exculpatory defence, which belongs to substantive criminal law. In their view, expiration of a prescription period not only removes the punishability of the crime and the right to institute criminal proceedings, but also eliminates the unlawfulness of the crime *ex nunc*. Moreover, they usually consider it dubious whether, with the passage of time, the purposes and objectives of punishment, such as retribution, deterrence, rehabilitation, and prevention, can still be reached. Consequently, when the prescription period has expired, punishment of the alleged perpetrator of a crime is no longer needed. It is believed that the passage of time removes the wrongfulness of the crime. For that reason, statutes of limitation qualify as substantive criminal law, and retroactive application therefore violates the principle of legality. This being the case, the retroactive amendment of statutes of limitation to the detriment of the offender is also forbidden with respect to prescription periods that have not yet expired (see, Kok, p. 249; http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)048-e).

24. In the Turkish legal system, statute of limitation is set out in the Criminal Code, not in the Law no. 5271, therefore it has substantive character.

25. Thus, it is clear that if the statute of limitations period has expired for an offence, it is no longer possible to extend or reuse/renew the limitation.

26. Furthermore, it is also stated in the Draft Amicus Curiae Brief for the Constitutional Court of Georgia and Comments on the Retroactivity of Statutes of Limitations in Georgia as opinions prepared on behalf of the Venice Commission as follows;

''…the idea of impartiality and objectivity of the State, which must not change the rules to obtain a result affecting situations already consolidated, thereby making the defendant's position worse and creating conditions for political manipulation of criminal procedure. We cannot say that there is a guarantee or a right to certain limitations for the defendant, but we can say that the legislative power under the rule of law is obliged to respect the law it enacts and cannot legislate on criminal matters merely to avoid, to the detriment of the defendant's situation, what would have been the result under the previous law… On the other hand; where a limitation period has already run, it is possible that the principle of legality could be invoked to prevent its revival… the new statutes of limitation should not be applied on the grounds of the principles of impartiality, objectivity and trust belonging to the rule of law that is the basis of the legality principle…'' (European Commission for Democracy through Law (Venice Commission), Opinion no. 523/2009, CDL (2009)048, CDL (2009)049, CDL (2009)051, Strasbourg, 4 March 2009)

27. In conclusion, the Turkish authorities would like to point out that if statute of limitations applied retrospectively, new violations are likely to be occurred in accordance with

Article 7 of the Convention as well as it would be detrimental for the legal certainty in cases for which thestatute of limitations prescribed already.

28. To this end, the Government of Turkey considers that reopening of trials or investigations is not possible for the cases whichhave already been subjected to expiration of prescription periods (for instance, prescription period at Benzer judgments in this group had already passed when the Court delivered the judgments)in order to prevent new human rights violations.

29. In addition, the Ministry of Justice exchanged correspondence with the relevant courts and the Committee of Ministers will accordingly be provided with information about the cases for which the investigations were re-opened or retrials were conducted and the cases which have not become time-barred in this connection.

III. GENERAL MEASURES

30. 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 freedom of association, ensuring effective investigation in cases involving actions of police and gendarmerie, training and awareness-raising measures as well as an array of other measures aimed at preventing similar violations.

III.a The measures taken in accordance with the interim resolution of CM/Del/Dec(2015)1222/20 / 13 March 2015

III.a.1 Amendments made and foreseen in the Meetings and Demonstration Marches Act (Law no. 2911)

31. The Turkish Government, at the outset, would like to underline some amendments made before that decision.

32. "Directive on Procedures and Principles Regarding the Assignment of Negotiators in Demonstrations" introduced by the Ministry of Interior on 29 March 2013 with a view to peaceful settlement of those events which are likely to come up during meetings and demonstration marches as well as sporting competitions, preventing such events from turning into large scale incidents and precluding committing of crimes by ensuring public order and security established an institution for negotiations. For the purposes of communicating interlocutors' demands to the local authority and ensuring that social movements be dispersed through persuasion of interlocutors without any intervention; senior law enforcement officers such as provincial gendarmerie commander deputy, public order branch director are assigned as negotiators.

33. Within the framework of intervention in social movements, verbal warnings are issued in the first place towards the crowd in order to disperse it without intervention. Where the crowd does not disperse, actions are taken by using proportionate force pursuant to the "Directive on the Principles of Intervention in Social Movements" dated 2013 of the Ministry of Interior. Police and gendarmerie personnel are also trained in line with this directive (see annex 1).

34. The Turkish Government would firstly like to state that Article 7 of the Law no. 2911 was amended in 2014 with the Law no. 6529. The said amendment provides that audio/video footages of the meeting location shall be recorded during meetings and demonstration marches and that the recordings obtained thereof shall only be used for the purposes of determining criminal evidence.

35. 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 Meetings and Demonstration Marches Act (Law no. 2911) in terms of those provisions which fall in contradiction with the European Convention on Human Rights.

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

III.a.2 Consolidation of the diverse legislation which regulates the conduct of law enforcement officers and fixes the standards as regards the use of force during demonstrations

37. At the 1222nd meeting, the Committee of Ministers called for the consolidation of various regulations governing use of gas and force during demonstrations under a single regulation. Accordingly, the "Draft Directive on the Usage and Storage of Tear Gas and Defence Gun Along with Their Equipment and Ammunition and Training of the User Personnel" mentioned in the Action Plan dated December 2014 was completed and sent to the Office of Legal Counsellor under the Ministry of Interior for consideration. Further information will be provided regarding the progress in respect of this.

38. On the other side, an assessment has been initiated by the Ministry of Justice as to the necessity of presence of public prosecutors in the crisis center to be established for those cases involving intervention in social movements. .

39. The Government will provide, in the upcoming period, further information regarding the outcome of the work and its consequences.

III.a.3 Establishing the system of adequate ex-post facto review for necessity, proportionality and reasonableness of any such use of force in dispersing a demonstration

40. According to Article 11.6 of the "Directive on the Principles of Intervention in Social Movements" mentioned above, law enforcement officers interfering with the demonstration have to hold a meeting and make post review report in order to make assessments with regard to the nature of the demonstration, its consequences and whether the use of force is proportionate (see annex 1).

41. In Addition, according to Article 24 of the Law no. 2911, Article 58 of the Directive on the implementation of this Law and also Article 16 of the Law on Duties and Power of Police, law enforcement officers are vested with the power to intervene in unlawful social movements through use of force. In principle, law enforcement officers may exercise the aforementioned power only after necessary verbal warnings have been issued and some reasonable time has been granted for them to express themself.

42. In cases where conditions for use of force are materialized, law enforcement officers shall follow, pursuant to Article 16 of the Law on Duties and Power of Police, a progressive approach by using and gradually increasing body and physical force in view of the nature and the proportion of the resistance and, where legal conditions are satisfied, by using weapons to neutralise those resistance.

43. The offence of exceeding the limits of the authority to use force which is governed by Article 256 of the Turkish Criminal Code provides that any public officer exceeding those limits shall be subject to the provisions relating to intentional injury, which is out of pre-authorization process.

44. By the Circular no. 2007/98 of the Ministry of Interior, all law enforcement units were informed that a prompt investigation shall be initiated where it is established that the law enforcement officers act erroneously in using disproportionate force while applying their exceptional powers to interfere with fundamental rights and freedoms pursuant to the Law no. 2559.

45. By the Circular no. 2008/69, it was established that a team shall be organized under the chairmanship of the provincial deputy chiefs of police for the follow-up and supervision of proportionate use of force by the law enforcement officers.

46. Pursuant to the Circular no. 2012/55, it was indicated that teams and officials must initially carry out a deep analysis of the incident, with which the law enforcement officers interfere, in order to ensure that the law enforcement officers use proportionate force, and that if no sharp or explosive materials are used in the incident, law enforcement officers must try to prevent the incident by using physical force in the first place.

47. On the other hand, Article 25 of the Directive on the Rapid Response Forces sets out the principles governing the supervision, control and intervention during demonstrations and provides, in the first place, for implementing persuasion measures to calm the mass in order to bring it under control harmlessly, secondly for keeping the group in a specific area so that it would not get harmed, and where these are not possible, for gradually increasing the degree of the force used.

48. The Ministry of Interior prepared in 2013 a "Directive on the Acts, Procedures and Principles of the Personnel Commissioned During Social Demonstrations" which aimed at ensuring - prior to the duties such as assemblies and demonstrations which require intervention in social movements - coordination with other units, clearly setting forth the stages of use of force, techniques, tactics, orders to be used and instruments of use of force, and thus ensuring a standard practice across the country and use of proportionate force by the police.

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

III.a.4 Prompt and diligent investigations into allegations of ill-treatment and in conducting criminal proceedings initiated against law enforcement officers and in such a way as to ensure the accountability of all, including senior law enforcement officers.

III.a.4.1 Abolishment of Pre-authorization for prosecution

50. Allegations of 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 ill-treatment and conduct them in person in accordance with the Law no 5271 and the circulars issued by the Minister of Justice. If he/she does not initiate an investigation regarding a complaint or a tip, that action shall be likely to amount to the offence of negligence of duty which is prescribed in Article 257 of the Law no.5237. Moreover, that action shall generate the disciplinary offence set out in Article 63/d of the Law no. 2802 on Judges and Prosecutors.

51. At first, it should be indicated here that if a prosecutor requests authorization from administrative authorities, it may be resulted in the initiation of disciplinary proceedings in respect of him/her for the disciplinary offence stipulated in Article 63/d of the Law no. 2802; moreover, it will be noted down in the appraisal of the inspector.

52. Taking into account that disciplinary proceedings and appraisals directly affect the transfer of prosecutors to more desired cities and their commissioning to a higher position, the fault made by a prosecutor will result for him an inconvenient evaluation as a whole.

53. Lastly, the Government would like to state that a study has been initiated by the Ministry of Justice in respect of making an announcement with a view to resolving certain misunderstandings in relation to the Law no. 4483 and to drawing the attention of judges and prosecutors to those cases where prior permission is not required for prosecution.

Former progress on this regard

54. The ill-treatment offence in Turkish Legal System ought to be explained here. Previously, if the complaint or the information about an alleged offence of ill-treatment 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 on the Trial of Civil Servants and other Public Officials 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.

55. In this context, the offence of ill-treatment in Turkish law needs to be explained. The so-called ill-treatment offence, the former Criminal Code contained exactly this notion, has been designated as aggravated battery which is drawn up in Article 86/1-3.d of the current Turkish Criminal Code Law no 5237.

56. In January 2003 the Law no 4483, and Article 154 of the Law no. 5271 were amended, lifting the requirement to obtain permission from superiors in order to open investigations on public officials in cases of ill-treatment. In other words, the prosecutor may and must initiate investigation against public officers for the offences ill-treatment directly without requesting any permission; however, some of the prosecution offices had requested permission from the administrative authorities in contravention to this Law during the initial period when this Law was started to be applied following its entry into force.

57. For instance, as it was accepted that the accused police officers, who had taken the victim to the police station for a criminal investigation without giving information to the public prosecutor and ill-treated him by means of holding at the police station without taking any action, had committed the imputed offence in the course of their duties, the Court of Cassation Grand Chamber for Criminal Matters held that pursuant to the provisions of the Law no. 4483, there was no need to take a permission for investigation in respect of those accused persons.Also the 4thand8th chambers of the Court of Cassation quashed decisions which were delivered by the first instance Court regarding a necessity of pre-authorization of administrative authorities (See Annex 2).

58. The Turkish authorities would like to underline here that if any highest level law enforcement officer personally commits any crime which falls into ill-treatment offence, due to the fact that this crime will be evaluated but personal conduct, no authorization may not be needed for prosecution. It should be mentioned here that no such offence committed so far by a highest level law enforcement officer.

III.a.4.2 Effective, prompt and independent investigations into complaints

59. Amendments introduced into the Law no. 5271, entered into force on 1 June 2005, aims at ensuring the speedy investigation and, if appropriate, prosecution of alleged offences of ill-treatment. 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 Law no. 5271).

60. The Minister of Justice issued a circular pursuant to which investigations concerning allegations of ill-treatment shall be conducted by the Public Prosecutor and not by law enforcement officers in a prompt, effective and just manner with respect to human rights and in accordance with not only domestic law but also international treaties and the ECtHR judgments (See Annex 3).

61. Moreover, the Government would like to indicate that a study has been lunched by the Ministry of Justice in order to make the circular more specific for ill-treatment. Further information will be provided to the Committee of Minister in respect of progress.

Former Progress Which Have Been Already Achieved

62. As a result of the amendments made in the domestic law since the year 2000, the effective investigation of ill-treatment allegations has been redefined and significant steps have been taken in the fight against ill-treatment by increasing the penalty for the said offences. Judicial and administrative investigations are launched for officials who have allegedly violated rights acting individually against the general principles and policies of the Turkish Police, and those who are found guilty are punished.

63. The Law no. 5271 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 havesufficient 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.

64. According to this circular the cases of ill-treatment are considered to be urgent cases by the prosecution offices.

65. The Ministry of Interior also issued a number of instructions and circulars concerning the rules of carrying out investigations, taking of statements at the police headquarters, management and inspection of custody facilities (2014), procedures with respect to defence counsel (2008), apprehension procedures (2008), and the Ministry also designated necessary rules in order for prevention of ill-treatment (See Annex 4).

66. On the other hand, the Government would like to state that versatile practices have been initiated with a view to conducting effective investigations into interventions in social movements.

67. In this respect, helmet numbering has been put into practice since 15 February 2012 under Article 11 of the Law no. 2911 for the helmets used in the units intervening in social movements for the purposes of recognizing and distinguishing one another, providing convenience in the dispatch and management of the units, and in the identification of those personnel who use disproportionate force.

68. Video recording systems have been installed in riot control vehicles as well.

69. Video cameras have started to be installed on some of the helmets used by law enforcement officers. The installation is intended to be extended.

III.b Other Developments

III.b.1 The law regulating cascade usage of power in incidents

70. The Police's authority to use force or weapon is regulated in Article 16 of the Law no. 2559 on Powers and Duties of Police. In the aforementioned article, it was established that "*in case of any resistance during fulfilling of its law-enforcement responsibilities, the police shall be empowered to use force for the purpose and in proportion of overcoming such resistance. Under the power of use of force, in view of the nature and proportion of the resistance and by gradually increasing, body force, physical force and weapons, after legal conditions are satisfied, shall be used in order to neutralise those resisting."* and **use of force in a gradually increasing manner** was stipulated (came into force on 02/06/2007).

71. Article 16 §§ 3 and 7 of the Law no. 2559 was amended by Article 4 of the Law no. 6638, dated 27 March 2015, which is known to the public as the Security Package. Accordingly, the police has been vested in the authority to « **use coloured water** » and « **use weapons** » in order to neutralize the attacks, against attempted attacks, or the ones who attack by weapons such as Molotov cocktails, bombs, explosives, combustibles, asphyxiates, wounding and similar weapons.

72. By the amendment made to Article 16 § 7 of the Law no. 2559 on Powers and Duties of Police, it was clearly established that "the Police has the authority to use weapons "*in order*

to neutralize the attacks and to the extend enough to neutralize the attacks, against attempted attacks or the ones who attack by weapons such as Molotov cocktails, bombs, explosives, combustibles, asphyxiates, wounding weapons to open or closed places where persons are present individually or collectively and to cars, houses of prayer, dormitories, schools, public buildings, houses, workplaces, other persons or himself/herself", which has the aim to overcome hesitations faced in practice. On the other hand, it was emphasised that while exercising the authority to use of weapons, the police must transparently follow the principle of proportionality and protection of the physical integrity and the right to life of the persons attacking with weapons in question has been paid attention.

73. After the aforementioned Law no. 6638 entered into force, training activities have been performed for all the law enforcement agencies to grasp a better understanding of the regulations, accurately learn their power and its limit in order to prevent the violations of rights through ensuring the use of these powers where necessary.

III.b.2 Recently Established Institutions As General Measures

III.b.2.1 Establishment of Human Rights Mechanisms

74. Turkey has undertaken a series of initiatives to establish mechanisms at the domestic level to uphold human rights. These measures may potentially lead to stronger protection of the rights set out in the Convention. To this end, the Turkish Government has set up a number of human rights institutions.

III.b.2.2 Individual Application to the Constitutional Court

75. Along the lines, the Turkish authorities would also like to indicate that, in 2012, legislative amendments were adopted to introduce a possibility of an individual application before the Constitutional Court in respect of violation of human rights. Although this is not a major response to the shortcomings identified by the European Court in this case, the Turkish authorities would like to observe that an individual in the applicant's situation could today pursue the avenue of lodging an individual application to uphold his or her Convention rights, including in the present case. In this respect, the Turkish authorities would like to recall that the European Court indicated in Hasan Uzun(10755/13) case that the individual application to the Constitutional Court should be considered an effective remedy as of 23 September 2012.

76. Moreover, in its judgment of *Sayfi Sarısülük and Others v. Turkey* (no. 64126/13, 25 March 2014), regarding the applicants' complaints under Articles 2, 3, 10 and 11 of the Convention, the ECtHR declared that the decision was inadmissible due to the fact that the proceedings were still in progress before the domestic courts and that the applicants could have applied individually to the Constitutional Court.

III.b.2.3 The Ombudsman Institution

77. The Ombudsman Institution was established in Turkey, following the adoption of the Law on the Ombudsman Institution on 14 June 2012. According to the law, the Ombudsman Institution is accountable to the Parliament and no one shall issue instructions to it. It shall

examine complaints and make recommendations on the functioning of the administration with regard to the rule of law and human rights.

78. The Government would like to reiterate the information submitted before regarding the applications to the Ombudsman Institution. As it has been stated before, the Ombudsman Institution issued two separate reports as to the police intervention in social movements and sent it to the Turkish Grand National Assembly.

III.b.3 Training and Project Activities

III.b.3.1 Training and Project Activities for Security Forces

79. A number of training activities concerning human rights were given to security forces.

Police

80. Trainings on the Issues "Human Rights" between 01 January 2011 and 08 January 2016 read as follows (Annex-15):

- *Human Rights and Use of Proportionate Force*
- *Human Rights and Prohibition of Torture*
- *Legislation concerning Mobile Forces and Human Rights*
- *Human Rights and Ethics*
- *Police Ethics and Human Rights*
- *Assessment of Activities of Collecting Information in respect of Human Rights*
- *Monitoring in Human Rights*
- *National Legislation and Human Rights envisaged in International Conventions*

Number of Participants					
2011	**2012**	**2013**	**2014**	**2015**	**TOTAL**
25,877	29,640	41,281	45,745	491,857	634,400

81. There were several trainings for police department on the issues "use of force and arms" between 01 January 2011 and 08 January 2016 which had 248,131 participants and which are enumerated as follows:

- *Options of use of force- forms and terms of seizure*
- *Information of weapons and shooting*

- *Power of use of arms and force*
- *Use of force and resistance analysis*
- *Interception, identity request, search and use of force*
- *Power of force in Law of Police Dutyand Authority*

Gendarmerie

82. Within the scope of the "Site Induction Training" on human rights performed between 2009 and 2015, in 34 cities visited, 2,522 personnel in total were provided with training and 651 jails were inspected (See Annex-5).

83. The course of Human Rights is provided in;

(1) The Main Course of Gendarmerie Commissioned Officers for one semester for three times a week, 48 hours in total.

(2) The Main Course of Gendarmerie Non-Commissioned Officers three times a week, 33 hours in total.

(3) The Gendarmerie Non-Commissioned Officer College, three times a week, 42 hours in total.

84. A document titled "Brochure on Precedent Judgments rendered by the ECtHR (2009-2011) was prepared concerning ten (10) judgments on the Gendarmerie rendered by the European Court of Human Rights in respect of Turkey between 2009 and 2011, and it was published for the use of the Gendarmerie Station Commands.

85. Furthermore, a document titled "Assessment of the ECtHR judgments with regard to the Gendarmerie" was prepared concerning the judgments on the Gendarmerie rendered by the European Court of Human Rights in respect of Turkey, and it was submitted for the use of units.

86. Within the framework of the respect for human rights, the European Union Project on "Strengthening the Institutional Capacity of General Command of Gendarmerie Regarding Public Order Management and Crowd Control" started on 10 November 2015 and has been conducted in cooperation with the Italian Carabinieri for the purposes of strengthening the Gendarmerie's infrastructure to intervene in social movements and establishing a sustainable training and drill system. Under this project, training of 1,580 personnel including:

- 40 instructor training personnel,
- 1,100 beginner training personnel,
- 300 advanced training personnel,
- 100 personnel in charge of crisis management,
- 40 personnel in charge of negotiation and mediation issues

and 30,000 personnel is targeted at trainer and executor levels, respectively.

87. Meanwhile, of the personnel to intervene in social movements, those who will use gas, weapons and ammunition were given a course on "the use of tear gas, weapons and ammunition", following which they were certified. On the other hand, those who are not given this course do not use this equipment.

88. Under the name of the "Basic Course on Negotiation During Social Movements", those personnel who will be assigned as negotiators during social movements are trained for a period of two weeks on matters such as:

- Negotiation and necessity of negotiation,
- Mass psychology, group dynamics, anger and stress management,
- Implementation of communication techniques and skills,
- Persuasion and techniques of persuasion,
- Techniques, tactics and strategies of effective negotiation.

III.b.3.2 The Gendarmerie Human Rights Violations Examination and Evaluation Center (JIHIDEM):

89. 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.*

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

91. 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).

92. 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.

93. 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.

94. 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

III.b.3.3 Justice Academy of Turkey

95. The training of law enforcement officials on human rights issues has continued, and new initiatives have been taken.

96. 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 Law no. 5271, on prevention of ill-treatment and effectiveness of the judicial process. They include training for judges, prosecutors and forensic experts with a view to better implementation of the Istanbul Protocol, which provides guidance on effective investigation and documentation of ill-treatment cases.

97. 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 Prosecutor and Increasing their Effectiveness*"

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

- "*Developing the Public Prosecutors' Investigation Capacities*"

- "*Increasing the activities of the investigation in the Turkish Criminal Procedure*"

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

99. With the EU joint project on "*The Improvement of the Efficiency of the Turkish Criminal Justice System*", it was aimed to ensure that the efficiency of the Turkish Criminal Justice System is developed in accordance with the Conventional standards and that the human rights standards in the Turkish Criminal Justice System are applied.

100. Vocational retraining seminar was organized on "Effective Investigation Techniques" on 1-3 December 2014; presentation was made -to the public prosecutors who participated in the program -on related issues regarding the prohibition of inhuman treatment in national and international law, the 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 the ECHR.

101. "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-prosecutors who were trained.

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

III.b.3.4 Publication of documents with respect to increasing the effectiveness of investigations

103. The activities concerning *effective investigation in the Turkish Criminal System* were as follows:

- establishing a commission by choosing experts among 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 it is aimed to:

- 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 Law no. 5271 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-prosecutors practicing in Ankara and its provinces.

III.b.3.5 Action Plan on the Prevention of Human Rights Violations

104. An Action Plan prepared by the Ministry of Justice was adopted by the Council of Ministers on 24 February 2014 and published in the Official Gazette no. 28928 of 1 March 2014.

105. The measures required to be taken, the activities to be carried out and the arrangements to be made as well as the institutions responsible for these were identified in detail in the Action Plan.

106. In the Action Plan, "*Elimination of Obstacles Against the Freedom of Assembly and Organization"* has been determined as one of the main goals. In respect of this main goal, another fundamental goal was set as the "*Prevention of Interferences with the Assemblies and Demonstrations that Do Not Aim at Encouraging Violence and Do Not Include Violent Elements*". Under this goal, three different sub-goals have been envisaged which are concerning the "*Revision of Law No. 2911 on Meetings and Demonstration Marches in accordance with the standards set out in the ECtHR the case-law*", "*Functional continuation of the vocational trainings, which raise awareness among law-enforcement officers in terms of the standards set out in the ECtHR case-law concerning the interference with the peaceful demonstrations made without notifying*" and "*Taking alternative measures in line with the standards set out in the ECHR case-law, instead of banning, when it is notified that a meeting or demonstration march will be made, in the event that the existence of a clear, substantial and imminent risk as to the fact that an offence will be committed, which will disturb public order, cannot be put forth*". Moreover, the Action Plan sets the "*Conduction of an Effective Investigation into the Violations of the Right to Life and the Prohibition of Ill-treatment*" as another main goal and envisages several objectives and actions in terms of this goal. The application of the action plan will be monitored by the Ministry of Justice and results have been reporting to the Prime Minister's Office in yearly basis.

107. The Action Plan foresees one- and three-year-long actions as to the amendments on the Law No.2911 in compliance with the standards set forth in the case-law of the ECHR. The Committee of Ministers will be informed regarding the actions taken in this respect.

108. With a view to the implementation of this aims and reach the goals, collaborative works carried out with relevant institutions in this respect.

III.c Publication and Dissemination Measures

109. As required by law, all of the judgments of the ECtHR regarding Turkey and important judgments regarding other countries are translated into Turkish by the Human Rights Department. The translated texts of the judgments are published on the HUDOC

database (http://hudoc.echr.coe.int). All of the judgments under the group at hand were also translated into Turkish and published on the database in question.

110. In addition, the translated texts are disseminated across the relevant judicial bodies and to the domestic courts which rendered the decisions in question. They are also circulated to the institutions which have any connection with the incident.

111. Besides the ECtHR judgments, "factsheets" are also translated into Turkish by the Human Rights Department, including the ones regarding the rights prescribed in Articles 2, 3, 5 and 6 of the Convention. The translated factsheets are published under the Turkish language option on the websites of both the Human Rights Department and the Court:

(http://www.inhak.adalet.gov.tr/inhak_bilgi_bankasi/tematik_bilginotu/tematik.html)

(http://echr.coe.int/echr/en/header/press/_information+sheets/factsheets/)

IV. CONCLUSION

112. 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.

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

ANNEXES:

1- Directive on the Principles of Intervention in Social Movements

2-Judgment of the Court of Cassation, docket no. 2008/15833(4), 2010/2(Gr), 2008/1685

3- Ministry of Justice Circular no.158-20 February 2015

4- Ministry of Interior Circulars

5- Information note provided by General Command of Gendarmerie