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The opinions expressed in this report are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe, European Union, Ministry of Justice, the Justice Academy of Turkey or other stakeholders of the project.

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Stakeholders:

- Turkish Constitutional Court
- Court of Cassation
- Council of Judges and Prosecutors
- Union of Turkish Bar Associations
- Financial Crimes Investigation Board (MASAK)
- Gendarmerie General Command
- Turkish National Police
  - Anti-Cybercrime Department
  - Counter-Terrorism Department
  - Anti-Smuggling and counter-Organized Crime Department
- Information and Communication Technologies Authority
- Forensic Medicine Institution

Contents

ABBREVIATIONS

The following abbreviations are used in the Report:

ATM	Automated teller machine
Budapest Convention	Council of Europe Convention on Cybercrime
CPC	Criminal Procedure Code
DGCA	Directorate General for Criminal Affairs
DG FR & EUA	Directorate General of Foreign Relations and European Union Affairs
DG HR	Department of Human Rights, Ministry of Justice
DGleg	Directorate General for Legislation
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FMI	Forensic Medicine Institution
ICTA/BTK	Information and Communication Technologies Authority
iPROCEEDS	Cooperation on Cybercrime under the Instrument of Pre-accession (IPA)
MASAK	Mali Suçlar Araştırma Kurulu (Financial Crimes Investigation Board)
MoJ	Ministry of Justice
SEGBIS	Ses ve Görüntü Bilişim Sistemi (Audio and Video Information System)
TCC	Turkish Constitutional Court
TNP	Turkish National Police
UN	United Nations
UYAP	Ulusal Yargi Ağı Bilişim Sistemi (National Judiciary Informatics System)

References in the text to “the police” and “police officers” include both the Turkish National Police and the Gendarmerie except where a point concerns just one or other of them, which will then be indicated.

A. INTRODUCTION

1. This Report embodies the conclusions of a needs assessment undertaken for legislation/policy relating to the criminal justice system in Turkey.
2. The needs assessment has focused on four themes of particular significance for the operation of the criminal justice system: the right to liberty and security; the right to a fair trial; cybercrime; and the financing of terrorism.
3. The preparation of the needs assessment was based primarily on desk research - relating to legislation, case law, analytical studies and official and other relevant documentation - and three visits to Turkey.[1]
4. During the visits, meetings were held with members of the Constitutional Court ("TCC"), the Court of Cassation, judges and prosecutors from the Istanbul Courthouse and the Court of Appeals – Istanbul, as well as with representatives from the Ankara Bar Association, the Banks Association of Turkey, the Directorate General Security and Gendarmerie's Anti-Smuggling and Counter-Organised Crime, Anti-Terror, Cybercrime and Public Security Departments, the Financial Crimes Investigation Board ("MASAK"), the Forensic Medicine Institution, the Istanbul Bar Association, the General Directorate of European and International Affairs ("DG EU & IA") and the Department of Human Rights ("DG HR") of the Ministry of Justice ("MoJ") .
5. In addition, the preparation of the needs assessment has benefited from a meeting between one member of the needs assessment team[2] with the Information and Communication Technologies Authority ("ICTA/BTK") and written submissions from certain official stakeholders[3].
6. The purpose of all the meetings during the visits to Ankara and Istanbul was to seek answers to questions relating to the four themes that had been provided in advance to the respective interlocutors, as well as to gather other information that they considered relevant.
7. Furthermore, the preparation of the needs assessment has been guided by the requirements established in relevant European standards and, in particular, those in the European Convention on Human Rights ("the ECHR") as elaborated in the case law of the European Court of Human Rights ("the ECtHR") and the Convention on Cybercrime ("the Budapest Convention").
8. The initial draft of the Report was revised to take account of additional information, as well as many comments and suggestions, provided by the interlocutors. Those comments and suggestions that were partially and accommodated are set out in Annex 2, the ones that could not be accommodated in it are set out in Annex 3.
9. The Report, by way of background, first reviews certain problems relating to the criminal justice system seen in judgments of the ECtHR, as well as legislative developments of relevance for the four themes with which the needs assessment is concerned and the key findings in the most recent Financial Action Task Force ("FATF") mutual evaluation report on measures to combat money laundering and terrorist financing. Thereafter, it examines in turn the issues found to require attention for each of these four themes.
10. *Recommendations for any action that might be necessary to ensure compliance with European standards – grouped according to whether they concern proposals for legislative amendments and policy regulations, matters of practice and capacity building activities and training - are*

[1] 4 October 2019 (preparatory meeting with Directorate General of Criminal Affairs, Ankara), 6-8 November 2019 (Ankara) and 17-20 December 2019 (Istanbul). See Annexes 4 and 5.
[2] Burcu Baytemir Kontaci.
[3] The TCC, the Court of Cassation, the Council of Judges and Prosecutors, DG HR, the Directorate General Security and Gendarmerie's Anti-Smuggling and Counter-Organised Crime and Cybercrime Departments and MASAK. See Annex 6.

italicised and included in the discussion of each theme, as well as being presented in a consolidated form at the end of the Report.[4]

11. The Report has been prepared by Burcu Baytemir Kontaci,[5] Serkan Cengiz.[6] Estelle De Marco,[7] Feridun Yenisey,[8] Murat Volkan Dülger,[9] Michael Jameison[10] and Jeremy McBride[11] under the auspices the Project "Strengthening the Criminal Justice System and the Capacity of Justice Professionals on prevention of the European Convention on Human Rights Violations in Turkey", funded by the European Union and the Council of Europe. This report covers the legislation and practise up until 2019, as well as some rulings of the ECtHR relating to that. It does not take account of any subsequent legislative changes.

[4] See Annex 1.
[5] Dr, Ankara Hacı Bayram Veli University Faculty of Law, Ankara.
[6] Lawyer, İzmir Bar Association.
[7] Council of Europe consultant on Cybercrime
[8] Prof, Bahçeşehir University. He took part in the meetings, but he did not contribute to the final version of the report.
[9] Associate Prof, İstanbul Aydin University
[10] Council of Europe consultant on Cybercrime
[11] Barrister, Monckton Chambers, London and Visiting Professor, Central European University, Budapest.

B. BACKGROUND

12. This section is in three parts and examines relevant developments in the criminal justice system.

13. It looks first at problems of compliance with the requirements of the ECHR relating to the operation of the system seen in judgments of the ECtHR handed down over the last five years (sometimes covering events 10 or more years before that), together with the issues raised in this regard in cases that have been communicated to the Government.

14. Secondly, it reviews the relevant legislative developments relating to the criminal justice system over the same period, which havedealt with a number of the problems identified in the judgments of the ECtHR.

15. Thirdly, there is a summary of the key findings in the latest mutual evaluation report on measures to combat money laundering and terrorist financing by the FATF.

1. Judgments of the ECtHR

16. The judgments since the beginning of 2015 have been particularly concerned with aspects of the rights to liberty and security and to a fair trial but there have also been some of relevance for cybercrime and the financing of terrorism.

17. Before considering those judgments, it is worth noting that the ECtHR has found aspects of the conduct of investigations problematic and that shortcomings in this regard can have a bearing on both the deprivation of liberty and the efficacy of the trial process.

18. Thus, the ECtHR has found various failures in the conduct of investigations – essentially matters of practice rather than the legislative framework - which meant that they were not capable of establishing the commission of an offence or of leading to the identification and punishment of anyone who might have been responsible for it in cases of alleged unlawful deaths[12] and alleged ill-treatment[13].

19. It has also found: failures by the authorities to act promptly in respect of investigation into alleged unlawful deaths[14] and alleged ill-treatment[15]; a failure to conclude an investigation into alleged ill-treatment;[16] a lack of diligence in conducting an investigation into such a complaint that resulted in the proceedings becoming time-barred,[17] and the absence of an independent investigation into an alleged unlawful killing by police officers[18].

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[12] *Sultan Dölek and Others v. Turkey*, no. 34902/10, 28 April 2015; *Kavaklıoğlu and Others v. Turkey*, no. 15397/02, 6 October 2015; *Behçet Söğüt and Others v. Turkey*, no. 22931/09, 20 October 2015; *Hakim İpek v. Turkey*, no. 47532/09, 10 November 2015; *Sefer Yılmaz and Meryem Yılmaz v. Turkey*, no. 611/12, 17 November 2015; *Muhacır Çiçek v. Turkey*, no. 41465/09, 2 February 2016; *Öztünç v. Turkey*, no. 14777/08, 9 February 2016; *Başbilen v. Turkey*, no. 35872/08, 26 April 2016; *Cangöz and Others v. Turkey*, no. 7469/06, 26 April 2016; *Cerf v. Turkey*, no. 12938/07, 3 May 2016; *Kalkan v. Turkey*, no. 37158/09, 10 May 2016; *Aydoğdu v. Turkey*, no. 40448/06, 30 August 2016; *Toptanış v. Turkey*, no. 61170/09, 30 August 2016; *Altın and Kılıç v. Turkey*, no. 15225/08, 6 September 2016; *Üstdağ v. Turkey*, no. 41642/08, 13 September 2016; *Güzelaydın v. Turkey*, no. 26470/10, 20 September 2016; *Mızrak and Atay v. Turkey*, no. 65146/12, 18 October 2016; *Cengiz and Saygıkan v. Turkey*, no. 26754/12, 24 January 2017; *Sinim v. Turkey*, no. 9441/10, 6 June 2017; *Güler and Tekdal v. Turkey* (no. 65815/10, 10 October 2017; *İncin v. Turkey*, no. 3534/06, 9 January 2018; *Mihdi Perinçek v. Turkey*, no. 54915/09, 29 May 2018; *Fatih Çakır and Merve Nisa Çakır v. Turkey*, no. 54558/11, 5 June 2018; *Yirdem and Others v. Turkey*, no. 72781/12, 4 September 2018; *Hakim Aka v. Turkey*, no. 62077/08, 6 November 2018; *Hakim Aka v. Turkey*, no. 62077/08, 20 November 2018; *Nihat Soylu v. Turkey*, no. 48532/11, 11 December 2018; *Tülay Yıldız v. Turkey*, no. 61772/12, 11 December 2018; *Öney v. Turkey*, no. 49092/12, 15 January 2019; and *Algül and Others v. Turkey*, no. 59864/12, 5 February 2019.

[13] *Salin and Karşin v. Turkey*, no. 44188/09, 23 June 2015; *Kavaklıoğlu and Others v. Turkey*, no. 15397/02, 6 October 2015; *Afet Süreyya Eren v. Turkey*, no. 36617/07, 20 October 2015; *Dilek Aslan v. Turkey*, no. 34364/08, 20 October 2015; *Şakir Kaçmaz v. Turkey*, no. 8077/08, 10 November 2015; *Alpar v. Turkey*, 22643/07, 26 January 2016; *Süleyman Çelebi and Others v. Turkey*, no. 37273/10, 24 May 2016; *Ersin Erkuş and Others v. Turkey*, no. 40952/07, 31 May 2016; *Nasrettin Aslan and Zeki Aslan v. Turkey*, no. 17850/11, 30 August 2016; *Ali Aba Talipoğlu v. Turkey*, no. 16408/10, 18 October 2016; *G.U. v. Turkey*, no. 16143/10, 18 October 2016; *Müftüoğlu and Others v. Turkey*, no. 34520/10, 28 February 2017; *Daşlık v. Turkey*, no. 38305/07, 13 June 2017; and *Gülkanat v. Turkey*, no. 38176/08, 9 July 2019.

[14] *Özel and Others*, no. 14350/05, 17 November 2015.

[15] *Süleyman Demir and Hasan Demir v. Turkey*, no. 19222/09, 24 March 2015.

[16] *Süleyman Demir and Hasan Demir v. Turkey*, no. 19222/09, 24 March 2015.

[17] *Baştürk v. Turkey*, no. 49742/09, 28 April 2015 and *Sidika İmren v. Turkey*, no. 47384/11, 13 September 2016.

[18] *Özpolat and Others v. Turkey*, no. 23551/10, 27 October 2015.

a. Liberty and security

20. There have been findings of violations of Article 5 of the ECHR as regards the initial deprivation of liberty on account of the absence of reasonable suspicion[19] of the person concerned having committed an offence,[20] as well as its continuation after the prosecutor had ordered the suspect's release[21].

21. Violations of Article 5 have also been found as regards the failure to bring the person arrested under an arrest warrant before a court within 24 hours,[22] as well as the failure to bring a person otherwise arrested before a court promptly, with the incompleteness of the custody records being an important factor in assessing the delay[23].

22. Also considered problematic by the ECtHR has been the fact that a military tribunal ordering a person's detention was not independent and impartial,[24] the imposition of such detention not being in accordance with a procedure prescribed by law[25] or being in the absence of reasonable suspicion of the person concerned having committed an offence[26].

23. Further problems found by the ECtHR regarding the use of detention have been that: this had not been used – in view of the suspect's age – only as a measure of last resort and that measures other than detention had not first been considered measures;[27] the failure to consider the use of alternative measures to it where a risk of flight was supposed to exist;[28][29] the failure of the judge to examine in any way the merits of using this measure in the suspect's case;[30] the invocation in a formulaic and abstract manner of grounds to justify its use of detention;[31] and the failure to justify the continued use of detention on relevant and sufficient grounds[32].

24. In addition, violations of Article 5 have been found where there was a failure to release a suspect in detention after this had been ordered by a court[33] and also where the detention of another suspect had been held to be contrary to the Constitution by the TCC[34].

25. There have been various problems found regarding challenges to the lawfulness of detention of suspects despite the guarantee of this right under Article 5(4) of the ECHR.

26. These have included: the simple denial of access to a remedy for this purpose following arrest;[35] the fact that the military tribunal was not independent and impartial;[36] the absence of a speedy determination of such a challenge;[37] the absence of a hearing and of personal attendance by the detainee concerned;[38] the absence of equality of arms in the proceedings on account of the written submissions of the prosecutor seeking to dismiss the request for release not being

[19] In this report, "reasonable suspicion" refers to the terminology of ECHR. ECtHR understands by the term "reasonable suspicion", namely, the existence of an objective link between the person concerned and the offence supposed to have been committed or to be about to be committed.
[20] *Mergen and Others v. Turkey*, no. 44062/09, 31 May 2016; *Ayşe Yüksel and Others v. Turkey*, no. 55835/09, 31 May 2016; *Erarslan and Others v. Turkey*, no. 55833/09, 19 June 2018; and *Kavala v. Turkey*, no. 28749/18, 10 December 2019.
[21] *Lütfiye Zengin and Others v. Turkey*, no. 36443/06, 14 April 2015.
[22] *Vedat Doğru v. Turkey*, no. 2469/10, 5 April 2016.
[23] *Döner and Others v. Turkey*, no. 29994/02, 7 March 2017.
[24] *Ali Osman Özmen v. Turkey*, no. 42969/04, 5 July 2016 and *Kerman v. Turkey*, no. 35132/05, 22 November 2016.
[25] *Alparsan Altan v. Turkey*, no. 12778/17, 16 April 2019.
[26] *Alparsan Altan v. Turkey*, no. 12778/17, 16 April 2019 and *Kavala v. Turkey*, no. 28749/18, 10 December 2019.
[27] *Agit Demir v. Turkey*, no. 36475/10, 27 February 2018.
[28] "Risk of flight" is a shorthand term used by the ECtHR for a situation in which there are concrete facts indicating the possibility of flight by the suspect.
[29] *Lütfiye Zengin and Others v. Turkey*, no. 36443/06, 14 April 2015.
[30] *Vedat Doğru v. Turkey*, no. 2469/10, 5 April 2016.
[31] *Lütfiye Zengin and Others v. Turkey*, no. 36443/06, 14 April 2015.
[32] *Galip Doğru v. Turkey*, no. 36001/06, 28 April 2015.
[33] *Vedat Doğru v. Turkey*, no. 2469/10, 5 April 2016.
[34] *Mehmet Hasan Altan v. Turkey*, no. 13237/17, 20 March 2018 and *Şahin Alpay v. Turkey*, no. 16538/17, 20 March 2018.
[35] *Döner and Others v. Turkey*, no. 29994/02, 7 March 2017.
[36] *Ali Osman Özmen v. Turkey*, no. 42969/04, 5 July 2016 and *Kerman v. Turkey*, no. 35132/05, 22 November 2016. The military tribunals were subsequently abolished.
[37] *Kavala v. Turkey*, no. 28749/18, 10 December 2019.
[38] *Adem Serkan Gündoğdu v. Turkey*, no. 67696/11, 16 January 2018.

communicated to the detainee or to his lawyer;[39] and a total restriction of access to the file for the suspect and his representative, preventing them from examining the documents until the filing of the indictment almost five months after the suspect's arrest[40].

27. The ECtHR has also found violations of Article 5 in respect of the excessive length of detention[41] and the absence of an effective remedy by which to obtain reparation for violation of the rights under this provision[42].

28. The execution of judgments concerned with (a) arbitrary arrests and placement in police custody on suspicion of belonging to a criminal organisation without any evidence of a link between the suspects and the organisation and (b) the continued detention of investigative journalists, accused of having aided and abetted a criminal organisation because of their involvement in the publication of certain books is currently being addressed through the enhanced supervision procedure before the Committee of Ministers.[43]

b. Fair trial

29. The problems regarding compliance with Article 6 of the ECHR that have been manifested in judgments of the ECtHR begin with the interrogation process.

30. Thus, it has found this provision to be violated where convictions relied upon statements made by the accused to the police without a lawyer being present[44] or ones made under duress[45]. A particular problem in this connection has been the failure of the courts to examine the validity of a supposed waiver by the accused nor of the statements made to the police in the absence of a lawyer. Also found to be problematic has been the fact that a suspect did not have the benefit of the assistance of a lawyer during certain procedural acts carried out during his police custody.[46]

31. The ECtHR has found violations of the presumption of innocence in a wide range of situations, namely, as a result of: maintaining an entry in police records regarding a conviction which was still the subject of re-opened proceedings;[47] dismissing a civil claim for wrongful dismissal by reference to the claimant having committed the offence of which the claimant had been acquitted;[48] disciplinary and judicial authorities having concluded that the person concerned had been guilty prior to his criminal trial and having enforced his dismissal on these grounds even after he had been acquitted;[49] dismissing a person while the criminal proceedings against him were still going on and the administrative courts' refusal to cancel that decision once he had been cleared of the

[39] *Levent Bektaş v. Turkey*, no. 70026/10, 16 June 2015; *Abdullatif Arslan and Zerife Arslan v. Turkey*, no. 40862/08, 21 July 2015; *Mustafa Avci v. Turkey*, no. 39322/12, 23 May 2017; *Adem Serkan Gündoğdu v. Turkey*, no. 67696/11, 16 January 2018; and *Ruşen Bayar v. Turkey*, no. 25253/08, 19 February 2019.
[40] *Mustafa Avci v. Turkey*, no. 39322/12, 23 May 2017.
[41] *Ruşen Bayar v. Turkey*, no. 25253/08, 19 February 2019.
[42] *Kerman v. Turkey*, no. 35132/05, 22 November 2016; *Döner and Others v. Turkey*, no. 29994/02, 7 March 2017; and *Ruşen Bayar v. Turkey*, no. 25253/08, 19 February 2019. These cases concerned State Security Courts – which have been abolished – but provisions of the CPC governed the events in question.
[43] Examples of the former are *Mergen and Others v. Turkey*, no. 44062/09, 31 May 2016 and *Ayşe Yüksel and Others v. Turkey*, no. 55835/09, 31 May 2016 and *Nedim Şener v. Turkey*, no. 38270/11, 8 July 2014 and *Şık v. Turkey*, no. 53413/11, 8 July 2014 are examples of the latter.
[44] *Seyfettin Güneş v. Turkey*, no. 22182/10, 17 November 2015; *İrmak v. Turkey*, no. 20564/10, 12 January 2016; *Gökbulut v. Turkey*, no. 7459/04, 29 March 2016; *Abdulgafur Batmaz v. Turkey*, no. 44023/09, 24 May 2016; *Bayram Koç v. Turkey*, no. 38907/09, 5 September 2017; *Bozkaya v. Turkey*, no. 46661/09, 5 September 2017; *Türk v. Turkey*, no. 22744/07, 5 September 2017; *İzzet Çelik v. Turkey*, no. 15185/05, 23 January 2018; *Ulay v. Turkey*, no. 8626/06, 13 February 2018; *Canşad and Others v. Turkey*, no. 7851/05, 13 March 2018; *Girişen v. Turkey*, no. 53567/07, 13 March 2018; *Ömer Güner v. Turkey*, no. 28338/07, 4 September 2018; *Mehmet Duman v. Turkey*, no. 38740/09, 23 October 2018; *Soytemiz v. Turkey*, no. 57837/09, 27 November 2018 (in circumstances where the police had unlawfully removed the accused's officially appointed lawyer and had coerced him into making incriminatory statements in the absence of that lawyer); *Ruşen Bayar v. Turkey*, no. 25253/08, 19 February 2019; *Harun Gürbüz v. Turkey*, no. 68556/10, 30 July 2019; *Akdağ v. Turkey*, no. 75460/10, 17 September 2019; and *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, 28 January 2020. Some of these cases had involved proceedings before State Security Courts – which have been abolished – but their relevance relates really to the procedure before the hearings themselves.
[45] *Aydın Çetinkaya v. Turkey*, no. 2082/05, 2 February 2016 and *Abdulgafur Batmaz v. Turkey*, no. 44023/09, 24 May 2016.
[46] *Galip Doğru v. Turkey*, no. 36001/06, 28 April 2015 (transportation to the scene with reconstruction of the facts and his statement to the police).
[47] *Dicle and Sadak v. Turkey*, no. 48621/07, 16 June 2015.
[48] *Alkaşı v. Turkey*, no. 21107/07, 18 October 2016.
[49] *Kemal Coşkun v. Turkey*, no. 45028/07, 28 March 2017.

charge;[50] and upholding a person's dismissal on the basis of considering him criminally liable despite the proceedings in respect of the alleged offence having been discontinued[51].

32. A violation was also found as regards the lack of independence and impartiality of the Izmir State Security Court,[52] which has now been abolished.

33. The conduct of the actual proceedings in court has been found to be problematic in several respects. These have concerned: the refusal to hear any witnesses for the defence;[53] the absence of any opportunity, at any stage in the proceedings, for the accused and their lawyers to question an anonymous witness and to cast doubt on his credibility;[54] the absence of any opportunity for the accused to examine or have examined witnesses against him, although their statements had been decisive for his conviction;[55] and the conviction of an accused where he did not have access to incriminating evidence against him[56].

34. There have also been various problems found by the ECtHR regarding particular appellate proceedings which are not necessarily reflective of general practice. These have concerned: a refusal of fresh determination of the case in which the accused had been convicted in his absence in circumstances where he had not waived his right to appear or tried to evade justice;[57] the failure of the courts to address the relevant arguments raised by the accused, who had challenged on appeal the reliability and accuracy of the main item of evidence used in support of her conviction;[58] the failure to communicate to the opinion of a prosecutor to the appeal court, taking into account the nature his observations and the impossibility for the defendant to respond in writing;[59] the failure to communicate the opinion of the Principal Public Prosecutor to the lawyer of one of the accused in proceedings before the Court of Cassation;[60] and the dismissal of an appeal on the basis of the case file without examining the arguments of the appellants about the lack of legal basis for the sanction imposed on them[61].

35. The ECtHR has also found violations of Article 6 on account of the excessive length of criminal proceedings[62] and of Article 13 as regards the absence of an effective remedy in respect of such proceedings[63].

c. Cybercrime

36. Although there have been no cases specifically concerned with cybercrime, there are some rulings of the ECtHR of relevance to measures taken to tackle this.

37. Thus, a violation of the right to freedom of expression under Article 10 was found in respect of the transfer to external discs of the entire contents of a magazine's computers and their storage by the prosecutor's office. In the view of the ECtHR, this had undermined the protection of sources to a greater extent than an order requiring them to be revealed since the indiscriminate retrieval of all the data had revealed information that was unconnected to the acts in issue.[64]

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[50] *Seven v. Turkey*, no. 60392/08, 23 January 2018.
[51] *Urat v. Turkey*, no. 53561/09, 27 November 2018.
[52] *Çamlar v. Turkey*, no. 28226/04, 10 November 2015.
[53] *Kuveydar v. Turkey*, no. 12047/05, 19 December 2017.
[54] *Balta and Demir v. Turkey*, no. 48628/12, 23 June 2015.
[55] *Gökbulut v. Turkey*, no. 7459/04, 29 March 2016; *Daştan v. Turkey*, no. 37272/08, 10 October 2017; and *Ürek and Ürek v. Turkey*, no. 74845/12, 30 July 2019.
[56] *İshak Sağlam v. Turkey*, no. 22963/08, 10 July 2018 (a computer disk).
[57] *M.T.B. v. Turkey*, no. 47081/06, 12 June 2018 and *İshak Sağlam v. Turkey*, no. 22963/08, 10 July 2018.
[58] *Hatice Çoban v. Turkey*, no. 36226/11, 29 October 2019.
[59] *Günana and Others v. Turkey*, no. 70934/10, 20 November 2018.
[60] *D.Y.S. v. Turkey*, no. 49640/07, 16 July 2015.
[61] *Bilen and Çoruk v. Turkey*, no. 14895/05, 8 March 2016.
[62] *Galip Doğru v. Turkey*, no. 36001/06, 28 April 2015; *Dilipak v. Turkey*, no. 29680/05, 15 September 2015; *Gurban v. Turkey*, no. 4947/04, 15 December 2015; *Kars and Others v. Turkey*, no. 66568/09, 22 March 2016; *Bozkaya v. Turkey*, no. 46661/09, 5 September 2017; *Canşad and Others v. Turkey*, no. 7851/05, 13 March 2018; *Girişen v. Turkey*, no. 53567/07, 13 March 2018; *Uzan v. Turkey*, no. 30569/09, 20 March 2018*; İshak Sağlam v. Turkey*, no. 22963/08, 10 July 2018 and *Ruşen Bayar v. Turkey*, no. 25253/08, 19 February 2019.
[63] *Gurban v. Turkey*, no. 4947/04, 15 December 2015.
[64] *Görmüş and Others v. Turkey*, no. 49085/07, 19 January 2016.

38. In addition, the interception of communications without a legal basis was found to violate the right to respect for private life under Article 8 as there was no law authorising the National Intelligence Agency of Turkey ("MİT") to undertake preventive interception.[65]

39. Furthermore, a violation of Article 8 was also found by the ECtHR in respect of the seizure of a lawyers' electronic data protected by lawyer-client professional secrecy, as well as the refusal to return or destroy them, by the judicial authorities for the purposes of criminal proceedings against another lawyer who had shared their office, and of the lack of sufficient procedural guarantees in the law relied upon as this was interpreted and applied by the judicial authorities.[66]

40. Moreover, it should be noted that in cases not involving Turkey, the ECtHR has found violations of the right to respect for private life under Article 8 where there was an absence of legal protection against the covert filming of a child for a sexual purpose[67] and where there was an inadequate legal basis for gaining access to subscriber information associated with a dynamic IP address during the monitoring of users of a certain file-sharing networks in the course of efforts to tackle the sharing of child pornography[68].

41. However, the ECtHR has recognised that cyberbullying be an aspect of violence against women and girls, taking on forms such as cyber breaches of privacy, intrusion into the victim's computer and the capture, sharing and manipulation of data and images, including private data.[69] It has also considered that a requirement to collect the names and addresses of users of pre-paid SIM cards and the possibility of obtaining access to this data in certain defined circumstances was not a violation of Article 8.[70]

d. Financing of terrorism

42. There have also been no judgments of the ECtHR specifically concerned with the financing of terrorism. However, there are some judgments regarding the understanding of what constitutes "terrorism" for the purpose of various offences and the way this can be legitimately defined that necessarily have implications for the scope of measures taken to counter its financing.[71]

43. Thus, a conviction of persons for membership of a terrorist organisation because of an expansive interpretation of the definition of "terrorism" in the relevant as capable of embracing acts that constituted moral coercion (namely, intimidation) of the public was considered by the ECtHR to be an unjustifiable extension of the reach of the criminal law contrary to the requirement in Article 7 that offences and the relevant penalties must be clearly defined by law .[72]

44. It has been found incompatible with the right to freedom of expression under Article 10 to convict persons for the offence of publishing articles containing a statement by an illegal armed organisation where the text, taken as a whole, had not contained any call for violence, armed resistance or insurrection and had not amounted to hate speech.[73]

45. Similarly, in the absence of such advocacy, the mere display of symbols and pictures pertaining to a terrorist organisation and its leader could not, in the view of the ECtHR, be construed as support

[65] *Mustafa Sezgin Tanrıkulu v. Turkey*, no. 27473/06, 18 July 2017. However, following an amendment to Law no. 2937 of 01.11.1983 by Article 3 of Law no. 6532 on 17 April 2014, Article 6(g) and some other additional paragraphs of the former Law now empower the MİT to intercept communication for several reasons, including national security and prevention of terrorism.
[66] *Kırdök and Others v. Turkey*, no. 14704/12, 3 December 2019.
[67] *Söderman v. Sweden* [GC], no. 5786/08, 12 November 2013.
[68] *Benedik v. Slovenia*, no. 62357/14, 24 April 2018.
[69] See, e.g., *Buturugă v. Romania*, no. 56867/15, 11 February 2020, in which a violation of the positive obligations under Article 3 and 8 were found to have been violated as a result of the failure to examine on their merits allegations to the effect that the applicant's former husband had improperly intercepted, consulted and saved her electronic communications.
[70] *Breyer v. Germany*, no. 50001/12, 30 January 2020.
[71] *See, e.g., Bakır and Others v. Turkey*, no. 46713/10, 10 July 2018 and *İmret v. Turkey (No. 2)*, no. 57316/10,10 July 2018, which concern alleged membership of an illegal organisation.
[72] *Parmak and Bakir v. Turkey*, no. 22429/07, 3 December 2019.
[73] *Bayar et Gürbüz v. Turkey (No. 2)*, no. 33037/07, 3 February 2015; *Belek and Velioğ v. Turkey (No. 2)*, no. 44227/04, 6 October 2015; *Özalp v. Turkey*, no. 48583/07, 18 July 2017; and *Ali Gürbüz v. Turkey*, no. 52497/08, 12 March 2019.

for unlawful acts committed by them.[74] Nor was it prepared to so regard a person's mere participation in the funeral of deceased members of a terrorist organisation and the hanging of photos of those members on his jacket.[75]

46. Furthermore, the ECtHR did not consider it appropriate to treat as terrorist propaganda speeches which express discontent with respect to certain policies of the government, the practices of the security forces, and the detention conditions of Abdullah Öcalan,[76] a television broadcast urging the authorities and the public to consider the potential role of the imprisoned leader of an illegal armed organisation in finding a peaceful solution to the Kurdish problem and calling for an improvement in the conditions of his detention[77] or articles assessing the establishment and development of a terrorist organisation and the relationship of intellectuals with it[78] when these, taken as a whole, did not encourage violence, armed resistance or an uprising or an apology of terrorism and were not capable of inciting violence by instilling a deep-seated and irrational hatred against identifiable persons so as to constitute hate speech.

47. Moreover, the ECtHR has found violations of Article 10 when no assessment as to these potential effects having been made about the material that was the basis for a conviction for disseminating terrorist propaganda[79] and also about a book whose publisher was charged with aiding and abetting an illegal organisation and disseminating propaganda in its favour[80].

48. In addition, the ECtHR has underlined that a peaceful request by parents regarding the education of their children was still protected by the right to freedom of expression, even if it coincided with the aims or instructions of an illegal armed organisation.[81]

49. Finally, the ECtHR has found that the requirement of foreseeability where criminal liability is being imposed had not been met where presence at a demonstration called for by an illegal organisation and openly acting in a manner expressing a positive opinion towards it was sufficient to be considered acting "on behalf of" the organisation and thus authorising the punishing of the person in question as an actual member[82] and it took a similar view of a provision stipulating that "anyone who aids an (illegal) organisation knowingly and willingly, even if he does not belong to the hierarchical structure of the organisation, shall be punished as a member of the organisation"[83].

50. The execution of judgments concerned with convictions for publication of press articles containing declarations from illegal armed organisations, notwithstanding the fact that the articles did not incite to intolerance or hatred is currently being addressed through the enhanced supervision procedure before the Committee of Ministers.

e. Communicated cases

51. In the issues raised by the ECtHR in respect of applications to it that have been communicated to the Government, there can be seen some of the same problems that have already figured in its judgments but there are also ones that have not so far been found to constitute violations of the ECHR by Turkey.[84]

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[74] *Müdür Duman v. Turkey*, no. 15450/03, 6 October 2015.
[75] *Nejdet Atalay v. Turkey*, no. 76224/12, 19 November 2019.
[76] *Öner and Türk v. Turkey*, no. 51962/12, 31 March 2015 and *Belge v. Turkey*, no. 50171/09, 6 December 2016.
[77] *Selahattin Demirtaş v. Turkey (No. 3)*, no. 8732/11, 9 July 2019.
[78] *Fatih Taş v. Turkey (No. 2),* no. 6813/09, 10 October 2017.
[79] *Mart and Others v. Turkey*, no. 57031/10, 19 March 2019 and *Özer v. Turkey (No. 3*), no. 69270/12, 11 February 2020.
[80] *Fatih Taş v. Turkey (No. 4),* no. 51511/08, 24 April 2018.
[81] *Döner and Others v. Turkey*, no. 29994/02, 7 March 2017.
[82] *Işıkırık v. Turkey* no. 41226/09, 14 November 2017.
[83] *Bakır and Others v. Turkey*, no. 46713/10, 10 July 2018.
[84] Subsequent to the drafting of the report, the ECtHR handed down judgments in five of the communicated cases listed below: *Baş v. Turkey* no. 66448/17, 3 March 2020 (violations of Article 5(1) and 5(4); *Sabuncu v. Turkey*, no. 23199/17, 10 November 2020 (violation of Article 5(1) but not of Article 5(4); and *Şik v. Turkey*, no. 36493/17, 24 November 2020 (violation of Article 5(1) but not of Article 5(4)); *Selahattin Demirtaş v. Turkey (No. 2)* [GC], no. 14305/17, 22 December 2020 (violations of Article 10, 5 (1), 5(1)c, 5(3) and Article 3 of Protocol No.1, article 18+5; *Atilla Taş v. Turkey* no.72/17, 19 January 2021 (violations of Article 5(1) and 10 and no violation of Article 5(4).

i. Liberty and security

52. Those relating to liberty and security concern: the existence of a legal basis for an arrest;[85] the existence of a reasonable suspicion and/or sufficient other grounds justifying an arrest;[86] the independence and impartiality of the judges deciding on the imposition of detention;[87] the lawfulness of the procedure for imposing detention;[88] the existence of a reasonable suspicion justifying the use of detention;[89] the adequacy of the reasoning for the imposition of detention;[90] the existence of an ulterior motive for a deprivation of liberty;[91] the length of detention;[92] the ability to challenge the lawfulness of detention;[93] the speediness of challenges to the legality of detention before the TCC;[94] the judicial character of peace judges determining challenges to the lawfulness of detention;[95] the assistance of a lawyer for a challenge to the lawfulness of detention;[96] the observance of the equality of arms in proceedings to challenge the lawfulness of detention;[97] access to the case file for a challenge to the lawfulness of detention;[98] the adequacy of the response to submissions made in a challenge to the lawfulness of detention;[99] and the availability of a right to compensation or a deprivation of liberty contrary to Article 5[100].

ii. Fair trial

53. Those concerned with the observance of the right to a fair trial involve: the appropriateness of the arrangements for interrogating a juvenile suspect;[101] the due notification of the charges to a suspect;[102] the adequacy of the time and facilities for preparing one's defence;[103] the observance of the presumption of innocence;[104] the ability of a juvenile defendant to participate effectively in the proceedings against him;[105] the absence of the accused from most hearings during the trial;[106] the adequacy of legal representation at the trial;[107] the adequacy of the

[85] *Duğan v. Turkey*, no. 84543/17; *Kiliç v. Turkey*, no. 208/18; *Tercan v. Turkey*, no. 6158/18; and *Sama v. Turkey*, no. 38979/19
[86] *Kiliç v. Turkey*, no. 208/18; *Tercan v. Turkey*, no. 6158/18.
[87] *Altan and Altan v. Turkey*, no. 13237/17; *Akgün v. Turkey*, no. 19699/18 and *Ablak v. Turkey*, no. 28566/17
[88] *Baş v. Turkey* no. 66448/17.
[89] *Altun v. Turkey*, no. 60065/16; *Taş and Aksoy v. Turkey*, no. 72/17; *Ilicak v. Turkey*, no. 1210/17; *Altan and Altan v. Turkey*, no. 13237/17; *Demirtaş v. Turkey*, no. 14305/17; *Bulaç v. Turkey*, no. 25939/17; *Yücel v. Turkey*, no. 27684/17; *Güler v. Turkey*, no. 62170/17; *Sabuncu and others v. Turkey*, no. 23199/17; *Şik v. Turkey*, no. 36493/17; *Kiliç v. Turkey*, no. 208/18; *Tercan v. Turkey*, no. 6158/18; *Erdal v. Turkey*, no. 6306/18; *Akgün v. Turkey*, no. 19699/18; *Ünal v. Turkey*, no. 20973/18; *Sayilğan v. Turkey*, no. 53887/18; and *Sama v. Turkey*, no. 38979/19.
[90] *Altun v. Turkey*, no. 60065/16; *Taş and Aksoy v. Turkey*, no. 72/17; *Ilicak v. Turkey*, no. 1210/17; *Altan and Altan v. Turkey*, no. 13237/17; *Demirtaş v. Turkey*, no. 14305/17; *Sabuncu v. Turkey*, no. 23199/17; *Bulaç v. Turkey*, no. 25939/17; *Şik v. Turkey*, no. 36493/17; *Baş v. Turkey* no. 66448/17; *Kiliç v. Turkey*, no. 208/18; *Tercan v. Turkey*, no. 6158/18; *Erdal v. Turkey*, no. 6306/18; *Akgün v. Turkey*, no. 19699/18; *Ünal v. Turkey*, no. 20973/18; *Bırlık v. Turkey*, no. 54469/18; and *Sama v. Turkey*, no. 38979/19.
[91] *Demirtaş v. Turkey*, no. 14305/17; *Kiliç v. Turkey*, no. 208/18; and *Bırlık v. Turkey*, no. 54469/18.
[92] *Altun v. Turkey*, no. 60065/16; *Taş and Aksoy v. Turkey*, no. 72/17; *Ilicak v. Turkey*, no. 1210/17; *Altan and Altan v. Turkey*, no. 13237/17; *Demirtaş v. Turkey*, no. 14305/17; *Sabuncu v. Turkey*, no. 23199/17; *Bulaç v. Turkey*, no. 25939/17; *Yücel v. Turkey*, no. 27684/17; *Şik v. Turkey*, no. 36493/17; *Güler v. Turkey*, no. 62170/17; *Baş v. Turkey* no. 66448/17; *Tercan v. Turkey*, no. 6158/18; *Erdal v. Turkey*, no. 6306/18; *Birlik v. Turkey*, no. 54469/18; and *Sama v. Turkey*, no. 38979/19
[93] *Erdal v. Turkey*, no. 6306/18 and *Ünal v. Turkey*, no. 20973/18.
[94] *Altun v. Turkey*, no. 60065/16; *Taş and Aksoy v. Turkey*, no. 72/17; *Ilicak v. Turkey*, no. 1210/17;*Altan and Altan v. Turkey*, no. 13237/17; *Demirtaş v. Turkey*, no. 14305/17; *Sabuncu v. Turkey*, no. 23199/17; *Bulaç v. Turkey*, no. 25939/17; *Yücel v. Turkey*, no. 27684/17; *Şik v. Turkey*, no. 36493/17; *Erdal v. Turkey*, no. 6306/18; *Ünal v. Turkey*, no. 20973/18; and *Sayilğan v. Turkey*, no. 53887/18.
[95] *Altun v. Turkey*, no. 60065/16; *Baş v. Turkey* no. 66448/17; *Tercan v. Turkey*, no. 6158/18; *Akgün v. Turkey*, no. 19699/18; and *Ablak v. Turkey*, no. 28566/17.
[96] *Altun v. Turkey*, no. 60065/16.
[97] *Altun v. Turkey*, no. 60065/16; *Baş v. Turkey* no. 66448/17; and *Kiliç v. Turkey*, no. 208/18.
[98] *Altun v. Turkey*, no. 60065/16; *Taş and Aksoy v. Turkey*, no. 72/17; *Altan and Altan v. Turkey*, no. 13237/17; *Demirtaş v. Turkey*, no. 14305/17; *Yücel v. Turkey*, no. 27684/17; *Baş v. Turkey* no. 66448/17; and *Tercan v. Turkey*, no. 6158/18.
[99] *Altun v. Turkey*, no. 60065/16 and *Baş v. Turkey* no. 66448/17.
[100] *Altun v. Turkey*, no. 60065/16; *Altan and Altan v. Turkey*, no. 13237/17; *Yücel v. Turkey*, no. 27684/17; and *Kiliç v. Turkey*, no. 208/18.
[101] *Can v. Turkey*, no. 38578/11.
[102] *Yeğer v. Turkey*, no. 4099/12.
[103] *Eraslan v. Turkey*, no. 45768/12.
[104] *Pışkın v. Turkey*, no. 33399/18.
[105] *Can v. Turkey*, no. 38578/11.
[106] *Eraslan v. Turkey*, no. 45768/12.
[107] *Bayoğlu v. Turkey*, no. 72613/11.

reasons for refusing to collect and examine further evidence;[108] the ability to obtain alternative expert evidence;[109] the ability to compare transcripts with the original audio recordings;[110] the ability to examine witnesses;[111] the testing of the veracity and probative value of the evidence;[112] the reliance on evidence obtained in the absence of a lawyer;[113] the reliance of evidence allegedly obtained in violation of the prohibition on torture and inhuman and degrading treatment;[114] the sufficiency of the reasons for a conviction;[115] the ability of a person tried in absentia to obtain a fresh determination of the case where he had not waived his right to appear or tried to evade justice;[116] the adequacy of the reasons given by the court of Cassation for dismissing an appeal;[117] the consistency of a ruling of the Court of Cassation with its ruling in similar cases[118].

2. Legislative developments

54. This legislative and related reforms concern both ones adopted in recent years as part of the process of the supervision of the execution of judgments before the Committee of Ministers and others adopted outside this process.

55. In the case of former they have dealt with issues relevant to the rights to liberty and security and to a fair trial, namely:

- The abrogation in 2014 of the procedure of provisional detention so that, if the distance between the judge having issued the arrest warrant and the place of arrest is too far to bring a person detained within 24 hours before a competent judge, the competent judge shall hear such person through audio-visual communication system;[119] and
- The introduction of the Audio/Visual Information System ("SEGBIS") to take statements of any parties as well as witnesses, thus introducing the possibility to question anonymous witnesses by enabling changes of voice or and appearance, with the "Regulation on the Use of the Audio/Visual Information System in Criminal Procedure" of 2011 establishing the conditions of recording and storing statements.[120]

56. The other relevant legislative and related developments have been:

- The addition of a new paragraph 6 to Article 158 of the CPC whereby a decision can be taken that there is no preliminary suspicion against someone and precluding them from being labelled as a suspect;[121]
- An amendment to Article 102 of the CPC setting new and shorter maximum periods for detention at the investigation stage;[122]

[108] *Çakir v. Turkey*, no. 24654/19.
[109] *Yeşil v. Turkey*, no. 7155/12.
[110] *İnal and İnal v. Turkey*, no. 28359/08
[111] *Gökmen v. Turkey*, no. 67465/12; *Alan v. Turkey*, no. 3137/19; *Oğuz v. Turkey*, no. 37404/18; *Baygeldı v. Turkey*, no. 2577/19; *Çakir v. Turkey*, no. 24654/19.
[112] *İnal and İnal v. Turkey*, no. 28359/08; *Gündüz v. Turkey*, no. 3473/19; and *Gür v. Turkey*, no. 33372/19.
[113] *Yeşil v. Turkey*, no. 7155/12 and *Doğan v. Turkey*, no. 3324/19.
[114] *Çiçekeler v. Turkey*, no. 37637/18 and *Gür v. Turkey*, no. 33372/19.
[115] *Gündüz v. Turkey*, no. 3473/19.
[116] *Yeğer v. Turkey*, no. 4099/12.
[117] *Topçu v. Turkey*, no. 9302/19.
[118] *Topçu v. Turkey*, no. 9302/19.
[119] Resolution CM/ResDH(2017)16 Execution of the judgment of the European Court of Human Rights Salih Salman Kılıç against Turkey, adopted by the Committee of Ministers on 18 January 2017 at the 1275th meeting of the Ministers' Deputies.
[120] Resolution CM/ResDH(2018)160 Execution of the judgment of the European Court of Human Rights Balta and Demir against Turkey, adopted by the Committee of Ministers on 10 April 2018 at the 1313th meeting of the Ministers' Deputies.
[121] The new procedure was accepted with the Article 140 of the Law. No. 7078 on Amending the Decree Law (Published in the Repeating Official Gazette numbered 30354 and dated 8 March 2018).
[122] The amendment was accepted with the Article 18 of the Law No. 7188 on Amending the Criminal Procedure Code and Other Laws (Published in the Official Gazette numbered 30928 and dated 24 October 2019). Two additional paragraphs were thereby introduced concerning the maximum length of detention during the criminal investigation but not the prosecution; namely, 6 months for a crime not

- Amendments to Article 141 of the CPC concerning compensation for excessive length of detention;[123]
- An amendment to Article 6 of the Principles About Promotion Grounds of Judges and Prosecutors, providing that account was to be taken of "whether they (judges and prosecutors) had caused a violation decision rendered by ECtHR and TCC, if so characteristics and gravity of the violation found, above all their efforts for protection of the rights guaranteed by ECHR and the Constitution";[124]
- An amendment to Article 28 of the Judges and Prosecutors Law No. 2802 through Law No. 6723 of 01.07.2016 in terms of Identification and Performance of Investigation, Prosecution and Trial durations, with a view to preventing violations of the right to trial within reasonable time;[125]
- Amendments to Articles 174,[126] 250,[127] 251[128] and 286[129] of the CPC, respectively providing for limitations on the return of the indictment, fast trials, simplified trials and paving the way for appeal on law after appeal on facts and law for crimes in regarding the freedom of expression; and
- The making of in-service training activities and specialization programmes as criteria for the assessment of the grounds of promotion of judges and prosecutors and the assessment of the work of the first-class judges and prosecutors[130].

3. Financial Action Task Force findings

57. The key findings in the FATF's mutual evaluation report for 2019 on measures to combat money laundering and terrorist financing[131] of relevance for the present Report are as follows:

Immediate Outcome 9[132]

a) Turkish authorities have a good understanding of TF threats in Turkey. While MASAK and TNP demonstrated understanding of domestic and international TF risk, this was less evident across other LEAs.

b) Turkey undertakes a large number of terrorism investigations, TF investigation within these cases are largely directed towards identifying the assets held rather than the identification of the collection, movement and use of funds or other assets.

c) MASAK provide LEAs[133] with a good level of details regarding the financial and asset data in relation to a suspect, however there is limited evidence that, outside of FETÖ/PDY

falling under the jurisdiction of assize court and 1 year for a crime falling under the jurisdiction of assize court, with an exception for certain crimes - such as those against the security of the state or the anti-terror law – for which the maximum length is 1 year 6 months, with the possibility of an extension for an extra 6 months. In other words, this provision may be interpreted as requiring a prosecutor to issue the indictment within these time limits. However, the overall maximum periods for detention (investigation and prosecution stages) remain those in Article 102(1) and (2) of the CPC: 1 year for crimes falling outside the jurisdiction of the assize courts, which can be extended once for an extra 6 months if there are compelling grounds; and 2 years falling under the jurisdiction of assize court, which can be extended to 3 years for most crimes and 5 years for those against the security of the state or the anti-terror law.

[123] By Articles 17 of Law No. 6459 (Published in the Official Gazette numbered 28633 and dated 30 April 2013). and Article 70 of Law no 6545(Published in the Official Gazette numbered 29044 and dated 28 June 2014).

[124] Official Gazette, 15 January 2020.

[125] Official Gazette No. 3015, 23 June 2017.

[126] The amendments accepted with the Article 20 of the Law No. 7188 on Amending the Criminal Procedure Code and Other Laws (Published in the Official Gazette numbered 30928 and dated 24 October 2019) and Law no: 5353/20, Official Gazette 1 June 2005.

[127] The amendment was accepted with the Article 23 of the Law No. 7188 on Amending the Criminal Procedure Code and Other Laws (Published in the Official Gazette numbered 30928 and dated 24 October 2019).

[128] The amendment was accepted with the Article 24 of the Law No. 7188 on Amending the Criminal Procedure Code and Other Laws (Published in the Official Gazette numbered 30928 and dated 24 October 2019).

[129] The amendment was accepted with the Article 29 of the Law No. 7188 on Amending the Criminal Procedure Code and Other Laws (Published in the Official Gazette numbered 30928 and dated 24 October 2019).

[130] Respectively, amendments to decisions 675/1 and 675/2 of the Council of Judges and Prosecutors, Official Gazette, 15 January 2020.

[131] https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-turkey-2019.html

[132] Investigation and Prosecution.

[133] Law Enforcement Agencies.

investigations, public prosecutors have used MASAK analysis to extend their investigation to include the bigger networks or for identification of the financiers. In addition, STR-generated files are low, in view of Turkey's risk profile and risk assessment, and by comparison with the number of TF and terrorism investigations.

d) Turkey has a low conviction rate under TF law. Turkey provided an explanation in relation to low numbers of TF cases brought to trial in Turkey; the application of the principle of concurrent offences "i.e., 'conceptual aggregation' under Article 44 of the of the Criminal Code" which means that terrorism offences of membership and providing assistance may be prioritised ahead of TF cases. Whilst Turkey undertook a case by case review of these convictions, detail was not available to demonstrate the depth of investigations as being beyond an asset research exercise.

e) There is no overarching strategy or action plan to detail how the investigation of TF is used to support national CT strategies and investigations. TF cases may attract a maximum of 10 years imprisonment the average sentence for TF cases to date being 5 years. There is, however no clear strategy for the prioritisation of TF investigative techniques to identify the collection, movement and use of funds within investigations.

f) Each of Turkey's four LEAs have trained TF investigators, TNP have dedicated TF investigators. Communication is open across the LEAs and MASAK and TNP reported a conduit for accessing the security and intelligence agencies but there was little evidence of joint working or co-ordination in relation to TF investigations of the intelligence agencies in countering TF in relation to TF investigations and their engagement with LEA

Immediate Outcome 10[134]

a) Turkey does not implement TFS[135] without delay under the relevant UNSCRs[136]. Turkey's legal framework allows for UNSCR 1267 designations to be transposed, but the process is dependent upon the ratification of the President, who faces no time limit in which to act. The average delay has been 33 days. Turkey has frozen no assets pursuant to TFS under 1267 or 1373.

b) Turkey has not proposed any UNSCR 1267 designations on its own initiative, despite Turkey's own assessment of being exposed to significant ISIL and, to a lesser extent, al-Qaida threats in its NRA findings. The assessment team considers Turkey's efforts to be fundamentally inconsistent with its risk.

c) In general, while there is collaboration and co-operation between supervisory, regulatory and operational authorities, co-ordinated by MASAK. This is primarily geared at building cases against members of terrorist organisations, as opposed to disrupting terrorist financing, especially with respect to international terrorism

d) Turkey does not consistently respond to incoming UNSCR 1373 requests. At the time of the on-site visit, there was a significant backlog of foreign requests received from 2013-2017 that remained unanswered, amounting to some 40 % of the total.

e) Turkey's outgoing UNSCR 1373 requests to its foreign partners are rarely accepted by other jurisdictions. As of the on-site, Turkish authorities had made 138 requests to foreign partners and received only 2 positive responses.

f) Turkey does not pursue domestic designation pursuant to 1373 and thus has not designated anyone on their own accord. Turkey has accepted some incoming 1373 requests for domestic listing. The assessment team considers the lack of use of 1373 domestic designations fundamentally inconsistent with Turkey's TF risks and its own risk assessment.

[134] Preventive Measures and Financial Sanctions.
[135] Targeted Financial Sanctions.
[136] United Nations Security Council Resolutions.

g) Turkey has conducted a sectorial risk assessment to identify what it believes to be the FATF-defined subset of NPOs[137] at greatest risk of TF abuse, which is included in the NRA[138]. Turkey's outreach to NPOs on TF issues is lacking and Turkey's overall NPO supervision system is heavily geared towards preventing fraud and mismanagement.

Immediate Outcome 11[139]

a) Turkey does not implement TFS for proliferation financing. As with TF-related TFS, Turkey's transposition of UNSCR 1718 designations into law is subject to Presidential ratification, which had no time limit. UNSCR 1718 designations are not transposed without delay as the average delay for 1718 designations below is 160 days, and no assets subject to UNSCR 1718 sanctions have ever been identified in Turkey. Turkey lacks a legal basis to implement UNSCR 2231 and its successor resolutions, and no penalties or supervision exist for contravention of these PF[140] sanctions by obliged entities in Turkey.

b) FIs[141] and DNFBPs[142] vary widely in their awareness of, and procedures for, observing proliferation-related TFS. DNFBPs and small FIs such as exchange offices, in particular, often do not do checks against relevant PF sanctions lists and lack established procedures or a general understanding of their risks in this regard. c) Compliance with UNSCR 2231 and its successor resolutions are not covered as part of the authorities' supervisory agenda. Nonetheless, some international FIs screen customers against UNSCR 2231 voluntarily, but procedures (if existing at all) vary significantly among FIs.

[137] Non-Profit Organisations.
[138] National Risk Assessment.
[139] Financial Sanctions.
[140] Proliferation Financing.
[141] Financial Institutions.
[142] Designated Non-Financial Businesses and Professions.

C. THE RIGHT TO LIBERTY AND SECURITY

58. There were several issues acknowledged by various interlocutors – notably the police and prosecutors - as being problematic which, while not explicitly linked to the observance of the right to liberty and security under Article 5 of the ECHR, are likely to have some impact on this.

59. These issues concerned:

- The lack of independence of the police from the political process;
- Excessive workloads for peace judges, police and prosecutors;
- The lack of quality of some prosecutors leading to erroneous decisions and unnecessary appeals;
- The failure of prosecutors to take part in searches despite this being a legal requirement; and
- The lack of familiarity of prosecutors with requirements under the case law of the ECtHR and the TCC.

60. These are considered further in the following section on the right to fair trial.

61. However, apart from those matters, thirteen potentially problematic issues have been identified, namely, ones relating to:

- the quality of police investigation;
- the basis for apprehension and taking into custody;
- recording initial arrival at a police station;
- "interviews" for suspects;
- alternatives to detention;
- justifying the use of detention;
- access to a lawyer;
- challenging the use of detention;
- judicial oversight of detention for certain offences;
- amendments to the CPC during the state of emergency;
- the length of detention;
- objecting to detention after conviction;
- compensation for unjustified or excessive detention; and
- adjusting practice in the light of TCC and ECtHR rulings.

1. The quality of police investigation

62. The quality of criminal investigations conducted by police officers was widely considered to be inadequate and seems to reflect shortcomings in their knowledge, training and expertise, as well as the organisation of their investigative and preventive roles. In particular, they did not always seize "evidence … which indicates the belief that the individual has committed an offense".[143] This affects decision-making in respect of the use of detention and the imposition of alternative measures of control, even though it primarily impacts on the fairness of criminal proceedings as a whole.

63. There was considerable support for a system of judicial law enforcement – with the police being placed under the direct authority of prosecutors - as a means of securing a more effective approach to investigations so that their preventive functions would no longer outweigh their judicial ones. This issue is considered further in the following section as it has broader implications for the right to a fair trial.[144]

[143] Article 91(2) of the CPC.
[144] See paras. 148-164 below.

2. Basis for apprehension and for taking into custody

64. There are three problematic issues.

65. Firstly, a practice has developed whereby prosecutors are seeking and obtaining apprehension orders under Article 98 of the CPC to apprehend suspects that they have identified in circumstances where the conditions in that provision – i.e., where, during the investigation phase the suspect does not appear upon a summons or it is not possible to serve a summons on him or her – are not being satisfied and so this has no legal basis. This practice reflects the view that in cases involving organised crime and terrorism, it was not possible to expect suspects to turn up in response to a request and so they had to be apprehended. However, there would be no inconsistency with Article 5(1) of the ECHR in apprehending such persons if there is a reasonable suspicion that they are, or have been, in the commission of an offence.

66. *There is thus a need to direct police officers to observe the conditions set out in Article 98 of the CPC – Instructions for police officers. In addition, there is a need to establish whether there is any gap in existing powers of apprehension of suspected offenders and, if so, to amend the law accordingly – Legislative amendment*.

67. Secondly, the basis for taking someone into custody following his or her arrest without a warrant is now that "concrete evidence that indicates the suspicion that the individual has committed an offense"[145]. This revision cannot be regarded as being equivalent to the requirement of "reasonable suspicion" under Article 5(1)(c) of the ECHR, as explained by the case law of the ECtHR. This is because this wording is still not the same as requiring the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. Using a different formulation to that of the ECtHR in applying Article 5(1)(c) inevitably runs the risk of applying a less exacting test and also of creating confusion in training on its case law.

68. *There is thus a need to amend Article 91(2) so as to align the formulation of the power in it with the case law of the ECtHR relating to reasonable suspicion – Legislative amendment.*

69. Thirdly, in addition, Article 91(4) is problematic in that this gives the head of administration in towns and provinces the authority to detain persons without any court supervision or prosecutor's order for up to 2 days. This power is exercisable in respect of "crimes committed during social disturbances when violent acts have been broadened, and are suitable to disturb public order, and during collectively committed crimes". The possibility of the detention lasting for up to 2 days without any consideration of the practicality of bringing the persons concerned before a court has the potential to lead to a violation of the obligation under Article 5(3) of the ECHR for this to be done "promptly".

70. The ECtHR has now recognised that detention when it is reasonably considered necessary to prevent a person committing an offence is a distinct ground within Article 5(1)(c).[146] However, in such cases, a person will generally be released after a relatively short period of time without ever being brought before a court. Moreover, there must in these cases still be adequate protection against arbitrariness and the possibility of exercising this preventive power must be provided for by national law. The power under Article 91(4) is not compatible with this approach.

71. *There is thus a need to modify the possibility of deprivation of liberty under Article 91(4) of the CPC so that those detained should be released within a few hours or brought promptly before a court – Legislative amendment*

[145] CPC, Art. 91(2).
[146] See *S., V. and A. v. Denmark* [GC], no. 35553/12, 22 October 2018.

3. Recording initial arrival at a police station

72. The sufficiency in practice of the recording of a person's arrival at a police station whether as a suspect, a witness or for "interview" – every transaction relating to a suspect is supposed to be recorded in the custody ledger,[147] there is a requirement for Closed-circuit television coverage in police stations[148] and specific responsibilities placed upon the custody officer[149] but no regulation regarding other persons who come to police stations - does not seem satisfactory in view of conflicting indications as to the use of interviews of persons who are really suspects in circumstances where it is alleged that they are not legally assisted[150]. Moreover, the data gathered by closed-circuit television coverage is not kept long enough for review when issues relating to what happened arise.

73. *There is thus a need to review the adequacy of arrangements for recording arrivals and departures from a police station by suspects, witnesses and anyone other than police officers and ensure that these include a video record - Study and Instruction for police officers*.

4. Use of "interviews" for suspects

74. There is an acknowledged practice in connection with the investigation of terrorist-related offences of using interviews as a means of interrogating suspects and procuring admissions prior to the formal initiation of proceedings.[151]

75. These may take place under effective compulsion without an explicit arrest and in such cases would amount to a deprivation of liberty incompatible with Article 5(1) of the ECHR.

76. *There is thus a need to prohibit the use of "interviews" of persons about offences where there is already a suspicion that they are the offender - Instruction for police officers.*

5. Alternatives to detention

77. The CPC provides that detention orders should be adopted only when measures other than such detention – referred to as "judicial control" [152] – would be inadequate to address the "grounds" set out in Article 100(2) and the prosecutor is supposed to indicate that this is the case in his or her submissions.[153] Nonetheless, it could be even more explicit in the CPC that the use of detention should only ever be used as a last resort as practice seems to run counter to this.

78. Certainly, many detention orders lack detailed evaluation as to why judicial control measures would be inadequate or as to the ones that could be taken. This means that, where there are concerns about a suspect fleeing, destroying, hiding or changing the evidence or putting an unlawful pressure on witnesses, the victims or other individuals, the requirement under Article 5(3) of the ECHR to demonstrate that there is no alternative in the particular circumstances to detention is not being met. While the use of detention may be justified in many cases, there is also a real risk of this occurring where other measures might have been sufficient to allay the relevant concerns.

79. *Consideration should thus be given to making it even more explicit in the CPC that the inadequacy of "judicial control" measures should first be established before any use of detention can even be considered. In any event, there is a need for guidelines to be provided for judges and*

[147] CPC, Art. 92(1).
[148] *Duties And Work (Polis Merkezi Amirliği Kuruluş, Görev ve Çalışma Yönetmeliği)*, Art. 36.
[149] *Regulation on Arrest, Detention and Questioning, Art. 4.*
[150] See as to this, paras. 165-180 below.
[151] *Ibid*. It should be noted that the TCC has ruled that keeping a person at the police station for a short time (36 minutes) before an investigation has violated the right to freedom and security; see. *Mehmet* Baydan [GK], App. No: o: 2014/16308, 12 April 2018.
[152] The use of the term "judicial control" is not a particularly apt means of referring to the use of alternative measures to the imposition of detention as there is also an exercise of judicial control in the latter situation. The reference to this term will thus be placed in inverted commas to highlight this usage, which does not accord with the approach seen in European and international standards and case law.
[153] CPC, Arts. 101(1) and 109.

prosecutors as to the approach required under Article 5(3) of the ECHR – Legislative amendment and guidelines for judges and prosecutors.

80. Furthermore, it appears that decisions regarding the use of "judicial control" may be taken in the absence of the person to whom the relevant measures are being applied, i.e., without any hearing.

81. *There is thus a need to make it explicit in the CPC that a hearing should normally be held before taking a decision to apply such measures to anyone and to specify the relevant conditions for taking such a decision without a hearing – Legislative amendment.*

6. *Justifying the use of detention*

82. There is often an absence of sufficient reasoning based on the specific facts of the case to support the use in it of detention, both for reasonable suspicion and also for legal grounds for detention as stipulated under the CPC. Instead, the reasons are often seen as clichéd and formulaic.

83. This is a shortcoming that is generally acknowledged to be a problem – notwithstanding the specific requirement in Article 101(1) of the CPC that prosecutors' motions should be reasoned and the similarity in the formulation of Article 19 of the Constitution and Article 5 of the ECHR - and has been the subject of adverse rulings by both the TCC and the ECtHR.

84. Indeed, the TCC has elaborated a four-part test applicable to the use of detention - involving a legal basis, existence of strong suspicion, legitimate ground and proportionality) which is similar but not the same as the approach of the ECtHR in applying Article 5 of the ECHR.[154]

85. The absence of sufficient reasoning is in part attributable to the failure of prosecutors to make appropriate use of the information in the investigation file prepared by the police that could support submissions by them that there was a need to impose detention or "judicial control" measures on account of the risk of flight or interference with evidence. However, it also results from the failure of the courts concerned to seek appropriate substantiation from prosecutors, resorting instead to general formulas – notably, the level of evidence in the case file (which may indeed be suggestive of guilt) and the nature of crime - that do not address the particular circumstances of the cases before them.

86. The police have acknowledged that the material that they provide to prosecutors does not necessarily highlight the relevant information that could support the use of detention. However, they consider that this is given in their verbal briefing to prosecutors. They also maintain that they were not entitled to formulate any reasoning for the use of measures such as detention.

87. *There is thus a need for the police to highlight for prosecutors in writing the specific facts considered relevant to their consideration as to whether to seek the imposition of "judicial control" or detention and for prosecutors to ensure that their submissions to the courts have appropriate factual substantiation - Guidelines for police officers and prosecutors.*

88. Although prosecutors emphasised the need for strong suspicion for a person to be subjected to detention, the failure of many of them to discuss the other relevant considerations for using such a measure or the suitability of the alternative measures available in the form of "judicial control" suggests an inadequate grasp or internalisation of the approach required by Article 5(3) of the ECHR. Some of them did state that decisions were based on the individual circumstances of the case. However, they did not have regard to any checklist for this purpose.

89. Moreover, there was some acceptance by prosecutors that detention was really being sought in respect of a suspect in order to find evidence against him or her, whereas it should only be used where evidence already obtained demonstrated a reasonable suspicion that the person

[154] The TCC has repeatedly stated that the lawfulness of detention or whether the duration of detention has exceeded the legal limits should be evaluated according to concrete facts of every application. It has also clearly indicated what the review criteria are in its judgments; see, e.g., its rulings in *Şahin Alpay* [GK], App. No: 2016/16092, 11 January 2018 and *Erdal Tercan* [GK], App. No: 2016/15637, 12 April 2018).

concerned had committed an offence. Nonetheless, it was not asserted that this was happening in all cases.

90. It seems to be accepted that the heavy workload of peace judges – with a very large number of cases to process each day - can mean that they do not have the time to read the file when taking decisions about the use of detention and so they base themselves on the submissions of prosecutors who can be assumed to be much more familiar with the file.

91. *There is thus a need to ensure that judges are better equipped to assess the adequacy of the grounds being relied upon to support the use of either measures in the form of "judicial control" or detention - Checklist for peace judges*

92. There also appears to be reluctance on the part of some peace judges to draft detailed reasoning when imposing detention under the mistaken impression that this might be seen as showing a lack of impartiality or a failure to respect the presumption of innocence.

93. Peace judges have indicated that the reasoning might be affected by restrictions on access to the file in terrorism cases but the need to keep information secret should not affect the character of the explanation given for a decision.

94. Nonetheless, the absence of adequately reasoned rulings continues despite peace judges being well aware that a mere reference to a legal provision was insufficient to justify remanding someone in custody.

95. Both prosecutors and peace judges have suggested that shortcomings in the reasoning could also be the result of missing evidence, which was attributed to the absence of judicial law enforcement. There were some suggestions that judges may seek to remedy this gap through direct communication with the police. However, this would be inconsistent with the adversarial procedure that should be followed in judicial proceedings. Moreover, some peace judges indicated that they would consider the file to be empty in cases where the police were present in court. In any event, the fact that evidence is missing should – consistently with the requirements of Article 5(3) of the ECHR – lead to a refusal to impose detention if this means that the case for doing this has not been substantiated.

96. The risk of flight in terrorism cases was said by judges to exist where the suspect had been apprehended when seeking to leave the country. They also indicated that the use of ByLock was strong and compelling evidence of involvement in terrorism, referring to a ruling of the Court of Cassation on this issue.

97. The former circumstance is certainly relevant. However, it would not be seen as conclusive by the ECtHR without regard to other circumstances of the individual concerned. The latter one is a matter that is currently being addressed in two of the communicated cases before the ECtHR previously referred to.[155]

98. Peace judges emphasised that they did not feel under any pressure regarding their decision-making, whether from the executive or social media, and said that they did not have their mobile phones with them in the court room.

99. Where the reasoning of the detention order does not include a detailed explanation, the defence counsel does not have opportunity to present reasoning for decisions in the case that an appeal is made against the decision.

100. *There is thus a need to prepare guidelines for judges and prosecutors as to the reasoning of decisions and submissions regarding whether or not resort to "judicial control" or detention is appropriate in a given case[156] - Guidelines for the judiciary (judges and prosecutors).*

[155] *Güler v. Turkey*, no. 62170/17 and *Akgün v. Turkey*, no. 19699/18.

[156] Such guidelines should be illustrated with samples of well-reasoned decisions and also an indication of the issues to be addressed when determining whether there is a need to impose any measure of restraint and, if so, which one would be appropriate.

101. *In addition, there is a need for training for judges and candidate judges and prosecutors on the requirements identified by the ECtHR regarding the implementation of Article 5(3) of the ECHR, in particular reasoning of decisions, the court's review of the lawfulness of detention, the use of alternative measures to detention and the distinction between the reasoning of in-trial detention decisions and that of the final decision in a case, to be organized under auspices of the Justice Academy of Turkey – Training modules/materials/activities (pre-service and in-service) for judges and prosecutors.*

7. Delayed access to a lawyer

102. Delayed access to a lawyer definitely has an impact on the right to a fair trial of the suspects concerned.[157]

103. However, such a delay can also be a possible impediment to the possibility of challenging the legality of an arrest and the imposition or continuation of detention.

104. Certainly, there is a tendency on the part of officers in the security forces to delay the ability of suspects to contact or communicate with a lawyer as much as possible during the investigation phase. Moreover, pursuant to the amendment to Article 154(2) of the CPC at the end of the state of emergency,[158] a suspect in cases of organised crime who has been detained by a judge's decision may be prohibited from meeting with a lawyer for the first 24 hours.

105. Furthermore, some lawyers appointed to act for suspects under the CPC service of bar associations do not meet their clients until after these have made statements that may be prejudicial to them. Nevertheless, they still sign the statements of suspects as if they had been present when that happened, thereby frustrating the guarantee that statements taken in the absence of a lawyer cannot be relied upon in proceedings against accused persons.

106. *There is thus a need to provide criteria to be observed for delaying access to a lawyer in all cases and in particular when this is for 24 hours in cases involving organised crime and terrorism - Instruction for police officers.*

8. Challenging the use of detention

107. There appear to be some instances of lawyers not having access to the case file for the purpose of proceedings to contest the use or continuation of detention. Such a restriction is authorised under Article 153(2) of the CPC where a review into the contents of the file, or copies taken, would endanger the aim of the ongoing investigation.

108. The imposition of restrictions tends to occur in cases involving surveillance and multiple suspects, particularly ones involving or portrayed as involving drug-trafficking, online betting, organised crime or terrorism. Cases are often categorised as involving organised crime simply because more than one person is involved in them, notwithstanding that they could be more properly treated as crimes committed in partnership, which could well have have less serious connotations.

109. Moreover, although a restriction is not supposed to apply to the submissions provided by the individual or suspect arrested without warrant, written expert opinions (regardless of their nature and drafters, including the police, the forensic medicine institution and MASAK), and records of other judicial proceedings, during which the above mentioned individuals who are entitled to be present, it is understood that the restrictions are often applied in a blanket manner (i.e., to all in a file and not just particular elements in it. Furthermore, restrictions are readily authorised by peace judges and their rulings are insufficiently reasoned.

110. Particular difficulties are experienced in getting access to reports prepared by MASAK, the controversial character of which is discussed in the section on financing of terrorism. Its reports

[157] See further paras. 167-182 below.
[158] Put into force by Law No. 7070 of 2018.

are withheld on the basis that disclosure to suspects might overshadow the quality of the investigation. At best, the staff at the office of the public prosecutor will inform defence lawyers orally and very concisely about the content of such reports.

111. The restrictions can last for up to 2 years and certainly longer than 6 months in many cases. This may mean that information that could be relevant to a dispute over the use or even the legality of detention cannot be relied upon in the proceedings concerned.

112. So far, there have not been many cases before the TCC where denial of access to the case file has been invoked as an obstacle to a challenge to the legality of a deprivation of liberty. Nonetheless the exemptions regarding access seems unduly broad.

113. The difficulty posed by restrictions on access to the case file is compounded by (a) the restriction decision is itself being withheld so that there is a need to ask for it in writing and then object – generally unsuccessfully - when this is refused and (b) practical limitations on the possibilities for defence lawyers to meet with prosecutors, particularly those dealing with terrorist cases who may be on a floor to which they do not have access.

114. *There is thus a need to ensure defence lawyers always have access to the case file when challenging any detention decision – especially as regards information relevant to the decision to detain - and that they are informed when a restriction decision concerning it is taken – Guidelines for peace judges.*

115. The ability of the defence to make submissions – particularly in proceedings to decide on the continuation of detention – may also be adversely affected by the absence of the suspect or his or her lawyer. Thus, it seems that the suspect will only be present at 90-day reviews, with other automatic monthly reviews being based only on the file.

116. Moreover, where there are hearings, these could be in person or through SEGBIS and a suspect's lawyer might not always be present at them as he or she would get notice only by a telephone call just before the hearing, which might not always be received.[159] In such cases, the suspect would be represented by a public defender appointed by the court, the quality of whose service is not necessarily satisfactory. Furthermore, it appears that the 90-day period for a hearing in terror-related crimes was often exceeded and nothing happens as a consequence of this.

117. Furthermore, notwithstanding that the non-communication of the opinion of the public prosecutor during objection proceedings to the continuing detention of a suspect or defendant has been found contrary to the ECHR and to Article 19(8) of the Constitution,[160] the TCC in at least one case did not consider such non-communication to have caused serious loss and so did not find a claim regarding it to be of constitutional or individual importance.[161] Any non-communication of the prosecutor's opinion based on the latter view is likely to mean that defence lawyers will not be able to make appropriate preparation for such proceedings.

118. An additional difficulty relates to the ability of defence lawyers always being able to discuss matters about the proceedings with their clients when they are in the hearing room.

119. *There is thus a need to ensure that: (a) there is a hearing for all monthly reviews of detention in which the suspect can participate; (b) these reviews are held within the prescribed deadline (c) the suspect's lawyer is given adequate notice as to the holding of every such review; and (d) defence lawyers can discuss matters with their clients during a review – Guidelines for peace judges.*

[159] *Cf.* civil cases in which lawyers are contacted in advance by email

[160] As regards the latter, see, e.g., the TCC's rulings in *Firas Aslan and Hebat Aslan* App.No: 2012/1158, 21 November 2013 and *Erman Ergin*, App. No: 2014/2680, 27 October 2016.

[161] See *Devran Duran*, App. No: 2014/10405, 25 May 2017.

120. Finally, the length of time required for appeals to be heard and determined in respect of decisions to impose or continue detention seems excessive, diminishing their value as a guarantee against wrongful deprivation of liberty.

121. *There is thus a need to ensure that the hearing and determination of appeals in respect of decisions to impose or continue detention occurs within a matter of days after the decisions being appealed – Guidelines for peace judges.*

9. Judicial oversight of detention for certain offences

122. The stipulation in Article 100(3) that, where there is "strong suspicion" of an offence in the case of the wide range of offences listed in this provision, the grounds for arrest "may be deemed as existing". This provision may not be intended to mandate the use of detention in such cases but this is what happens in practice as the focus is put on whether offence in a particular case is one of those listed rather than on whether there is a need for detention to be imposed. As a result, this leads to a failure to comply with the need under Article 5(3) of the ECHR for the exercise of independent judicial supervision in all cases whenever such a measure is imposed.[162] It is unlikely that guidance would be sufficient to change this practice given the strength of the formulation that the grounds for arrest "may be deemed as existing".

123. *There is thus a need to delete Article 100(3) of the CPC to ensure that the existence of the grounds for arrest is something to be established in all cases – Legislative amendment*.

10. The length of detention

124. Limits were set on the length of pre-trial detention in the investigation phase by the amendment made to Article 102(3) of the CPC by Law No. 2019-7188.

125. Accordingly, where the crime is not within the jurisdiction of the court of assizes, the maximum period of detention is six months and where the crime is under the jurisdiction of the court of assizes (except in crimes defined by the second book, fourth part, chapters four, five, six and seven of the Turkish Penal Code No. 5337, as well as in crimes in the scope of Anti-Terror Law), the maximum period of detention is one year.

126. These periods can, however, be extended for up to a total period of 3 years. Maximum period for offences within the exception just mentioned is 5 years, although under the Anti-Terror Law, the pre-trial detention period for certain offences (particularly ones against the State and State security) could be extended for up to a maximum period of 7 years.

127. The actual length of pre-trial detention in many instances does not seem consistent with the approach required under Article 5(3) of the ECHR, and apart from the violations found by the ECtHR, the TCC has found the length of detention as being excessive in many cases coming before it.

128. However, the impression gained from some prosecutors was that the maximum periods for detention were irrelevant given that a person was treated as a defendant until his or her conviction became final. This attitude assumes that the person will actually be convicted and does not suggest an awareness of the need under Article 5(3) of the ECHR that the length of detention – where justified – should be reasonable, thus requiring a diligence in the processing of cases.

129. Of course, in the specific circumstances of some cases, resort to the length of detention that is authorised by the CPC and the Anti-Terror Law could be compatible with Article 5(3) of the ECHR. However, it cannot be automatically assumed that this will turn out to be so.

130. It has also been suggested by prosecutors that problems relating to the handling of cases were likely to diminish as the numbers of judges and prosecutors is increased. Efforts to deal with

[162] See, e.g., *Caballero v. United Kingdom* [GC], no. 32819/96, 8 February 2000, *Boicenco v. Moldova*, no. 41088/05, 11 July 2006 and *Piruzyan v. Armenia*, no. 33376/07, 26 June 2012

workload were cited to include the pilot scheme allowing prosecutors to contact suspects directly and, if there is an admission, the case would not go to court at all. Also helping to reduce their workload was said to be the existence of a reconciliation institution, the reclassification of some offences as misdemeanours and the possibility of postponing the opening of a case where offences for which 5 years' imprisonment can be imposed.

131. These measures may indeed help relieve the burden on prosecutors and judges. However, the most fundamental consideration is that in all cases every effort is made to ensure that detention only lasts for the shortest period really needed.[163] The present problem of excessive length of pre-trial detention lies not in the maximum detention periods specified in the legislation as such but the approach to its prolongation in individual cases, which fails to take into account of the overall length of detention thereby being endured and thus ensure that it is not excessive.

132. *There is thus a need to require that no extension be made to any detention unless there is a full and explicit examination as the compatibility of the cumulative effect of each and every extension being granted with the requirement in Article 5(3) of the ECHR that a person be tried within a reasonable time or released pending trial – Legislative amendment.*

11. Compensation for unjustified or excessive detention

133. Article 141 of the CPC provides for the possibility of awarding compensation for unlawful apprehension, custody and detention. This has been found to be an effective remedy by the ECtHR.[164] Moreover, the TCC has an internal scale that it applies for compensation for deprivation of liberty found to be contrary to the Constitution.

134. There is, however, no clear indication as to how satisfactory awards of compensation are in practice. It seems that the amounts awarded do not necessarily accord with the TCC's scale or the amounts considered appropriate by the ECtHR. As a result, it is likely that those subjected to unjustified or excessive detention are not always consistent with the approach required under Article 5(5) of the ECHR. This is thus a matter that would benefit from further investigation, not least because this could provide useful guidance for the courts as a whole.

135. *There is thus a need to review the practice of awards of compensation under Article 141 of the CPC, identify the considerations taken into account and assess the compatibility of the approach with that required under Article 5(5) of the ECHR. In the light of this study, there would then be a need to provide judges with training on the appropriate approach to providing compensation, with a view to ensuring the harmonisation of the practice of courts of first instance – Study regarding compensation awards and training modules/materials/activities for judges.*

12. Adjusting practice in the light of TCC and ECtHR rulings

136. Violations found by the TCC and the ECtHR do not seem to be being consistently communicated to the law enforcement agencies, prosecution or the courts whose actions or decisions led to the cases concerned.

137. Moreover, even if they are communicated, the individuals concerned may well have moved to another position. Furthermore, there is no systematic arrangement to monitor the general observance of rulings by these two courts, even though they clearly relate to matters of practice and not isolated incidents.

138. In addition, there is no common training program for the judges, prosecutors and the police force, particularly as regard matters relevant for the detention stage.

[163] See also the related problem of lengthy proceedings, discussed at paras. 225-234 below

[164] Recently, the ECtHR clarified in *Selahattin Demirtaş v. Turkey (No. 2)* [GC], no. 14305/17, 22 December 2020 that Article 14 is an effective remedy for claims solely in respect of length of detention but not in respect of either the alleged lack of reasonable suspicion that an individual has committed an offence, or the alleged lack of relevant and sufficient reasons to justify pre-trial detention; at para. 214.

139. *There is thus a need for a regular bulletin that digests rulings in the field of criminal justice by the TCC and the ECtHR – focused both on recent developments and on specific topics*[165] *- to be provided electronically to judges, police officers and prosecutors – Launch of bulletin.*

140. *In addition, there is a need to introduce the case law of the TCC into the curriculum for candidate judges and prosecutors – Curriculum for candidate judges and prosecutors*.

[165] These might cover not only issues related to the present section (such as reasoned judgments and standards concerning lawful detention) but also ones connected to matters dealt with in other sections (such as online abuses of children and other cyber-related activity).

D. THE RIGHT TO A FAIR TRIAL

141. The various amendments noted above[166] to Articles 158, 174, 250, 251 and 286 of the CPC are potentially positive developments. So is the amendment to Article 28 of the Judges and Prosecutors Law No. 6723 of 01.07.2016, which has the objective of preventing violations of the right to trial within reasonable time. Recommendations are made below in respect of the amendments to Articles 250 and 251 of the CPC[167] but it remains to be seen how positive the other amendments prove to be.

142. *There is thus a need to monitor the impact that these amendments have had and to establish whether or not they should be modified in the light of practice so as to ensure that they fulfil the requirements of Article 6 of the ECHR – Study assessing impact*.

143. Furthermore, thirteen potentially problematic issues were seen to exist in other provisions or practices, namely, ones relating to:

- Independence of the judiciary;
- Judicial law enforcement;
- "Interviews" of suspects and access to a lawyer;
- Covert investigative techniques;
- Retention of illegally obtained evidence in the case file;
- Access to the case file;
- Other factors relevant to fair proceedings;
- Alternatives to prosecution, plea bargaining and fast or simplified trials;
- Length of proceedings;
- Perpetuation of amendments made to the CPC during the state of emergency;
- Taking account of rulings by the TCC, the Court of Cassation and the ECtHR;
- Retrials following rulings by the ECtHR; and
- The functions performed by MASAK.

144. The last of these will be considered in the section below on the financing of terrorism.[168]

1. Independence of the judiciary

145. This was not universally recognised as a problem but nonetheless the existence of concerns regarding has the capacity to undermine confidence in the criminal justice system. Appearances of political and other forms of influence - even if this is not actually being exercised – can be problematic in this regard. This is all the more likely where the public does not fully understand the role and responsibilities of the different actors in the criminal justice system.

146. Such appearances exist with: (a) the very close relationship between judges and prosecutors (with the latter belonging to the same category of officials as judges, having the same social benefits and level of seniority as them and working from the same courthouse); (b) the change in the formation of the Council of Judges and Prosecutors so that the President now appoints almost half its members; and (c) the impression that judges are removed or relocated if they make decisions which do not please the government.

147. *There is thus a need to find ways of reducing the scope for political influence over judicial appointments and the relocation of individual judges. At the same time, there is a need to increase public understanding of the organisation and operation of the criminal justice system -*

[166] See para.55 above.
[167] See paras. 221-224 below.
[168] See paras. 311-368 below.

Study assessing the current situation to be presented to the MoJ for further legislative or policy amendments and public education activities relating to the criminal justice system.

2. Judicial law enforcement

148. The dual nature of the police's duties - acting as judicial police under the supervision of competent public prosecutors and carrying out other administrative and law enforcement roles under the supervision of the State law enforcement administration[169], which was given priority – was seen as resulting in lengthy investigations, insufficient quality of the investigative steps taken and the incomplete collection of investigation files.

149. There was also disagreement between police and prosecutors as to the quality of communication between them, with the former suggesting that it was good and the latter indicating that their command and control over criminal investigations not always being satisfactory, notwithstanding that - under Article 160 of the CPC - the prosecutor is the ultimate authority responsible for criminal investigations from their outset.

150. The latter view is supported by the fact that the Court of Cassation has frequently sent cases back to re-launch the investigation, sending a list of questions as to matters to be covered. The high number of quashing decisions concerning money laundering cases was instanced by it as an indication of procedural problems at the initial stages.

151. Particular problems in respect of investigation that were identified by both prosecutors and the Court of Cassation related to police officers not being trained on searching for evidence based on scientific methods and to them not continuing search activities after a suspect was arrested with a warrant or after an indictment was approved in cases where there was no arrest warrant.

152. This has led judges and prosecutors to emphasise the need for a system of judicial law enforcement, which would put the police more under the control of prosecutors.

153. Many in the police did not accept that there was generally any difficulty in their relationship with the prosecution and indeed suggested that their objectivity would be damaged by being put under the control of the MoJ. In their view, every criminal investigation was carried out upon an order of the competent public prosecutor and under his/her responsibility.

154. Furthermore, they maintained that no investigative step was taken without securing a relevant instruction of the prosecutor (pursuant to Article 160 of the CPC). They indicated that oral instructions were transformed into written minutes by police officers as soon as it was received. They described the prosecutor as the decision-maker and the boss of the investigation. Consequently, they felt that there was little need to change the status quo and especially considered that proposals for a judicial police arrangement were not required.

155. It is not entirely clear whether the absence of judicial enforcement is a real problem. Certainly, the concerns about the effectiveness and completeness of investigations by the police might be better addressed through a focus on strengthening their independence and professionalism of the police and increasing their specialisation rather than placing them under the direct control of prosecutors which could confuse two discrete functions and also potentially undermine the preventive role of the police.

156. The lack of professionalism in the conduct of investigations certainly seems to be evident in the apparent breach of their confidentiality on account of the provision by the police of information about them to governors and others. Such disclosures have implications not only for observance of the right to respect for private life under Article 8 of the ECHR but also of the presumption of innocence under Article 6(2).[170]

[169] In this latter role, their superior is the local head of the administration.

[170] See, e.g., *Craxi v. Italy (No. 2*) no. 25337/94, 17 July 2003; *Toma v. Romania*, no. 42716/02, 24 February 2009 and *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, 29 April 2014.

157. *There is thus a need for further investigation to be undertaken in respect of these matters, particularly as regards strengthening the independence and professionalism of the police and increasing their specialisation - Study assessing the current situation to be presented to the MoJ for further legislative or policy amendments.*

158. *In any event, there is a need to strengthen the independence and professionalism of the police structures and increase their specialisation so that they are better equipped to work under the guidance of prosecutors in the investigation of crime - Memorandum of understanding or other cooperation policy document between the Prosecution and the Ministry of Interior/Gendarmerie.*

159. *In addition, there is a need for the police to better respect confidentiality of investigations - Instruction for police officers.*

160. At the same time, it should be noted that there is a possibility for victims and other complainants to approach prosecutors directly about a possible offence and the latter could then initiate criminal proceedings against the alleged offender.

161. Prosecutors suggested that this occurred sometimes because of police officers avoiding their responsibilities and referring victims and complainants to their offices. However, State officials also seem to approach them directly where they considered them to have been insulted.

162. There was concern on the part of prosecutors about the impact of such direct access on their workload, with it being suggested the introduction of a fee could lead to a decrease in the number of applications being received.

163. However, more importantly, this runs counter to the prosecutor's responsibility to supervise the initiation and conduct of an investigation, thereby exercising control over this process from beginning to end. Certainly, the present possibility of direct access to prosecutors could result in them being involved in cases from the first report to the final sentence, mixing the discrete roles of conducting an investigation and supervising its compliance with the law.

164. *Consideration should thus be given to removing the possibility of prosecutors receiving the first report of a crime and the need for any consequential reallocation of resources that this would entail. In any event instructions should be given to police not to refer complainants to prosecutors and guidelines should be provided to prosecutors not to deal with cases which they have opened upon a direct complaint to them – Legislative amendment, instructions for police and guideline for prosecutors.*

3. "Interviews" of suspects and access to a lawyer

165. The practice of "interviews" prior to treating persons as suspects – particularly in connection with alleged terrorist and public security cases – has no statutory basis but – as already noted[171] - was generally acknowledged to occur.

166. Such "interviews" seem to be being used as a means of interrogating suspects, gathering information and procuring admissions – whether through duress in the form of the threat of long prison sentences or of not getting the benefit of a reduction in sentence under the good behaviour and effective repentance provisions in Articles 62 and 221 of the Criminal Code - prior to the formal initiation of proceedings.

167. The use of "interviews" is not formally recorded and is thus difficult to prove in a given case.[172] Their effect is to deny suspects the assistance of a lawyer and thereby lead to prejudice in the subsequent trial proceedings. This will especially be so where statements given in or subsequent to the "interviews" are signed by public defenders who were not actually present when these

[171] See paras. 74-76 above.

[172] Video recordings (if carried out) in cells and other rooms at police stations are kept for a maximum period of 30 days.

were made, thereby frustrating the guarantee that statements taken in the absence of a lawyer cannot be relied upon in proceedings against accused persons.

168. *There is thus a need to require a lawyer who signs a statement made by a suspect to confirm that he or she was present during the interrogation during which it was made – Instruction to police officers and guideline by bar associations to lawyers*.

169. Article 154(1) of the CPC provides that a suspect and his or her lawyer shall have the right to meet at any time in an environment where other individuals are unable to hear their conversation. However, as already noted,[173] Article 154(2) now provides that this right can be restricted for up to 24 hours, by a judge's decision upon the motion of a prosecutor.

170. There are no criteria governing decisions under this provision, apart from the nature of the crime involved.[174]However, this does not, in itself, provide any basis for concluding that the investigation or some other strong public interest – such as preventing a terrorist activity – would be prejudiced by access to a lawyer being allowed.[175]

171. Prosecutors have suggested that denial of access to a lawyer in the first 24 hours of a terrorist case was very exceptional and then only in cases where there were specific threats connected to the investigation. Even if that is so, such limited use of the power is no substitute for the need to satisfy a judge that there are substantive grounds for the denial of access in a particular case.

172. Where Article 154(2) has been invoked, the suspect should not be interviewed during the relevant period. However, it appears that this does occur – albeit without the interview being recorded – with the same objectives as the other informal "interviews" already discussed.

173. *There is thus a need to develop criteria as to when access to a lawyer can justifiably be restricted for 24 hours in cases involving organised crime and terrorism - Study with proposal to be either incorporated under the CPC or other policy document.*

174. Even where Article 154(2) is not applicable, there appear to be instances of persons who have been recognised as suspects still being questioned without the assistance of a lawyer. This includes "off-the-record" interviews taking place with a senior police officer and these may produce "results" as a result of the psychological pressure on a suspect stemming from the possible 4-day period allowed under Article 91(3) of the CPC for initial custody, especially in cases where such a period was not really needed. Such pressure may be even greater during the 12 days allowed for terror investigations under Article 19 of the Anti-Terror Law.

175. The possibility of questioning in the absence of a lawyer may also be facilitated by the tendency of prosecutors to allow a suspect access to a lawyer only during "working hours", regardless of when he or she was apprehended. It may also be delayed, particularly outside the cities, because the fact that a lawyer was not in the locality could result in much time elapsing before he or she could arrive.

176. There may also be cases where a suspect has waived his or her right to see a lawyer but the fact that there was no waiver can also be difficult to disprove on account of the willingness of some public defenders to sign statements taken from a suspect in their absence an in circumstances where he or she had been given the impression that a lawyer would be coming to help him or her. Such public defenders may also have been called to the police station – whether under pressure or induced by financial considerations - in preference to the suspect's own lawyer.

177. None of this should, of course, occur if the custody officer fulfils his or her responsibilities to complete a custody logbook and apprehension document and to give suspects forms with their

[173] See para. 104 above.
[174] I.e., "crimes defined in the fourth, fifth, sixth and seventh sections of the fourth chapter of second book of the Turkish Penal Code and the crimes regulated in the Anti-Terror Act and the crimes of drug and stimulant production and trade".
[175] See *Ibrahim and Others v. United Kingdom* [GC], no. 50541/08, 13 September 2016.

basic rights. Moreover, as the TCC has made clear, the denial of access to a lawyer by suspect without proper cause was a violation of the Constitution.

178. Moreover, as Article 147(1)(b) of the CPC provides, "During the recording of the interview or interrogation, technical means shall be utilized", giving a legislative basis for the use of the SEGBIS system.[176] Some representatives of the police agreed that video and audio recording of any contact with suspects at this stage of the proceedings – something recommended by the Council of Europe[177] and seen in a number of criminal justice systems - could be a safeguard for all sides, precluding any controversy as to what happened after an apprehension since it can demonstrate that rights have been respected and that allegations to the contrary are unfounded.

179. In those cases where access to a lawyer is not precluded, its effectiveness can be undermined by the inhibiting effect of the lack of confidentiality occasioned by police officers being present during the interview or this being video-recorded.

180. *There is thus a need to require all questioning of persons – whether suspects, witnesses or anyone else – to be audio and/or video-recorded and to ensure that there is effective recording of persons entering or leaving police stations- Instruction for police officers.*

4. Covert investigative techniques

181. The use of covert investigative techniques (i.e., surveillance, technical surveillance and interception) is often essential in tackling serious forms of criminality.

182. Police officers dealing with organised crime seemed to have a clear understanding of the importance of observing proportionality, legality and necessity in the use of such intrusive techniques, as well as of their responsibilities regarding their impact on the right to respect for private life under Article 8 of the ECHR.

183. However, the position regarding their actual application and authorisation appeared to be less satisfactory, in that these officers did not fully appreciate what should be entailed in reporting to a reviewing entity - when seeking approval for their use – how they considered that the requirements of proportionality, legality and necessity would be observed, along with a plan as to how they would deal with the impact on privacy, collateral intrusion and the right to a fair trial, in the course of using these techniques.

184. Without some improvement in the approach to the authorisation, inception and application of covert investigative techniques, there is clearly a risk that the relevant requirements of Articles 6 and 8 of the ECHR will not be respected in practice.

185. *There is thus a need to identify international best practice in respect of covert investigative techniques and then to integrate these into the training and operational arrangements of law enforcement bodies – Study on best practices, Guidelines and Training activities.*

5. Retention of illegally obtained evidence in the case file

186. It was generally acknowledged that, notwithstanding the inadmissibility of evidence obtained through some unlawful process (including through torture or ill-treatment),[178] such evidence would still be retained in the case file. As a result, this evidence could be seen by trial and appellate judges when considering how to determine a case.

[176] Under Article 9 of the Regulation on the use of audio and visual information systems in criminal procedure, it is provided that: "(1) In the case of the possibility of using video and voice communication techniques, all kinds of transactions carried out during the investigation or prosecution phase in accordance with the procedures and principles in the laws shall be recorded with SEGBIS. (2) However; a) Victim children, b) Persons who cannot be brought to trial and whose testimony is obligatory in order to reveal the material truth, this recording is mandatory".

[177] See its handbook, *The European Convention on Human Rights and Policing* (https://www.echr.coe.int/Documents/Handbook_European_Convention_Police_ENG.pdf).

[178] The Court of Cassation has extensive case law in this regard.

187. There are, however, no statistics relating to cases where such evidence has been retained in the case file. It is not possible, therefore, to assess the actual impact of this on the outcome of trials. Furthermore, there has not been any case before the TCC concerning the preservation of the illegally obtained evidences in the case file. It has, however, recognised the potential violation of the right to respect for private life under Article 8 of the ECHR stemming from the inclusion in the case file of intelligence notes, which ought not to be used as evidence.

188. Assize court judges indicated that they could not completely disregard an admission made under torture. However, they said that they would ask themselves what would be the position in the case without it.

189. At the same time, they acknowledged that it would be impossible not to be influenced illegally obtained evidence even though they did try to put aside. Moreover, this may be encouraged by the stipulation in Article 217 of the CPC evidence presented at the main hearing "is subject to the free discretion of the conscious opinion of the judge" notwithstanding that it also states that the "charged crime may be proven by using all kinds of legally obtained evidence"

190. The present arrangement seems to be one which can lead to defendants being unjustifiably prejudiced and there seems to be no necessity for it to be continued.[179]

191. *There is thus a need to establish a mechanism whereby any evidence established prior to the trial to be inadmissible would then be excluded from the case file and thus not be accessible by the judge(s) trying the case – Guideline for prosecutors.*

192. *In addition, there is a need to clarify the scope for testing the admissibility of evidence and to ensure that, if necessary, this is made consistent with the requirements of Article 6 of the ECHR - Guidelines for the judiciary (judges and prosecutors).*

6. Access to the case file

193. The effect of restrictions imposed – pursuant to Article 153(2) of the CPC - on the possibility of reviewing the contents of the case file by the defence lawyers have already been noted in connection with efforts to contest the imposition of detention.[180]

194. However, such restrictions – given the tendency for them to be imposed on the whole of the file (and not just those elements in it that would hinder the aim of the investigation or pose a risk to witnesses) and to last until the trial commences or even concludes – can have a significant impact on the ability of the defence lawyers to prepare the defence of an accused person. In some instances, the court may explain that it has accessed the evidence but will not then even summarise so that cannot help the defence.

195. *There is thus a need to limit the possibility of imposing restrictions on a defence lawyer's access to the case file pursuant to Article 153(2) of the CPC to only those elements in it that could actually hinder the investigation both through legislation specifying information and documents that should not be covered by restrictions and by checklists to follow in applying restrictions – Legislative amendment and Checklist for judges and prosecutors.*

[179] A conviction based on the use of evidence obtained by torture would be in violation of Article 6 of the ECHR (*Harutyunyan v. Armenia*, 36549/03, 28 June 2007), as would one based on the use of inhuman and degrading treatment where this involves oppression (*Jalloh v. Germany* [GC], no. 54810/00, 11 July 2006) or it or casts doubt on its reliability (*Sakit Zahidov v. Azerbaijan*, 51164/07, 12 November 2015). Reliance on evidence obtained in other unlawful circumstances will not necessarily render a conviction unfair for the purposes of Article 6, particularly where its reliability is not in doubt, it is not the only evidence relied upon and there is corroboration (*Khan v. United Kingdom*, no. 35394/97, 12 May 2000; *Heglas v. Czech Republic*, no. 5935/02, 1 March 2007; and *Akhlyustin v. Russia*, no. 21200/05, 7 November 2017). However, it would be unfair if this illegality led to a breach of the privilege against self-incrimination (*Allan v. United Kingdom*, no. 48539/99, 5 November 2002).

[180] See paras. 107-114 above.

7. Other factors relevant to fair proceedings

196. There were a range of other factors that were widely acknowledged as rendering the conduct of trial proceedings incompatible with not only the requirements of Article 6 of the ECHR but also those in the Constitution.

197. These concerned:

- Insufficient time and facilities for preparing the defence;
- Frequent changes in the judges;
- The inability to examine or cross-examine witnesses, both where their testimony is taken at a hearing where the accused is not present and in ones where he or she is present;[181]
- The absence of provision to require compensatory factors where the testimony of a witness who cannot attend the hearing for good reason is taken into account without being subjected to cross-examination;[182]
- Reliance on evidence withheld from the accused because of the confidentiality of the investigation and other non-compliance with the equality of arms;
- The gathering and presentation of evidence for the defence;
- Reliance on statements of persons convicted in other proceedings;
- Inadequate and stereotyped reasoning;
- Failure by prosecutors to give notifications to defendants as to their appeals; and
- The adequacy of the infrastructure arrangements for child monitoring centres which may affect the taking of statements from children who may be victims of sexual abuse.

198. In addition, the TCC was concerned about the potential for hearings held through SEGBIS to lead to a violation of the right to a fair trial on account of insufficient familiarity of judges with the functioning of this system.

199. Judges seem to rely on Article 201 of the CPC – which provides that the "[t]he accused and the intervening party may also direct questions with the help of the chief justice or judge" – as enabling them to filter the questions put and thus restrict the ability to conduct a cross-examination. This is particularly problematic as there is also a tendency for witnesses for the prosecution being defined as public witnesses and their testimony being accorded greater authority than that of witnesses for the defence.

200. *There is thus a need for judges to ensure that an accused and defence lawyers are able to undertake the cross-examinations of witness and experts in accordance with the requirements of Article 6(3)(d) of the ECHR – Guidelines for judges and workshops and trainings. In addition, there is a need to require adequate compensatory factors to be available where the testimony of a witness who cannot attend the hearing for good reason is taken into account without being subjected to cross-examination – Legislative amendment. Furthermore, there is a need to ensure the adequacy of infrastructure for child monitoring centres in respect of taking statements from possible victims of sexual abuse – Organisational and practical arrangements. Also, judges and candidate judges should be provided with training on the use of SEGBIS in the light of requirements identified by the ECtHR and the TCC – Regular training activities/seminars.*

201. The fact that judges may be changed in the course of the proceedings can have an impact on the ultimate evaluation of the evidence as it will not have been heard in person.[183]

[181] As reflected in the cases referred to in para. 33 above.

[182] As required by the ECtHR in cases such as *Schatschaschwili v. Germany* [GC], no. 9154/10, 15 December 2015.

[183] See, e.g., *Svanidze v. Georgia*, no. 37809/08, 25 July 2019.

202. *Reduce the scope for changing the judges who take part in particular criminal proceedings – Study assessing the current situation to be presented to the MoJ for further legislative or policy amendments and Organisational and practical arrangements*.

203. There is an inability for the defence to test the veracity of digital evidence as a result of the amendment to Article 209(1) of the CPC[184], whereby the documents recording this are now to be only "explained" by the judge rather than "read out", albeit that this might help some understand that technical issues involved.

204. *There is thus a need to clarify the scope for testing the veracity of digital evidence and to ensure that, if necessary, this is made consistent with the requirements of Article 6 of the ECHR - Guidelines for the judiciary (judges and prosecutors)*

205. In practice, defence lawyers seem to have no real role in the gathering of evidence by experts, although they may - under certain conditions - submit a private expert report to the court.[185] Moreover, the suspect is not always reminded by prosecutors of the right under Article 147(1)(f) to request the collection of exculpatory evidence and to be given the opportunity to invalidate the existing grounds of suspicions against him or her and to put forward issues in his favour. Furthermore, although Article 170(5) of the CPC requires that the conclusion section of the indictment should "include not only the issues that are disfavourable to the suspect but also those in his favour", this does not always seem to be occurring.

206. There is no evaluation system to be used by judges in order to assess evidence other than the reference in Article 217(1) of the CPC to this being "subject to free discretion of the conscious opinion of the judge".

207. The poor quality of the reasoning – which includes account being taken of irrelevant matter, failure to address points raised by the defence and the failure to substantiate conclusions reached with evidence adduced in the proceedings – is not an isolated occurrence but one that is systemic as rulings of both the Court of Cassation and the ECtHR have made clear. A new dimension in this regard has been noted by appeal court judges, who cited a problem of hasty first instance judgments being made as a result of trying to respond quickly to unpleasant crimes that are a source of pressure from social media.

208. *There is thus a need for training of judges and candidate judges and prosecutors on the requirements identified by the ECtHR regarding the implementation of Article 6 of the ECHR, in particular concerning the admissibility of evidence/usage of inadmissible evidence, cross-examination, and reasoning of judgments, to be organized under auspices of the Justice Academy of Turkey – Training modules/materials/activities (pre-service and in-service) for judges and prosecutors.*

209. At present, regional appeal courts cannot quash first rulings on account of the inadequacy of the reasoning, which means that these cases have to be referred to the Court of Cassation. It is possible for the regional appeal courts can open a hearing and thereby possibly remedy the deficiency at first instance. However, this will not lead to the problem being drawn to the attention of first instance courts and reinforce the preceding recommendation with respect to training. It would also result in the regional appeal courts becoming trial courts rather than appeal ones.

210. *There is thus a need for regional appeal courts to be able to quash the decisions given by first instance courts where their reasoning is found to be inadequate and there are significant evidential issues to be considered – Legislative amendment*.

[184] Article 97 of Decree Having the Force of Law No. 696, this Decree Having the Force of Law accepted by the Parliament and became a legislation with the Article 91 of the Law No. 7079 dated 1.2.2018.
[185] Article 67(6) of the CPC.

8. Alternatives to prosecution, plea bargaining and fast or simplified trials

211. There is considerable concern about the workload of judges and prosecutors. This is a problem faced by all criminal justice systems and ways of addressing it include diversion from prosecution and techniques to reduce the need for an elaborate trial process.

212. At present, all cases are reported to the prosecutor and - except in those cases where there is a decision not to prosecute, including one following from mediation, or to postpone the filing of a public claim - the sole outcome possible appears to be the need to seek a court ruling.

213. In particular, unlike many other jurisdictions, there are no alternatives to court for young offenders and/or minor crimes that include warnings, cautions and administrative fines.

214. Equally, existing offences such as insult – the proceedings in respect of which often prove problematic as regards compliance with the right to freedom of expression under Article 10 of the ECHR – might benefit from being treated as misdemeanours or even left to civil proceedings.

215. The existence of alternatives to prosecution would not only lead to some reduction in the workloads of judges, police officers and prosecutors but would also provide a more proportionate response in situations where offences have been committed by persons with no previous convictions or by juveniles.[186]

216. *There is thus a need to review the scope for introducing further alternatives to prosecution and also for the decriminalisation of offences – Study to be presented to the MoJ for further legislative or policy amendments*.

217. A trial waiver scheme – a form of plea bargaining – has been introduced into the CPC. However, this has not been welcomed by prosecutors. In particular, they consider that their current average case load – 2,000 files for each prosecutor was cited – would make it difficult to operate such scheme.

218. This is an issue that ought to be addressed if the advantage such an arrangement potentially offers for reducing the overall burdens faced by the criminal justice.

219. At the same time, the proposed scheme needs to be reviewed to ensure that it is compatible with the requirements of the ECHR as elaborated by the ECtHR, particularly as regards the need for overall control over the process to be exercised by the courts and for the suspect to have effective legal representation.

220. *There is thus a need to review the scheme for plea bargaining to assess its feasibility for prosecutors while ensuring that their role does not displace the overall control over the process to be exercised by the courts and undermine effective legal representation for suspects- Study and Checklist for judges and prosecutors.*

221. Finally, as in all criminal justice systems, the large number of petty and medium crimes result in an excessive workload where the process for handling them is over-elaborate in its requirements. As a result, efforts are made to simplify the processing of such cases without leading to a loss of fairness, as required by Article 6 of the ECHR.

222. In this connection, fast proceedings and simple trial procedures have been introduced under Law No. 7188 of 2019 with the goal of decreasing the workload of judges.

223. Although such procedures are not problematic in themselves, some concern has been raised about the possibility under them of the prosecutor determining the punishment and of a person being tried *in absentia* if he or she did not respond within 15 days to the notice of charges and then, if convicted, being sentenced to imprisonment for up to 2 years.

[186] See further Opinion No2 (2008) of the Consultative Council of European Prosecutors, https://rm.coe.int/168074773f.

224. *There is thus a need to clarify the compatibility of the arrangements adopted for fast proceedings and simple trials with Article 6 of the ECHR – Study to be presented to the MoJ for further legislative or policy amendments*.

9. Length of proceedings

225. Various factors seem to be at play in leading to proceedings that are lengthy and possibly incompatible with the right to trial within a reasonable time under Article 6(1) of the ECHR, as well as potentially having a detrimental effect on the supposed victims.

226. In the first place, this can result from the time taken by prosecutors to prepare an indictment, which can take up to thirty months despite the level of suspicion supposedly existing to initiate the proceedings and possibly occasioning resort to detention.

227. Secondly, notwithstanding the time taken, the proceedings can be prolonged on account of cases being returned by appeal courts for further evidence to be gathered where they consider that there are shortcomings in the investigation and that the indictments are incomplete (including the absence of an expert report or evidence that is vague).

228. Thirdly, can be prolonged on account of the multiple perpetrators considered to be involved, as well as the unwieldy nature of some case files in which disproportionate evidence has been gathered.

229. Finally, the failure to cooperate in requests for mutual legal assistance can also lead to delay in trials being heard.

230. Undoubtedly some of these considerations – apart from the last one - stem from excessive workloads and insufficient professionalism, which could be addressed by the provision of more resources and more effective training.

231. However, there also seems to be a tendency to make investigations more complex than necessary.

232. Moreover, in cases that are sent back the courts seem to be looking for evidence which is only slightly touched in or hinted at the case file with a determination to secure a conviction. This is at risk of compromising the impartiality of the judiciary since the burden of proof should rest upon the prosecution.

233. Furthermore, a predisposition towards giving the prosecution the opportunity to "perfect" its case is unlikely to lead to a change in the way cases are prepared, ensuring the inefficiency of this process and inevitably wasting the criminal justice system's valuable resources.

234. *There is thus a need to establish more clearly the factors leading to the undue length of proceedings and the steps that could be taken to mitigate this, as well as to monitor the actual impact of the amendment to Article 28 of the Judges and Prosecutors Law No. 6723 of 01.07.2016 on the length of proceedings – Study (including impact assessment) to be presented to the MoJ for further legislative or policy amendments*.

10. Taking account of rulings by the TCC, the Court of Cassation and the ECtHR

235. Violations of the Constitution found by the TCC will be shared with the relevant court and the defendant's legal representative. They are also posted on its website. However, there is no more general, official review of the implications of such rulings or apparatus for sharing them more widely and describing relevant best practice related to them.

236. *There is thus a need to establish a means for communicating the reasoning of a finding of a violation by the TCC to the court that will then be required to re-examine the conviction concerned - Study to be presented to the MoJ for further legislative or policy amendments.*

237. Furthermore, compliance with the decisions rendered by the TCC in response to individual complaints – and, more particularly, the absence of this seems to have played no part in promotion decisions for judges.[187]

238. This remains a major weakness as regards the implementation of the right to a fair trial. It needs to be addressed through more effective dissemination (in some instances translation) and explanation as to requirements of the rulings, together with real leadership in ensuring their implementation. This is something to be undertaken for judges, police officers and prosecutors in a manner that takes account of their different professional competences.

239. The TCC saw a need for the Court of Cassation and the appeal courts to do more to follow its rulings. However, the Court of Cassation indicated that it often refers to the case law of both the TCC and the ECtHR in its decisions, which are also followed by the judges at lower instances.

240. Furthermore, the Court of Cassation indicated that judgments of the ECtHR were regularly translated into Turkish and that, as a member of the ECtHR's superior courts network, it regularly shared its work in integrating the ECtHR's case law into its own case law.

241. Nonetheless, the tendency seems to be for courts only to consider the rulings of the Court of Cassation Court and not those of the TCC or the ECtHR, with the implications of those by the latter not being sufficiently internalised so as to prevent a recurrence of the violations found in them.

242. *There is thus a need to ensure the more effective dissemination (including translation and updating) and use of handbooks and other materials prepared under previous Council of Europe projects) and explanation as to requirements of the rulings of the ECtHR, the TCC and the Court of Cassation to judges, police officers and prosecutors. Such dissemination explanation also needs to be accompanied by real leadership directed at ensuring the consistent implementation of these rulings in the course of regular seminars organized under auspices of the Justice Academy of Turkey for both candidate and senior judges and prosecutors – Seminars.*

11. Retrials following rulings by the ECtHR

243. A retrial can be the most effective way of remedying a violation of the right to a fair trial. However, that does not always seem to be the outcome of proceedings held following a finding of a violation by the ECtHR.

244. This seems to be the consequence of the judge(s) in the court concerned being ignorant of the actual reasoning that led to the finding of a violation.

245. The responsibility for overseeing the execution of judgments by the ECtHR rests with DG HR, which translates rulings of the ECtHR and sends them to relevant units with an explanatory note. Where necessary, it makes general comments regarding changes to the law that might be required but it has no mandate to change or recommend changes to legislation. However, it does not have a particular role where the holding of a retrial was an element in the implementation of a judgment finding a violation of Article 6 of the ECHR, although it will prepare a translation as soon as possible of the relevant judgment where requested by the court concerned in the event of one not having already been made.

246. As a result, it does not explain the ruling or give the court conducting the retrial any guidance as to the problem to be addressed. Similarly, no details are given in cases where a unilateral declaration has been made to the ECtHR and this is followed by a retrial. Furthermore, there seems to be no systematic arrangement for informing all judges and prosecutors about violations that have been found by the ECtHR. The reluctance to act appears influenced by a concern to respect the independence of the judiciary. Such respect is appropriate but it would not be undermined by providing information relevant to a finding by the ECtHR or the

[187] But see the reform referred to in para. 55 above.

submission of a unilateral declaration to it as this merely provides the context for rulings of the ECtHR that are material to the proceedings before the relevant court. It does not interfere with the responsibility of that court to determine the relevance of the ECtHR ruling to the proceedings before it.

247. *There is thus a need for DG HR to communicate the reasoning for a finding of a violation of Article 6 of the ECHR, as well as of any unilateral declaration accepted by it, to the relevant court in time for this to be taken into account in the retrial proceedings – Suggestions for DG HR*.

E. CYBERCRIME

248. Apart from certain matters arising in respect of the work of MASAK – which are dealt with in the following section on the Financing of Terrorism – the potentially problematic issues identified related to: the adequacy of legislation; law enforcement; and imposing restrictions on internet access.

1. Adequacy of legislation

249. It appears that it is not always possible to collect traffic in real time because of cost and issues of access. Although the provision of some additional resources could facilitate the collection of traffic data, there also appears to be a need to clarify the nature of this concept in the relevant legislation and to simplify the range of provisions involved given that is no single piece of legislation dealing with it.

250. At the same time, there is no equivalent for the Gendarmerie to the powers of criminal investigation that are conferred on the police by the Police Powers and Duties Law, additional Arts. 6 and 7, which were considered to handicaps them in the conduct of investigations relating to cybercrime, notwithstanding that their responsibilities are not identical to those of the police.

251. In addition, if there is physical damage to devices from which some electronic evidence can be obtained, operations such as "rooting", "chip-off" and "jailbreaking"[188] would need to be performed in order to extract it. However, there is no provision in the CPC which would authorise such a physical intervention.

252. There is also no legal basis enabling police to carry out crime preventive task (infiltration into closed internet groups, hacking a hacker's internet-based platforms, etc.). For instance, the Fifth Part of the CPC dealing with the interception of communications does not contain any provision concerning monitoring of internet traffic. This problematic as this precludes covert investigations involving infiltration into closed internet groups and websites in the "Dark Net", which could lead to the rescue of victims and the identification of persons committing the offences of making and distributing indecent images of children, who have often also engaged in serious sexual conduct towards them.

253. Moreover, there is no clear legal ground for obtaining information from international and national cloud applications or for crimes related to cryptocurrency.

254. Furthermore, cybercrimes have not been included in the catalogue crimes referred to in the CPC, which will sometimes adversely affect evidence gathering.

255. Also, the penalties for frauds committed through credit and ATM cards seem to be too low to act as a deterrent.

256. Finally, there appear to be doubts as to whether the provisions (including those in relation to definitions) in the Budapest Convention have been transposed with sufficient precision, this being important for both for cooperation purposes and the protection of human rights. There also seems be some uncertainty as to whether some national provisions that co-exist with the Budapest Convention would be disregarded in favour of the latter should these have an adverse impact on human rights. There was, however, no specificity provided as to either of these two possible shortcomings.

257. *There is thus a need to remedy the legislative gaps regarding measures to tackle cybercrimes outlined above and to ensure that the requirements of the Budapest Convention are fully and adequately transposed. However, doing so, it would be appropriate to liaise with the team working on the Council of Europe iPROCEEDS project - Liaison before any legislative reform is adopted.*

[188] https://www.techradar.com/uk/how-to/phone-and-communications/mobile-phones/what-is-jailbreaking-1322927.

258. Article 134(2) of the CPC requires the return to a suspect of an electronic device that has been seized "without delay when the password has been solved and the necessary copies are produced".

259. This provision for temporary seizure is potentially problematic as its observance could result in a suspect receiving back a device on which there are indecent images of children or cryptocurrency accounts such as Bitcoin and Monero, allowing him or her to have continued access to those images or to move the currencies concerned beyond the reach of law enforcement. This is inappropriate as such a return is giving the suspect the very elements that constitute the offence.

260. *There is thus a need to amend Article 134 of the CPC so that it no longer requires computers and other electronic devices to be returned automatically to suspects where indecent images of children and cryptocurrencies are present on them – Legislative amendment*.

261. Investigations in cases involving the use of pre-paid SIM cards can be impeded by the names and addresses of those using them are not collected by those selling them.

262. *Consideration should thus be given as to whether the legal obligations of those selling pre-paid SIM cards as regards collecting names and addresses need to be strengthened.*

2. Law enforcement

263. Problems in respect of the effectiveness of law enforcement stem in part from some aspects of the organisational arrangements but they are also attributable to the level of the skills of those involved in it.

264. As regards the conduct of investigations, the concern of the Court of Cassation about the high rate of quashing decisions in cases involving cybercrime has already been noted.[189] In its view – one also shared by appeal court judges - this was connected to the absence of a separate judicial law enforcement system[190] as well as the need to develop specialisation.

265. The TNP Cybercrime Unit has been established for several years and manages the 24/7 single point of contact on behalf of Turkey. It has, however, been trying to fill a skills gap after losing officers who had been dismissed after the attempted coup. In addition, the Digital Forensics Unit had been placed under extreme resourcing issues following the seizure of significant numbers of digital devices in relation to the ByLock application and other matters deemed necessary whilst the Emergency Measures were in place.

266. The TNP Cybercrime Unit seems to have a good level of experience and capability in the investigation of blockchain evidence relating to cryptocurrencies, including concrete cases involving the seizure of criminal proceeds in this form. The unit has a circular note that provides guidance on how this should be undertaken and includes the use of cryptocurrency wallets (under the control of law enforcement) to which the proceeds of crime are transferred and thereby preventing any illegal interference from the suspect. This is now routine investigative behaviour in many advanced cybercrime units.

267. The Gendarmerie Cybercrime Unit was only established in September 2019 and is still building on its capacity and capabilities. The officers in charge demonstrated some great enthusiasm towards the subject but there appear to be some large gaps in their knowledge regarding the potential responses to cybercrime. One of their key aspirations is to have a carte blanche authority to undertake undercover officer investigations on the Internet ("virtual patrol"), without really considering the importance of taking into account the checks and balances that should flow from observing the requirements of legality, necessity and proportionality.

[189] See para. 150 above.
[190] As to which, see paras. 148-164 above.

268. The relationship between the TNP and Gendarmerie units tended to indicate that they were planning to support one another. Certainly, it was clear the former one could provide useful guidance and support to the latter one.

269. *There is thus a need to encourage the TNP and Gendarmerie units dealing with cybercrime to share their experience in this field, with each other and also with Prosecutor Cybercrime bureaus in different provinces – Regular seminars and workshops and Memorandum of Understanding or other cooperation policy document between all relevant stakeholders.*

270. The TNP Cybercrime Unit pointed to the fact that several investigations could be conducted about the same matter within different jurisdictions in the country and that there was insufficient coordination in this regard.

271. *There is thus a need for consideration to be given to establishing a centralised file system for investigations concerned with cybercrimes in different jurisdictions within the country – Legislative amendment.*

272. Furthermore, in connection with 24/7 focal point applications, there were sometimes problems between the cyber police and prosecutors regarding the content and urgency of the situation (notably as regards the implementation of a preservation request relating to evidence) due to a lack of training on the side of the latter. This is particularly significant given the responsibility of prosecutors for directing investigations.

273. *There is thus a need for consideration to be given to establishing a central coordination prosecution office to deal with preserving evidence requested by parties to the Budapest Convention – Legislative amendment.*

274. The lack of specialist expertise on the part of prosecutors not only affects the willingness to commence or continue investigations – notwithstanding the establishment of IT offices and cybercrime units in Ankara, İstanbul, İzmir, Diyarbakir, Antalya, Samsun, Konya and Adana - but it also means that they do not have the competence to deal with area-specific requests such as a "storing request".

275. Similarly, MASAK was concerned about what it saw as a lack of efficiency and of specialisation on the part of public prosecutors, as well as about the processes for exchange with the latter, which could jeopardize investigations on account of failing to react appropriately within the legal timeframes. A related problem seems to be the slow response times from international partners to International Letters of Request, which need to be pursued more vigorously.

276. Moreover, the prosecutors contacted by the TNP Cybercrime Unit are responsible for local jurisdictions. As a result, they thus tend to be reluctant to commence or continue investigations involving cybercrimes because these involve much more complex international investigations, which would then compete with their time and resources in dealing with local issues.

277. *There is thus a need for consideration to be given to establishing further dedicated units within the public prosecution offices to deal solely with cybercrime cases – Organisational and practical arrangements.*

278. Appeal court judges saw a need for judicial expert witnesses on IT, with some form of accreditation.

279. *There is thus a need for consideration to be given to adopting a scheme for accrediting expert witnesses in the field of IT, which could be called upon by both prosecution and defence – Organisational and practical arrangements.*

280. The Forensic Medicine Institution ("FMI") is already well-equipped to examine IT equipment in a reliable manner. Nonetheless, it is likely to have a problem in responding to the growth of this form of criminality if it continues to be primarily responsible for conducting examinations of such equipment. Certainly, certain forms of examination might be better conducted by the police – which is already done to an extent in law enforcement laboratories - and thereby avoid the need for indefinite expansion of the institution.

281. However, there was some concern on the part of defence lawyers that the police, in cases involving cybercrime and electronic evidence, often started searches and imaging of devices without the presence of the suspect's legal representative, even when it was known that the lawyer was on his or her way.

282. *There is thus a need to ensure that the effectiveness of the FMI is not undermined through becoming too big and to provide the police with the training and equipment to conduct straightforward examinations of IT equipment in circumstances where its reliability is not open to question – Training and equipment for police officers.*

283. *In addition, there is a need for a checklist to be issued to the police as to the proper handling of digital evidence so that it is not later found to be inadmissible for breach of the procedures that should be followed – Checklist for police*.

284. *In addition, there is a need to update and adapt the Council of Europe's Electronic Evidence Guide (prepared by its Cybercrime Division) for the Turkish context – Guide on electronic evidence.*

285. The FMI's status as part of the MoJ might be seen as undermining its appearance as an independent expert body, even though this link is essentially concerned with financial arrangements for staff and its organisational structure. Furthermore, this appearance could also be affected by its apparent readiness to allow its expertise to go beyond analysis and become involved in the investigative process.

286. *There is thus a need to take steps that promote rather than undermine the independence of the FMI– Legislative amendment*.

287. Currently, electronic evidence is stored in depots located in courthouses, which may not have the appropriate environment in terms of humidity and temperature required for its storage.

288. *There is thus a need to establish appropriate conditions for the storing of electronic evidence throughout the country – Infrastructure development*.

289. It is clear that there is a varying degree of expertise on matters relevant for tackling cybercrime within the judiciary, the police and the prosecution. There is acknowledged to be a need to expand this not only in substantive terms – particularly as regards electronic evidence and the technical aspects of its preservation, cryptocurrencies and bitcoins, money laundering and mutual legal assistance – but also on a country-wide basis.

290. Certainly, everyone in these services should have a basic knowledge about electronic evidence since this can touch most forms of criminality but this should not preclude the development of advanced specialists and the establishment of specialist cybercrime units.

291. The development of more specialist judges within local courts would be preferable to the creation of a centralised, specialist court since this would keep proceedings close to the victims concerned and electronic crimes or evidence might be part of many proceedings.

292. Efforts to develop specialisation should not, however, be allowed to encourage or strengthen any "silo" effect as the rapid sharing of information and preservation of evidence is crucial for the effective tackling of cybercrime.

293. *There is thus a need to ensure that all judges, police officers and prosecutors receive general training with respect to the potential for issues involving electronic evidence and cybercrime to impact on their work – Regular training activities/seminars*.

294. *At the same time, there is a need to develop specialist judges, police officers and prosecutors with a view to entrusting them with the principal responsibility for dealing with electronic evidence and cybercrime issues in their respective domains – Advanced training.*

295. DG FR & EU Affairs is right to consider that it would be fruitful to enhance national capacity to undertake international cooperation the field of cybercrime.

296. *There is thus a need for the MoJ to complete its work on updating the circular on implementation of guidelines and templates in order to enable faster communication between*

services, including requests for international exchanges from the MoJ to prosecutors – Guidelines and Templates for relevant government departments, police and prosecutors.

297. There also seems to be scope for greater coordination between banks, police and prosecution in their efforts to fight against the growth in bank fraud.

298. *Consideration should thus be given to the conclusion of a Memorandum of Understanding or other cooperation policy document between the Union of Banks, the Ministry of Justice/Prosecution services and the Ministry of Interior/Gendarmerie in connection with their efforts to tackle bank frauds – Memorandum of Understanding or other cooperation policy document between the Union of Banks, the Ministry of Justice/Prosecution services and the Ministry of Interior/Gendarmerie.*

3. Restricting internet access

299. The Law on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication ("the Internet Law")[191] allows restrictions to be imposed on access to the Internet on the grounds of safeguarding individual rights of persons or other reasons.

300. The Internet Law provides for four different access-blocking procedures: denying access, and implementation thereof under article 8; removing content and/or blocking of access in circumstances where delay would entail risk under Article 8A; removing content from publication, and blocking of access under Article 9; blocking access to content on grounds of the confidentiality of private life under Article 9A.

301. Under Article 8, access-blocking is a "precautionary measure" or "interlocutory measure", taken in the framework of criminal proceedings concerning the crimes listed under Article 8(1) (a) and (b), by a judge at the investigation stage and by a court at the prosecution stage, or by a public prosecutor at the investigation stage where delay would present a risk.

302. A decision not to prosecute by the public prosecutor at the end of the subsequent investigation into the commission of crimes indicated in the first paragraph of Article 8, and an acquittal decision given by criminal courts at the prosecution stage, result in the lifting of the blocking measure. On the other hand, the powers in the other provisions in the Internet Law are not linked to and do not depend on any other substantive criminal or civil procedure.

303. A decision on access-blocking under Article 8 is to be issued if there are "sufficient grounds for suspicion" that the content constitutes any of the crimes listed in paragraph 1[192], i.e., the prerequisite for the submission of an indictment by public prosecutor.

304. In addition, the president of the ICTA has competence to issue an *ex officio* blocking order which is executed by the access provider in two different scenarios: (a) the content or hosting provider of the publications with content which constitutes offences as specified in Article 8(1) is located outside the country; and (b) the content of the publications constitutes offences of sexual exploitation of children and prostitution, even if the content or hosting provider is located within the country. It is understood that this power is used as a last resort, with the adoption of a "Notice and Takedown" to block the access to the illegal material being first adopted.

[191] Official Gazette No. 26530 of 23/05/2007.

[192] I.e., incitement to commit suicide; sexual exploitation of children; facilitating the use of narcotic or stimulant substances; supply of substances which are dangerous to health; obscenity, prostitution, providing premises or facilities for gambling; and any of the offences under the Law on Offences against Atatürk, Statute 5816, dated 25/7/1951.

305. In cases where it is technically not possible to ban access to content related to the violation or where the violation cannot be prevented through blocking the access to the relevant content[193], it is possible under Article 8(17) for access to the entire website to be blocked.

306. The exercise of these powers has the potential to be disproportionate in their effect and thus their use could be inconsistent with the right to freedom of expression under Article 10 of the ECHR, notwithstanding that this provision and the constitutional guarantee of freedom of expression ought to be taken into account. This is particularly so in view of the wide interpretation that seems to be being given to some of the offences to which the blocking power is applicable.[194]

307. An objection to an access-blocking decision taken as a precautionary measure (i.e. taken by a judge or public prosecutor), as opposed to administrative measure taken by the president of ICTA may be made under Article 268 (3)a of the CPC. However, there is no provision for any notification about this procedure under Article 8(2) to be given to the content providers – as opposed to the access and hosting providers - so that they learn about the blocking measure and the reasons supposed to justify it. In addition, only the Union of Service Providers is able to appeal against such measures and this does not necessarily represent all content providers. Moreover, there is no provision for the trial court to determine whether the supposed precautionary measure is necessary.

308. There is no provision for prior judicial approval of blocking measures adopted by the President of the ICTA, an administrative body, but a complaint should be made to the Office of the Chief Public Prosecutor where the identity of the person creating the publication concerned is identified. Nonetheless, the need to adopt such measures where there has not been any determination by a judge or prosecutor that the institution of criminal proceedings is appropriate is not at all evident.

309. *There is thus a need to amend the Internet Law so as to require that the content providers concerned are (a) notified of access-blocking decisions and the reasons for them and (b) are able to appeal against the decisions affecting them. In addition, there is a need to require judges and prosecutors taking those decisions or hearing appeals against them to take into account the requirements of Article 10 of the ECHR. Furthermore, there is a need for the power of the President of ICTA to make blocking orders to be replaced by a requirement to notify a prosecutor of the suspected commission of offences specified in Article 8(1) – Legislative amendment.*

310. *There is also a need for those involved in the exercise of these powers to receive training as to the relevant requirements arising from Article 10 of the ECHR – Regular training activities/seminars.*

[193] E.g., websites using HTPS protocol are not technically suitable for page-based blockage since they adopt a cryptographic access.

[194] See European Commission for Democracy through Law (the Venice Commission), *Opinion on Law no. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by means of such Publication ("the Internet Law")*, CDL-AD(2016)011, 15 June 2016, para. 47.

F. FINANCING OF TERRORISM[195]

311. The banking system seems to have a well-structured arrangement for monitoring potentially suspicious transactions. However, this is not enough to tackle the financing of terrorism, particularly as this is not the only way in which terrorists and their supporters collect, move and gain access to funds.

312. Six problematic issues were identified, namely, ones relating to: the precision of legislative terms; the nature of MASAK's roles; the accuracy and knowledge of MASAK reports; the information flow to MASAK; the applicability of United Nations ("UN") sanctions; and training and specialisation.

1. Precision of legislative terms

313. There is no universally agreed definition of terrorism but it was acknowledged by many interlocutors that what was understood to constitute "terrorism" in the various legal provisions – notably those in Article 220(6) and (7) of the Penal Code - lacked precision, which affects compliance with the requirement of foreseeability under the ECHR regarding their application.[196]

314. Moreover, the way in which certain activities are characterised as "terrorism" by Turkish law and practice is not entirely reflected in the approach taken in other countries with which it wishes to cooperate. The lack of full cooperation on the part of the States concerned in response to requests for mutual legal assistance and for the removal of material from websites tends to reflect their wish to protect the right to freedom of expression. It is a matter of debate as to whether the failure to fulfil legal assistance/rogatory requests on this basis is consistent with obligations under the European Convention on Mutual Legal Assistance in Criminal Matters (under Article 2, the requested Party may refuse assistance if it considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of is country). Outside of mutual legal assistance, police working in the anti-terrorism field have also experience difficulties in finding common ground with their international partners for the same reason.

315. Although a common definition of terrorism – adopted, e.g., by the United Nations - would undoubtedly be helpful in this connection, the prospect of securing international agreement on this issue seems unlikely at present.

316. Full cooperation on the part of other States might be more readily obtained if there were a narrower scope than at present as to what is considered to amount to terrorism. This would also assist in ensuring that the ECHR's foreseeability requirement is fulfilled. In making this observation, it is not being asserted that the definition in Turkey is necessarily inconsistent with international standards, other than possible issue concerned with foreseeability. However, it reflects current practical difficulties in securing cooperation in some instances.

317. The problem of precision also possibly arises with regard to what is to be treated as funding and financing in this context as is evident from an issue raised by the Court of Cassation, namely, whether this would extend to the provision of food, a tent and other small supplies merely on account of such items having some economic value. It had apparently reached the conclusion that this offence under Article 4 of Law No.6415 had been committed in a recent case in which the material supplied had included spices, camouflage and knives. [197] Such a conclusion seems

[195] The Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction entered into force on 31 December 2020. Venice Commission's opinion on this new law is expected to be adopted in July 2021.
[196] See, e.g., *Parmak and Bakır v. Turkey*, no. 2429/07, 3 December 2019 and *Sabuncu and Others v. Turkey*, no. 23199/17, 10 November 2020.
[197] See Decision No. 2017/692 E, 2018/41 K.dated 13.02.2018.

to reflect a focus more on the economic value of what was provided than on the purpose of its provision (i.e., whether or not this was to assist directly or indirectly terrorist acts).

318. Moreover, there does not appear to be any attempt to consider whether it might have been more appropriate to invoke the offence of aiding and abetting a terrorist organisation" in Article 220(7) of the Penal Code rather than seek to stretch the concepts of funding and financing.

319. Both offences are, of course, entirely appropriate tools in the fight against terrorism.

320. The problem of ambiguity in the interpretation of the offence of aiding and abetting terrorism is beginning to be an issue in applications to the TCC but so far it has not been the subject on any ruling.

321. Articles Law of No. 6415 on the Prevention of Financing of Terrorism would benefit from some clarification or elaboration in order to avoid the need for these concepts being unduly stretched.

322. *There is thus a need to revise existing legislation in such a way that the concept of what is understood to constitute terrorism as distinct from other substantive criminal conduct is more precisely defined and, in particular, is consistent with the requirement of foreseeability under the ECHR. At the same time, there is a need to clarify or elaborate what is to be treated as funding and financing in relation to terrorism as opposed to aiding and abetting – Legislative amendment.*

323. *In addition, there is a need to provide prosecutors with guidance as to how to determine when the use of offences of funding and financing in relation to terrorism and of aiding and abetting it would respectively be appropriate – Guidelines for prosecutors.*

2. The nature of MASAK's roles

324. MASAK fulfils the role of the Financial Intelligence Unit ("FIU") for Turkey[198] and joined the Egmont Group in 1998[199]. Its duties and powers are prescribed in a Presidential Decree[200].

325. MASAK has been designated by Law No. 5549 as an administrative model FIU, meaning that it is a centralised, independent administrative authority acting as a "buffer" between the financial and law enforcement communities.

326. Although MASAK was keen to reinforce the view that its mandate is restricted to intelligence and analysis, it actually prepares reports about financial data for prosecutors and law enforcement agencies in a similar manner to ones prepared by a financial investigator. As a consequence, it is in reality a hybrid model, with its reports entering the evidential chain, even though it does not have a formal evidence-gathering role. Certainly, the Court of Cassation saw MASAK as gathering evidence and not just intelligence, which it does not rely upon.

327. Turkish law enforcement agencies do also use financial investigators. The nature of their tasks generally means that they are required first to obtain Production Orders from the courts. However, this is not required for the reports prepared by MASAK, which prefers to use the term "examination" to describe its activities having this nature.

328. Indeed, UYAP data, tax related information, bank accounts and transactions and real estate registration are all accessible to MASAK experts without a court decision or warrant, if requested. The access to data is not direct but subject to authorisation by the owner (such as the bank). However, Articles 7 and 9 of Law no. 5549 on Prevention of Laundering Proceeds of Crime and Article 231 of Presidential Decree No. 1 impose public institutions and organisations,

[198] Over 160 countries have established a FIU serving as the national centre for the receipt and analysis of: (a) Suspicious Transaction Reports; (b) other information relevant to money laundering, associated predicate offences and financing of terrorism; and (c) dissemination of the results after analysis.

[199] The FATF Interpretive Note (Recommendation 29) determines that countries should ensure that the FIU has regard to the Egmont Group statement of purpose and its principles for information exchange between Financial Intelligence Units for money laundering and financing of terrorism cases.

[200] No. 1, Art. 231 and 232.

natural and legal persons and organisations without legal personality to give MASAK access to the data they control upon it request and without the need for a court order.

329. In these circumstances, the fact that guarantees set up in the penal procedure law are seen as hampering investigations and MASAK is not bound by these controls means that it is not surprising that recourse to MASAK instead of specialised police seems to be frequent.

330. In addition, individuals are under a legal obligation – under Article 14 of Law No. 5549 on Prevention of Laundering Proceeds of Crime - to provide material sought by MASAK. This obligation is backed by the possibility of criminal sanctions being imposed for non-compliance.

331. Moreover MASAK can make use of international intelligence sharing agreements, such as the Egmont Group – a platform that provides for sharing of financial intelligence among FIUs - to get much quicker answers from international financial bodies than under slower systems such as the Mutual Legal Assistance Treaties letter of request.

332. MASAK does not have the obligation to reason its reports or to document its investigation in a way that enables to verify the reliability of evidences and findings. In addition, their analysis is confidential; as a result, concerned persons cannot access it.

333. Thus, a MASAK "Analyst" can easily find him or herself wearing two hats; one of gathering information and intelligence to make assessments of suspected criminal money laundering a second of sharing these assessments with prosecutors, courts, law enforcement and other relevant public institutions when needed.

334. MASAK sees its roles as complementary to the investigation being conducted by a prosecutor but, in practice, it seems that MASAK is the single source of information used in many cases so that it is not just complementing or corroborating any other material procured by the prosecution.

335. The present arrangement in Turkey means that confidential intelligence can be used to support reports presented to the prosecution and the courts, with little (if any) opportunity for the defence to refute or challenge any of the assumptions made in them[201], particularly as MASAK analysts are regarded by some courts as expert witnesses (although other courts do seek additional reports from experts and some appeal court judges considered that excessive importance was attached to MASAK reports, which they rightly regarded as intelligence and not expert reports) with them being accorded a high level of credibility on account of the body's public status.

336. Moreover, apart from practical limitations on cross-examination[202], it is unlikely to be able to obtain a strong enough expert report to refute the one from MASAK.

337. Intelligence should not normally be relied upon to support financial investigations as these require the relevant material to be prepared in accordance with evidential standards.

338. There is certainly a possibility that reliance on intelligence-based reports prepared by MASAK on the basis of compulsion to disclose information lead to situations in which the privilege against self-incrimination under Article 6(1) of the ECHR is breached. However, the Court of Cassation and the TCC do not appear to see this as problematic, referring to the possibility for the defence to object to their use and to submit counter reports pursuant to Article 67 of the CPC.

339. In addition, MASAK's ability to have access to information without any court order, albeit having a clear basis in law, means that this activity is not subject to the safeguards required by Article 8 of the ECHR, which do have to be observed by the police.

[201] Also, defence lawyers may not have seen these reports until the trial stage on account of their inability to have access to the case file; see paras. 135-195 above.
[202] See para. 199-200 and 208 above.

340. Certainly, it is more usual for the two roles being performed by MASAK to be undertaken by two separate bodies because one relies upon confidential intelligence sources and the other relies upon evidence.[203]

341. Moreover, Article 64(3) of the CPC precludes anyone from being appointed as an expert witness in cases related to the office to which they are attached. Although MASAK personnel may not therefore act as experts in prosecutions in which their institution is involved, this does not stop the courts from treating reports prepared by it as expert evidence.

342. *There is thus a need for MASAK either to discontinue undertaking financial investigation activities and continue solely in its role as a FIU or divide itself so that a different department deals with each role. At the same time, care should be taken in the reorganisation of these matters so as not to undermine the high levels of performance that MASAK currently delivers – Legislative amendment*.

343. *There is also a need to ensure that whichever bodies undertake the roles currently performed by MASAK be subject to the safeguards required under Articles 6 and 8 of the ECHR and Article 64(2) of the CPC – Legislative amendment*.

344. *In addition, material produced by MASAK* (*or its successor bodies) should not be included in the case file on account of this being intelligence and not evidence – Legislative amendment.*

345. At present, MASAK's existence depends essentially upon a Presidential Decree and it is dependent upon decisions taken by the Ministry of Treasury and Finance.

346. *There is thus a need for whichever bodies undertake the roles currently performed by MASAK to be given a statutory basis that secures their autonomy – Legislative amendment.*

3. Accuracy and knowledge of MASAK reports

347. It is possible to object to clerical material errors in MASAK reports but not to other matters relating to their accuracy.

348. Moreover, reports by MASAK used to secure the seizure of immovable goods, rights and credits are confidential and so cannot be appealed.

349. Furthermore, persons who are subject to an examination by MASAK experts will not be informed about its outcome.

350. There is a form of internal safeguard against possible deficiencies in MASAK reports – whether prepared in-house or (outside of Ankara) by examiners (i.e., generally tax inspectors working in each city centres), for whom guidelines have been prepared - in that these are also examined by a kind of reading commission in Ankara to ensure that the requisite standards are met and that there is a consistency of approach in them.

351. The inability to challenge the accuracy of MASAK reports except as regards clerical material errors, the non-disclosure of confidential reports used for the seizure of goods and certain rights and the absence of any obligation to inform persons subject to an investigation about the outcome could result in suspects not being able to defend themselves in related criminal proceedings (*cf*., the obligation to notify a person under Article 137 of the CPC where no suspicion is identified during the interception of correspondence).

352. Moreover, insofar as MASAK reports are relied upon in criminal proceedings, the limitations in practice on the possibility of cross-examination in criminal procedure mean that they cannot be

[203] A report prepared by the UK Home Office, "Exploring the Role of the Financial Investigator" (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/753212/exploring-the-role-of-the-financial-investigator-report-horr104.pdf) provides a better example of the roles of a financial investigator involved in criminal proceedings and can be compared with documentation about the role of a "Financial Intelligence Unit within the UK National Crime Agency (https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-terrorist-financing?highlight=WyJmaXVzIl0=).

challenged in the course of the trial. However, even if that problem is resolved[204], it is inappropriate to require someone to wait until that stage in the proceedings to be able to challenge these reports.

353. *There is thus a need to introduce (a) the possibility of challenging the accuracy of financial investigation reports on matters beyond clerical material errors and (b) the duty to inform persons subject to an investigation about the outcome – Legislative amendment*.

354. It seems that MASAK is regularly tasked by prosecutors and judges to obtain financial information for offences where no money laundering (or financing of terrorism) is identified, such as matters concerning, but not limited to, online gambling and fraud. However, MASAK should not be expected to meet the needs of the prosecutors and courts since - as with other national FIUs - this is outside of its legal mandate and, in any case, there is a separate process involving parallel Financial Investigation already in place within Turkey.[205]

355. *There is thus a need for MASAK (or its successor bodies) (a) to seek only financial data in respect of suspicious activity for which there is a money laundering or financing of terrorism and (b) to act as a buffer between the financial institutions and the law enforcement community – Suggestions for MASAK (or its successor bodies), guidelines for judges and prosecutors*.

4. The information flow to MASAK

356. MASAK – which has an effective method of working and intelligence sharing nationally and internationally, with high levels of professionalism and reputation and which is composed of about 110 experts stationed in Ankara - is able to obtain quick access to a number of government records such as tax records, legal databases, bank accounts, commercial records and government indices such that it is easily able to compile a 'financial curriculum vitae' of any individual that is relevant to its mandate.

357. Moreover, as has been seen, banks are required to notify MASAK of suspicious transactions. MASAK must then perform an examination and prepare a report on this notification. In accordance with Article 19/A of Law No. 5549, the Minister of Treasury and Finance is authorised to suspend the transaction for up to seven working days.

358. Intelligence-led policing is a necessary part of a national response to money laundering and terrorist financing cases as it can lead to the identification of offenders and criminal property.

359. Although MASAK can quickly acquire intelligence, it has already been noted that all the salient information may not always be received from prosecutors and police officers.[206] This can lead to missed opportunities or wasted time.

360. *There is thus a need to address these shortcomings through joint meetings and workshops involving prosecutors, police officers and the staff of MASAK (or its successor bodies) with a view to enhancing their respective performance and contributing to inter-agency cooperation - Regular meetings and workshops.*

5. Applicability of UN sanctions

361. Where sanctions have been adopted by the United Nations Security Council, it is possible the person against whom they are being implemented to challenge this on the basis that he or she is actually not the person who has been listed in the Security Council resolutions concerned. This is important as many people have the same or similar names and they may find that their assets have been wrongly frozen. Objections regarding name similarities are made to MASAK pursuant to Article 14 (6) of the Regulation on Procedures and Principles Regarding the

[204] See paras. 199-200 and 208 above.
[205] See further, the Ministry of Treasury and Finance's description of MASAK at https://en.hmb.gov.tr/fcib-presentation and the EGMONT guidelines of an Administrative FIU at https://egmontgroup.org/en/content/financial-intelligence-units-fius.
[206] See para. 275 above.

Implementation of the Law on Prevention of the Financing of Terrorism. If the aforesaid applications are found to be justified, the said freezing decisions are corrected immediately

362. Moreover, a person who has been properly listed can challenge their application to him or her in proceedings before the administrative court,[207] consistent with the right of access to court under Article 6(1) of the ECHR.[208].

6. Training and specialisation

363. The Anti-Terrorism Department has prepared a Guide to Combating Financing of Terrorism for its units working in this field and carries out various training activities for them. Nonetheless, the existence of a knowledge gap on the part of prosecutors and police officers as regards understanding what is required for the investigation of the financing of terrorism and issues relating to mutual legal assistance was generally recognised, particularly as terrorist organisations do not use the banking and finance system.

364. *There is thus a need for prosecutors and police officers working in this field to receive joint training on an ongoing basis – Regular training activities/seminars*

365. There was also much recognition that greater specialisation on the part of prosecutors in the fields of money laundering and financing of terrorism would put them in a better position to handle cases involving them both in Turkey and (in cooperation with other foreign law enforcement institutions) abroad. However, it would be important to ensure that such specialisation is not handicapped by jurisdictional boundaries, between provinces.

366. *There is thus a need to establish a central prosecution mechanism – operating countrywide - for money laundering and financing terrorism crimes – Legislative amendment*.

367. Although no particular need for training was identified by MASAK, the nature of its work underlines the importance of those working on financial intelligence and financial investigation to be more sensitised to the human rights implications of exercising the relevant powers.

368. *There is thus a need for the staff working in MASAK (or its successor bodies) to receive training as to the human rights implications of exercising the relevant powers conferred upon them – Regular training activities/seminars*.

[207] See the FATF mutual evaluation report for 2019 (fn. 131), at p. 173.
[208] See *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, 21 June 2016, paras. 150-154.

G. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

369. There have been a number of potentially positive legislative developments, whose impact will need to be monitored.

370. However, there are also several aspects of legislation, practice and organisational arrangement which either conflict with the requirements of the ECHR, particularly Articles 5 and 6, or could possibly do so.

371. In order to preclude these conflicts from continuing or arising, there is thus a need to take various measures, involving the adoption of legislation, the adoption of suggestions the issuing of guidance and checklists, the making of certain organisational and practical arrangements, the preparation of studies, the provision of training and the dissemination of information

372. The **legislative amendments** required concern:

a. aligning the formulation of Article 91(2) of the CPC with the case law of the ECtHR relating to reasonable suspicion;

b. modifying the possibility of deprivation of liberty under Article 91(4) of the CPC so that those detained should be released within a few hours or brought promptly before a court;

c. making it explicit in the CPC that a hearing should be held before taking a decision to apply such measures to anyone;

d. deleting Article 100(3) of the CPC to ensure that the existence of the grounds for arrest is something to be established in all cases;

e. requiring that no extension be made to any detention unless there is a full and explicit examination as the compatibility of the cumulative effect of each and every extension being granted with the requirement in Article 5(3) of the ECHR that a person be tried within a reasonable time or released pending trial;

f. enabling regional appeal courts to quash the decisions given by first instance courts where their reasoning is found to be inadequate;

g. removing the automatic requirement in Article 134 of the CPC to return computers and other electronic devices to suspects where indecent images of children and cryptocurrencies are present on them;

h. limiting the possibility of imposing restrictions on a defence lawyer's access to the case file pursuant to Article 153(2) of the CPC to only those elements in it that could actually hinder the investigation;

i. precluding the inclusion in the case file of material produced by MASAK (or its successor bodies);

j. introducing a requirement for adequate compensatory factors to be available where the testimony of a witness who cannot attend the hearing for good reason is taken into account without being subjected to cross-examination;

k. taking steps that promote rather than undermine the independence of the FMI, possibly by separating it from the MoJ;

l. requiring in the Internet Law that content providers parties are notified of access-blocking decisions and the reasons for them and can appeal against those decisions;

m. requiring judges and prosecutors taking access-blocking decisions or hearing appeals against them to take into account the requirements of Article 10 of the ECHR;

n. replacing the power of the President of ICTA in the Internet Law to make blocking orders by a requirement for him or her to notify a prosecutor of the suspected commission of offences specified in Article 8(1);

o. revising existing legislation in such a way that the concept of what is understood to constitute terrorism as distinct from other substantive criminal conduct is more precisely defined and, in particular, is consistent with the requirement of foreseeability under the ECHR;

p. clarifying or elaborating what is to be treated as funding and financing in relation to terrorism as opposed to aiding and abetting;

q. introducing (a) the possibility of challenging the accuracy of financial investigation reports on matters beyond clerical material errors and (b) the duty to inform persons subject to an investigation about the outcome; and

r. establishing a central prosecution mechanism – operating countrywide - for money laundering and financing terrorism crimes.

373. There is also a need to **adopt legislation** in order to remedy certain legislative gaps regarding measures to tackle cybercrimes and to ensure that the requirements of the Budapest Convention are fully and adequately transposed. However, before doing so, it would be appropriate to **liaise with the team** working on the Council of Europe iPROCEEDS project – which has been focussing on legislation in relation to cybercrime - so as to prevent unnecessary duplication of resources.

374. In addition, **legislation is required** in connection with MASAK that: (a) leads to it either (i) discontinuing the undertaking of financial investigation activities and continuing solely in its role as a FIU or (ii) dividing itself so that a different department deals with each role; (b) ensures that whichever bodies undertake the roles currently performed by MASAK be subject to the safeguards required under Articles 6 and 8 of the ECHR and Article 64(2) of the CPC; and (c) gives the bodies concerned a statutory basis securing their autonomy.

375. Furthermore, **consideration needs to be given** to adopting legislation that will:

a. make it even more explicit in the CPC that the inadequacy of "judicial control" measures should first be established before any use of detention can even be considered;

b. remove the possibility of prosecutors receiving the first report of a crime;

c. strengthen the legal obligations of those selling pre-paid SIM cards as regards collecting names and addresses;

d. establish a centralised file system for investigations concerned with cybercrimes in different jurisdictions within the country; and

e. establish a central coordination prosecution office to deal with preserving evidence requested by parties to the Budapest Convention.

376. Moreover, there is a **need to establish** whether there is any gap in existing powers of apprehension of suspected offenders and, if so, to amend the law accordingly.

377. **Suggestions** should be adopted for:

a. DG HR, in order to communicate the reasoning for a finding of a violation of Article 6 of the ECHR to the relevant court in time for this to be taken into account in the retrial proceedings;

b. MASAK (or its successor bodies) to seek only financial data in respect of suspicious activity for which there is a money laundering or financing of terrorism;

c. MASAK (or its successor bodies to act as a buffer between the financial institutions and the law enforcement community (paras. 353);

d. Police officers in order to (i) observe the conditions set out in Article 98 of the CPC; (ii) ensure that there is a video record of arrivals and departures from a police station by suspects, witnesses and anyone other than police officers; (iii) prohibit the use of "interviews" of persons about offences where there is already a suspicion that they are the offender, (iv) to prohibit them from referring complainants to prosecutors; (v) to highlight for prosecutors in

writing the specific facts considered relevant to their consideration as to whether to seek the imposition of "judicial control" or detention is considered appropriate, (vi) to provide criteria to be observed for delaying access to a lawyer in all cases and in particular when this is for 24 hours in cases involving organised crime and terrorism, (vii) to better respect confidentiality of investigations, (viii) to require a lawyer who signs a statement made by a suspect to confirm that he or she was present during the interrogation during which it was made and (ix) to require all questioning of persons – whether suspects, witnesses or anyone else – to be audio and/or video-recorded.

378. **Guidelines** should be issued by bar associations to lawyers requiring them, when signing statements made by suspects, to confirm their presence during the interrogations during which they were made.

379. **Guidelines** should also be provided for

a. police officers that integrate international best practice in respect of covert investigative techniques into their operational arrangements;

b. judges and prosecutors as to the adoption of measures of restraint, including detention, in a manner that is consistent with the approach required under Article 5(3) of the ECHR*;*

c. criminal peace judges with respect to; (i) ensuring defence lawyers always have access to the case file when challenging any detention decision and that they are informed when a restriction decision concerning it is taken; (ii) ensuring that: (aa) there is a hearing for all monthly reviews of detention in which the suspect can participate, (bb) these reviews are held within the prescribed deadline, (cc) the suspect's lawyer is given adequate notice as to the holding of every such review and (dd) defence lawyers can discuss matters with their clients during a review; and (iii) ensuring that the hearing and determination of appeals in respect of decisions to impose or continue detention occurs within a matter of days after the decisions being appealed;

d. judges and prosecutors as to: (i) the reasoning of decisions and submissions regarding whether or not resort to "judicial control" or detention is appropriate in a given case; (ii) the scope for testing the admissibility of evidence and to ensure that, if necessary, this is made consistent with the requirements of Article 6 of the ECHR; and (iii) the scope for testing the veracity of digital evidence and to ensure that, if necessary, this is made consistent with the requirements of Article 6 of the ECHR;

e. judges and prosecutors to seek only financial data in respect of suspicious activity for which there is a money laundering or financing of terrorism;

f. judges in order to ensure that an accused and defence lawyers are able to undertake the cross-examinations of witness and experts in accordance with the requirements of Article 6(3)(d) of the ECHR;

g. prosecutors in order (i) to prohibit them from dealing with cases which they have opened upon a direct complaint to them, (ii) to establish a mechanism whereby any evidence established prior to the trial to be inadmissible would be excluded from the case file and thus not be accessible by the judge(s) trying the case and (iii) to ensure that their submissions to the courts regarding the imposition of "judicial control" or detention have appropriate factual substantiation; and

h. prosecutors as to how to determine when the use of offences of funding and financing in relation to terrorism and of aiding and abetting it would respectively be appropriate.

380. **Guidelines and Templates** should also be prepared for relevant government departments, police and prosecutors in order to enable faster communication between services, including requests for international exchanges from the MoJ to prosecutors*.*

381. **Checklists** should be issued to:

a. peace judges to ensure that they are better equipped to assess the adequacy of the grounds being relied upon to support the use of either measures in the form of "judicial control" or detention;

b. judges and prosecutors so that (i) the possibility of imposing restrictions on a defence lawyer's access to the case file pursuant to Article. 153(2) of the CPC is limited to only those elements in it that could actually hinder the investigation and (ii) the role of prosecutors in plea bargaining does not displace the overall control over the process to be exercised by the courts and undermine effective legal representation for suspects; and

c. police officers to ensure they handle digital evidence properly and that such evidence is not later found to be inadmissible for breach of the procedures that should have been followed.

382. There is a need for **Memoranda of Understanding** or other cooperation policy documents between:

a. the Prosecution and the Ministry of Interior/Gendarmerie in order to strengthen the independence and professionalism of the police structures and increase their specialisation so that they are better equipped to work under the guidance of prosecutors in the investigation of crime; and

b. TNP, the Gendarmerie and Prosecutor Cybercrime bureaux on sharing their experience in dealing with cybercrime.

383. **Consideration needs to be given** also to the adoption of a Memorandum of Understanding or other cooperation policy document between Union of Banks, Ministry of Justice/Prosecution services and Ministry of Interior/Gendarmerie in relation to better ensure fight against bank frauds.

384. **Consideration needs to be given** also to (a) establishing further dedicated prosecutorial departments or units within the public prosecution offices to deal solely with cybercrime cases and (b) providing a scheme for accrediting expert witnesses in the field of IT, which could be called upon by both prosecution and defence.

385. The effectiveness of the FMI should not be undermined through it **becoming too big**, which can be facilitated by providing the police with the **equipment** needed to conduct straightforward examinations of IT equipment in circumstances where its reliability is not open to question.

386. In addition, **appropriate conditions** should be established for the storing of electronic evidence throughout the country.

387. Furthermore, **Studies** (including as to the need for legislative and policy amendments) should be undertaken to:

a. review the adequacy of arrangements for recording arrivals and departures from a police station by suspects, witnesses and anyone other than police officers and ensure that these include a video record

b. review the practice of awards of compensation under Article 141 of the CPC, identify the considerations taken into account and assess the compatibility of the approach with that required under Article 5(5) of the ECHR;

c. monitor the impact of amendments to Articles 158, 160(2), 174, 250, 251 and 286 of the CPC and to Article 28 of the Judges and Prosecutors Law and establish whether or not they should be modified in the light of practice so as to ensure that they fulfil the requirements of Article 6 of the ECHR;

d. find ways of reducing the scope for political influence over judicial appointments and the relocation of individual judges;

e. review ways of strengthening the independence and professionalism of the police and increasing their specialisation;

f. develop criteria as to when access to a lawyer for 24 hours can justifiably be restricted in cases involving organised crime and terrorism;

g. identify international best practice in respect of covert investigative techniques and their integration into the training and operational arrangements of law enforcement bodies;

h. reduce the scope for changing the judges who take part in particular criminal proceedings;

i. review the scope for introducing further alternatives to prosecution and also for the decriminalisation of offences;

j. review the scheme for plea bargaining to assess its feasibility for prosecutors while ensuring that their role does not displace the overall control over the process to be exercised by the courts and undermine effective legal representation for suspects;

k. clarify the compatibility of the arrangements adopted for fast proceedings and simple trials with Article 6 of the ECHR;

l. establish more clearly the factors leading to the undue length of proceedings and the steps that could be taken to mitigate this, as well as to monitor the actual impact of the amendment to Article 28 of the Judges and Prosecutors Law No. 6723 of 01.07.2016 on the length of proceedings; and

m. establish a means for communicating the reasoning of a finding of a violation by the TCC to the court that will then be required to re-examine the conviction concerned.

388. Moreover, **training modules/materials/activities** are required for:

a. Judges and candidate judges and prosecutors as to the requirements identified by the ECtHR regarding the implementation of Article 5(3) of the ECHR, in particular reasoning of decisions, the court's review of the lawfulness of detention, the use of alternative measures to detention and the distinction between the reasoning of in-trial detention decisions and that of the final decision in a case;

b. Judges and candidate judges and prosecutors as to the requirements identified by the ECtHR regarding the implementation of Article 6 of the ECHR, in particular concerning the admissibility of evidence/usage of inadmissible evidence, cross-examination and reasoning of judgments;

c. Judges and candidate judges on the use of SEGBIS in the light of requirements identified by the ECtHR and the TCC;

d. Judges as to the appropriate approach to providing compensation pursuant to Article 5(5) of the ECHR;

e. Police and prosecutors as to international best practice in respect of covert investigative techniques;

f. Police as to the conduct straightforward examinations of IT equipment in circumstances where its reliability is not open to question;

g. All judges, police officers and prosecutors as to the potential for issues involving electronic evidence and cybercrime to impact on their work;

h. All those involved in the exercise of powers under the Internet Law as to the relevant requirements arising from Article 10 of the ECHR;

i. Prosecutors and police officers whose work concerns the financing of terrorism as to issues relating to its investigation and mutual legal assistance (to be undertaken jointly); and

j. Staff working in MASAK (or its successor bodies) as to the human rights implications of exercising the relevant powers conferred upon them.

389. At the same time, there is a need for **advanced training** to develop specialist judges, police officers and prosecutors with a view to entrusting them with the principal responsibility for dealing with electronic evidence and cybercrime issues in their respective domains.

390. In addition, the case law of the TCC should be introduced into the **curriculum** for candidate judges and prosecutors.

391. There should also be **seminars** to disseminate and explain the requirements of the rulings of the ECtHR, the TCC and the Court of Cassation to judges, police officers and prosecutors, on different topics and aspects relating to Article 6 of the ECHR for both candidate and senior judges and prosecutors. These should be supported by the translation, where necessary, of the rulings of the ECtHR and by the use of updated handbooks and other materials prepared under previous Council of Europe projects.

392. Furthermore, TNP and the Gendarmerie units dealing with cybercrime should be encouraged to share their experience in this field with each other and also with Prosecutor Cybercrime bureaux in different provinces through **seminars and workshops**.

393. Moreover, there should be **joint meetings and workshops** involving prosecutors, police officers and the staff of MASAK (or its successor bodies) with a view to enhancing their respective performance and contributing to inter-agency cooperation.

394. Also, the Council of Europe's **Electronic Evidence Guide** should be updated and adapted for the Turkish context.

395. Finally, a regular **bulletin** should be established that digests rulings in the field of criminal justice by the TCC and the ECtHR to be provided electronically to judges, police officers and prosecutors.

ANNEXES

ANNEX 1. List of recommendations

Legislation

There is a need to adopt the following amendments:

R. 1 – Align the formulation of the power in Article 91(2) of the CPC with the case law of the ECtHR relating to reasonable suspicion (para. 68);

R. 2 - Modify the possibility of deprivation of liberty under Article 91(4) of the CPC so that those detained should be released within a few hours or brought promptly before a court (para. 71);

R. 3 - Make it explicit in the CPC that a hearing should normally be held before taking a decision to apply measures of "judicial control" to anyone and specify the relevant conditions for taking such a decision without a hearing (para. 81);

R. 4 - Delete Article 100(3) of the CPC to ensure that the existence of the grounds for arrest is something to be established in all cases (para. 123)

R. 5 – Require that no extension can be made to any detention imposed under the CPC unless there has been a full and explicit examination as the compatibility of the cumulative effect of each and every extension previously granted with the requirement in Article 5(3) of the ECHR that a person be tried within a reasonable time or released pending trial (para. 132);

R. 6 - Limit the possibility of imposing restrictions on a defence lawyer's access to the case file pursuant to Article 153(2) of the CPC to only those elements in it that could actually hinder the investigation (para. 195);

R. 7 - Require adequate compensatory factors to be available where the testimony of a witness who cannot attend the hearing for good reason is taken into account without being subjected to cross-examination (para. 200);

R. 8 – Provide a power in the CPC for regional appeal courts to be able to quash the decisions given by first instance courts where their reasoning has been found to be inadequate and there are significant evidential issues to be considered (para. 210);

R. 9 – Modify the requirement to return computers and other electronic devices to suspects in Article 134 of the CPC so that it is no longer applicable where indecent images of children and cryptocurrencies are present on them (para. 260);

R. 10 - Promote the independence of the FMI (para. 286);

R. 11 – Introduce requirements in the Internet Law for content providers concerned to be (a) notified of access-blocking decisions and the reasons for them and (b) able to appeal against the decisions affecting them (para. 309);

R. 12 – Introduce a requirement in the Internet Law for judges and prosecutors taking access-blocking decisions or hearing appeals against them to take into account the requirements of Article 10 of the ECHR (para. 309);

R. 13 – Replace the power of the President of ICTA to make blocking orders by a requirement to notify a prosecutor of the suspected commission of offences specified in Article 8(1) (para. 309);

R. 14 – Revise provisions dealing with terrorism so that the concept of what is understood by this concept - as distinct from other substantive criminal conduct - is more precisely defined and, in particular, is consistent with the requirement of foreseeability under the ECHR (para. 322);

R. 15 - Clarify or elaborate what is to be treated as funding and financing in relation to terrorism as opposed to aiding and abetting it (para. 322);

R. 16 – Provide for MASAK to discontinue undertaking financial investigation activities and continue solely in its role as a FIU or for two new bodies each performing only one of these, while taking care not to undermine the high levels of performance currently delivered by MASAK (para. 342);

R. 17 – Subject whichever bodies undertake the roles currently performed by MASAK to the safeguards required under Articles 6 and 8 of the ECHR and Article 64(2) of the CPC (para. 343);

R. 18 – Preclude the inclusion of material produced by MASAK (or its successor bodies) in the case file on account of this being intelligence and not evidence (para. 344);

R. 19 – Provide a statutory basis for whichever bodies undertake the roles currently performed by MASAK that secures their autonomy (para. 346);

R. 20 - Introduce (a) the possibility of challenging the accuracy of financial investigation reports on matters beyond clerical material errors and (b) the duty to inform persons subject to an investigation about the outcome (para. 353); and

R. 21 - Establish a central prosecution mechanism – operating countrywide - for money laundering and financing terrorism crimes which can work across the country (para. 366).

Consideration should also be given to:

R. 22 - Making it even more explicit in the CPC that the inadequacy of "judicial control" measures should first be established before any use of detention can even be considered (para. 79);

R. 23 - Removing the possibility of prosecutors receiving the first report of a crime and the need for any consequential reallocation of resources that this would entail (para. 164);

R. 24 - Strengthening the legal obligations of those selling pre-paid SIM cards as regards collecting names and addresses (para. 262);

R. 25 - Establishing a centralised file system for investigations concerned with cybercrimes in different jurisdictions within the country (para. 271); and

R. 26 - Establishing a central coordination prosecution office to deal with preserving evidence requested by parties to the Budapest Convention (para. 273).

In addition:

R. 27 – There is a need to establish whether there is any gap in existing powers of apprehension of suspected offenders and, if so, amend the law accordingly (para. 66); and

R. 28 - Before remedying the legislative gaps regarding measures to tackle cybercrimes outlined in paras. 250-257 and to ensure that the requirements of the Budapest Convention are fully and adequately transposed, it would be appropriate to liaise with the team working on the Council of Europe iPROCEEDS project (para. 257).

Instructions

These should be issued to:

R. 29 - Police officers to observe the conditions set out in Article 98 of the CPC (para. 66);

R. 30 - Police officers to prohibit the use of "interviews" of persons about offences where there is already a suspicion that they are the offender (para. 76);

R. 31 – Police officers to require them to highlight for prosecutors in writing the specific facts considered relevant to their consideration as to whether to seek the imposition of "judicial control" or detention is considered appropriate (para. 87);

R. 32 – Police officers as to the criteria to be observed for delaying access to a lawyer in all cases and in particular when this is for 24 hours in cases involving organised crime and terrorism (para. 106);

R. 33 – Police officers require them to better respect confidentiality of investigations (para. 159);

R. 34 – Police officers to prohibit them from conveying complainants to prosecutors (para. 166);

R. 35 – Police officers to require a lawyer who signs a statement made by a suspect to confirm that he or she was present during the interrogation during which it was made (para. 168);

R. 36 – Police officers to require the audio and/or video-recording of all questioning of persons – whether suspects, witnesses or anyone else – and to ensure that there is effective recording of persons entering or leaving police stations (para 180);

Suggestions

R. 37 – DG HR to communicate the reasoning for a finding of a violation of Article 6 of the ECHR, as well as of any unilateral declaration accepted by it, to the relevant court in time for this to be taken into account in the retrial proceedings (para. 247);

R. 38 – MASAK (or its successor bodies) to seek only financial data in respect of suspicious activity for which there is a money laundering or financing of terrorism (para. 355); and

R. 39 - MASAK (or its successor bodies) to act as a buffer between the financial institutions and the law enforcement community (para. 355).

Guidelines

These should be provided for:

R. 40 - Judges and prosecutors as to the approach required under Article 5(3) of the ECHR (para. 79);

R. 41 - Judges and prosecutors as to the reasoning of decisions and submissions regarding whether or not resort to "judicial control" or detention is appropriate in a given case (para.100);

R. 42 – Peace judges as to the need for defence lawyers always to have access to the case file when challenging any detention decision – especially as regards information relevant to the decision to detain - and to be informed when a restriction decision concerning it is taken (para. 114);

R. 43 – Peace judges as to the need for (a) a hearing for all monthly reviews of detention in which the suspect can participate; (b) holding these reviews within the prescribed deadline (c) giving the suspect's lawyer adequate notice as to the holding of every such review; and (d) defence lawyers being able to discuss matters with their clients during a review (para. 119);

R. 44 – Peace judges as to the need to ensure that the hearing and determination of appeals in respect of decisions to impose or continue detention occur within a matter of days after the decisions being appealed (para. 121);

R. 45 - Police officers as to the integration of international best practice in respect of covert investigative techniques into their operational arrangements (para. 185);

R. 46 – Judges and prosecutors as to the scope for testing the admissibility of evidence and as to the need to ensure that, if necessary, this is made consistent with the requirements of Article 6 of the ECHR (para. 192);

R. 47 – Judges and prosecutors as to the scope for testing the veracity of digital evidence and to the need to ensure that, if necessary, this is made consistent with the requirements of Article 6 of the ECHR (para. 204);

R. 48 - Relevant government departments, police and prosecutors (together with Templates) to facilitate faster communication between services, including requests for international exchanges from the MoJ to prosecutors (para. 296);

R. 49 – Prosecutors to ensure that their submissions to the courts regarding the imposition of "judicial control" or detention have appropriate factual substantiation (para. 87);

R. 50 - Prosecutors to prohibit them from dealing with cases which they have opened upon a direct complaint to them (para. 164);

R. 51 – Lawyers to require them when signing statements by suspects to confirm that they were present during the interrogation at which these were made (para. 168);

R. 52 – Prosecutors to establish a mechanism whereby any evidence established prior to the trial to be inadmissible is then excluded from the case file and thus not accessible by the judge(s) trying the case (para. 191);

R. 53 – Judges to ensure that an accused and defence lawyers are able to undertake the cross-examinations of witness and experts in accordance with the requirements of Article 6(3)(d) of the ECHR (para. 200);

R.54 – Judges and prosecutors to seek only financial data in respect of suspicious activity for which there is a money laundering or financing of terrorism (para. 355); and

R. 55 – Prosecutors as to how to determine when the use of offences of funding and financing in relation to terrorism and of aiding and abetting it would respectively be appropriate (para. 323).

Checklists

These should be issued to:

R. 56 – Peace judges for assessing the adequacy of the grounds being relied upon to support the use of either measures in the form of "judicial control" or detention (para. 91);

R. 57 – Judges and prosecutors for ensuring that the possibility of imposing restrictions on a defence lawyer's access to the case file pursuant to Article 153(2) of the CPC is limited to only those elements in it that could actually hinder the investigation (para. 195);

R. 58 – Judges and prosecutors for ensuring that the role of prosecutors in respect of plea bargaining does not displace the overall control over the process to be exercised by the courts and undermine effective legal representation for suspects (para. 220); and

R. 59 - Police officers for the proper handling of digital evidence so that it is not later found to be inadmissible for breach of the procedures that should be followed (para. 283).

Organisational and practical arrangements

These concern:

R. 60 – The conclusion of a Memorandum of Understanding or other cooperation policy document between the Prosecution and the Ministry of Interior/Gendarmerie to strengthen the independence and professionalism of the police structures and to increase their specialisation so that they are better equipped to work under the guidance of prosecutors in the investigation of crime (para. 158);

R. 61 - The need to ensure the adequacy of infrastructure for child monitoring centres in respect of taking statements from possible victims of sexual abuse (para. 200);

R. 62 - Reduce the scope for changing the judges who take part in particular criminal proceedings (para. 202);

R. 63 – The conclusion of a Memorandum of Understanding or other cooperation policy document between the TNP and Gendarmerie units dealing with cybercrime and the Prosecutor

Cybercrime bureaux in different provinces to enable them to share their experience in this field with each other (para. 269);

R. 64 – The giving of consideration to the conclusion of a Memorandum of Understanding or other cooperation policy document between the Union of Banks, the Ministry of Justice/Prosecution services and the Ministry of Interior/Gendarmerie in connection with their efforts to tackle bank frauds (para. 298);

R. 65 – The giving of consideration to the establishment of further dedicated units within the public prosecution offices to deal solely with cybercrime cases (para. 277);

R. 66 - The giving of consideration to the adoption of a scheme for accrediting expert witnesses in the field of IT, which could be called upon by both prosecution and defence (para. 279);

R. 67 - Ensuring that the effectiveness of the FMI is not undermined through becoming too big and providing the police with the equipment to conduct straightforward examinations of IT equipment in circumstances where its reliability is not open to question (para. 282); and

R. 68 – The establishment of appropriate conditions for the storing of electronic evidence throughout the country (para. 288).

Studies

These should be undertaken to:

R. 69 - Review the adequacy of arrangements for recording arrivals and departures from a police station by suspects, witnesses and anyone other than police officers and ensure that these include a video record (para. 73);

R. 70 - Review the practice of awards of compensation under Article 141 of the CPC, identify the considerations taken into account and assess the compatibility of the approach with that required under Article 5(5) of the ECHR (para. 135);

R. 71 - Monitor the impact that the amendments to Articles 158, 174, 250, 251 and 286 of the CPC have had and to establish whether or not they should be modified in the light of practice so as to ensure that they fulfil the requirements of Article 6 of the ECHR (para. 142);

R. 72 - Find ways of reducing the scope for political influence over judicial appointments and the relocation of individual judges (para. 147);

R. 73 – Investigate further issues relating to the need for judicial law enforcement, particularly as regards strengthening the independence and professionalism of the police and increasing their specialisation (para. 157);

R. 74 - Develop criteria as to when access to a lawyer can justifiably be restricted for 24 hours in cases involving organised crime and terrorism (para. 173);

R. 75 - Identify international best practice in respect of covert investigative techniques and their integration into the training and operational arrangements of law enforcement bodies (para. 185);

R. 76 - Reduce the scope for changing the judges who take part in particular criminal proceedings (para. 202);

R. 77 - Review the scope for introducing further alternatives to prosecution and also for the decriminalisation of offences (para. 216);

R. 78 - Review the scheme for plea bargaining to assess its feasibility for prosecutors while ensuring that their role does not displace the overall control over the process to be exercised by the courts and undermine effective legal representation for suspects (para. 220);

R. 79 - Clarify the compatibility of the arrangements adopted for fast proceedings and simple trials with Article 6 of the ECHR (para. 224);

R. 80 - Establish more clearly the factors leading to the undue length of proceedings and the steps that could be taken to mitigate this, as well as to monitor the actual impact of the amendment to Article 28 of the Judges and Prosecutors Law No. 6723 of 01.07.2016 on the length of proceedings (paras. 142 and 234); and

R. 81 - Establish a means for communicating the reasoning of a finding of a violation by the TCC to the court that will then be required to re-examine the conviction concerned (para. 236).

Training and related activities

Training should be provided for:

R. 82 – Judges and candidate judges and prosecutors on the requirements identified by the ECtHR regarding the implementation of Article 5(3) of the ECHR, in particular reasoning of decisions, the court's review of the lawfulness of detention, the use of alternative measures to detention and the distinction between the reasoning of in-trial detention decisions and that of the final decision in a case (para. 101);

R. 83 - Judges regarding the appropriate approach to providing compensation pursuant to Article 5(5) of the ECHR (para. 135);

R. 84 – Candidate judges and prosecutors on the case law of the TCC (para. 140);

R. 85– Judges regarding the ability of an accused and defence lawyers to undertake the cross-examinations of witness and experts in accordance with the requirements of Article 6(3)(d) of the ECHR (para. 200);

R. 86 - Judges and candidate judges regarding the use of SEGBIS in the light of requirements identified by the ECtHR and the TCC (para. 200);

R. 87 – Police officers on the integration of international best practice in respect of covert investigative techniques into their operational arrangements (para. 185);

R. 88 – Judges and candidate judges and prosecutors on the requirements identified by the ECtHR regarding the implementation of Article 6 of the ECHR, in particular concerning the admissibility of evidence/usage of inadmissible evidence, cross-examination, and reasoning of judgments, to be organized under auspices of the Justice Academy of Turkey (paras. 208 and 242);

R. 89 – Police officers on conducting straightforward examinations of IT equipment in circumstances where its reliability is not open to question (para. 282);

R. 90 - Judges, police officers and prosecutors on the potential for issues involving electronic evidence and cybercrime to impact on their work. (para. 293);

R. 91 – Selected judges, police officers and prosecutors with a view to entrusting them with the principal responsibility for dealing with electronic evidence and cybercrime issues in their respective domains (para. 294);

R. 92 - All those involved in the exercise of powers under the Internet Law as to the relevant requirements arising from Article 10 of the ECHR (para. 310);

R. 93 – Police officers and prosecutors whose work concerns the financing of terrorism as to issues relating to its investigation and mutual legal assistance (jointly and on an ongoing basis) (para. 364); and

R. 94 - Staff working in MASAK (or its successor bodies) as to the human rights implications of exercising the relevant powers conferred upon them (para. 368).

In addition, there should be meetings, seminars and/or workshops for:

R. 95 - TNP and Gendarmerie units dealing with cybercrime and Prosecutor Cybercrime bureaux to share their experience in this field (para. 269);

R. 96 - Candidate and senior judges and prosecutors on topics and aspects relating to Article 6 of the ECHR under auspices of the Justice Academy of Turkey (para. 243);

R. 97 - Prosecutors, police officers and the staff of MASAK (or its successor bodies) on a joint basis with a view to enhancing their respective performance and contributing to inter-agency cooperation (para. 360).

These activities should be supported by:

R. 98 - A regular bulletin that digests rulings in the field of criminal justice by the TCC and the ECtHR – focused both on recent developments and on specific topics - to be provided electronically to judges, police officers and prosecutors (para. 139);

R. 99 - The more effective dissemination (including translation and updating) of handbooks and other materials prepared under previous Council of Europe projects) and explanation as to requirements of the rulings of the ECtHR, the TCC and the Court of Cassation to judges, police officers and prosecutors (para. 242);

R. 100 – The updating and adaptation of the Council of Europe's Electronic Evidence Guide (prepared by its Cybercrime Division) for the Turkish context (para. 284); and

R. 101 - Public education activities to increase understanding of the organisation and operation of the criminal justice system (para. 147).

ANNEX 2. List of comments on the draft Report that were partially or completely accommodated

The following comments were accommodated in the Report:

- **DGCA comment on Paragraph 13;**

DGCA: Even though some applications have been resolved in the last five years, it is seen that the subject matter of the applications is based on systematic problems arising from the former TPC/CPC, the repealed State Security Court, Military Court procedures; or practices that are not in use anymore. Therefore, it is identified that some referrals to cases and judgments do not cover current problems. It is necessary to re-visit all judgments referred to in the report and update them in a way to address ongoing problems. It is thought that selecting ECtHR judgments that were subjected to the Individual Application review of the TCC as well will further contribute to the identification of current problems.

- **18th Criminal Chamber (CC), Court of Cassation comment on Paragraph 18;**

18th Criminal Chamber (CC), Court of Cassation: Although it is stated that the investigation capacity is not adequate to establish the commission of an offence or of leading to the identification and punishment of anyone who might have been responsible for it in cases of alleged unlawful deaths and alleged ill-treatment, our Legislation has sufficient regulation on how Public Prosecutors should act in case an offence is committed. Therefore, it is thought that if a deficiency is identified within the scope of a violation judgment, that deficiency should be caused by bad practices rather than the insufficiency of the system or our legislation.

- **DGCA comment on Paragraph 22;**

DGCA: It would be appropriate to delete the references to violations that occurred before 2005 in the time of the former law.

- **DGCA comment on Paragraph 26;**

DGCA: The referred judgments are about Military Court Proceedings. As there is no Criminal Court anymore, these observations are not valid.

- **DGCA comment on Paragraph 27;**

DGCA: The cited judgments are very old and do not reflect the current practices. Also, the practice as stated in Article 141 of the CPC is accepted as an effective legal remedy in this sense.

- **DGCA comment on section a. Right to Fair Trial which is addressed in Paragraphs 54-56:**

DGCA: When referring to the decisions of the ECtHR that do not contain current issues, it would be appropriate to state this situation, that is, to add a statement that the subject of violation is eliminated with the legal regulation.)

- **DGCA comment on Paragraph 30;**

DGCA: a reference is made to a judgment regarding the State Security Court

- **DGCA comment on Paragraph 32;**

DGCA: This is not a current problem.

- **18th CC, Court of Cassation comment on Paragraph 32;**

18th CC, Court of Cassation: Although some procedural mistakes of İzmir State Security Court were mentioned, it should be taken into consideration that these courts have been abolished.

- **18th CC, Court of Cassation comment on Paragraph 34;**

18th CC, Court of Cassation: It is claimed that the opinion of the Principal Public Prosecutor was not communicated to the lawyer of the accused, yet this does not reflect the reality since the notification of the person concerned is the very first step taken whenever a case is delivered to the Principal Public Prosecution Office.

- **DGCA comment on Paragraph 40;**

DGCA: It is evaluated that it would be helpful to indicate that the events mentioned in judgments referred to in the report occurred outside Turkey.

- **18th CC, Court of Cassation comment on Paragraph 41;**

18th CC, Court of Cassation: It is observed that big challenges are faced in investigations in terms of collecting the names and addresses of pre-paid SIM card users. In this sense, it is evaluated that GSM operators' due diligence in the assignment of sim cards (pre-paid/post-paid) would contribute to the apprehension of offenders.

- **MASAK comment on Paragraphs 43, 44, 45, 46, 47, 48, 49, 50 ;**

MASAK: (ref: parag. 43, 44, 45, 46, 47, 48, 49, 50): Although these paragraphs are under the title “d) Financing of Terrorism” the content is not related to Terrorism Financing.

- **DGCA comment on Paragraph 51;**

DGCA: It might be necessary to make updates in line with the resolved judgments.

- **9th Civil Chamber, Court of Cassation comment on Paragraph 56/4;**

9th Civil Chamber, Court of Cassation: It is obvious that judges and prosecutors should be provided with such training. Because the Resolution published in the Official Gazette dated 15 January 2020 does not distinguish between law and penalty, violation judgments of the ECtHR and the TCC should be classified and necessary training on this subject should be provided for judges and prosecutors. The outputs of training seminars should be followed up in the long run for the evaluation of project results.

- **DGCA comment on Paragraph 63;**

“They suggested that the government did not favour this as it would lead to a loss of power.” (DGCA: It would be appropriate to delete this part) This issue is considered further in the following section as it has broader implications for the right to a fair trial.

- **TCC comment on Section « 2. Basis for apprehension and for taking into custody” under heading C. THE RIGHT TO LIBERTY AND SECURITY**

TCC: The report states that a practise has developed whereby prosecutors are seeking and obtaining apprehension orders under Article 98 of the CPC to apprehend suspects that they have identified in circumstances where the conditions in that provision – i.e., where, during the investigation phase the suspect does not appear upon a summons or it is not possible to serve a summons on him – are not being satisfied. In this sense, it is observed that the relevant provision of the law is not sufficient. In

fact, it might lead to certain problems in issuing summons to suspects when there is a risk of escape, particularly in the case of terrorism or organised crimes. Therefore, legal modifications would be needed and appropriate to eliminate hesitations in practice concerning apprehension and custody measures. These modifications would pave the way for the apprehension of suspects directly by law enforcement officials before judicial authorities ensure guarantees to prevent arbitrariness.

- **DGLeg comment on Paragraph 68;**

DGLeg: The report states that "the basis for taking someone into custody following his or her arrest without a warrant is mere that "evidence exists, which indicates the belief that the individual has committed an offence". This does not amount to the same as the requirement of "reasonable suspicion" under Article 5(1)(c) of the ECHR, as explained by the case-law of the ECtHR."

Paragraph two of Article 91 of the Criminal Procedure Code No. 5271 states "Taking an individual into custody requires that this measure is necessary for respect to the investigation and that evidence exists, which indicates the belief that the individual has committed an offence." As per Article 6 of the Law No. 6526 dated 21/2/2014 the phrase "evidence exists, which indicates the belief that the individual has committed an offence" was replaced with "concrete evidence that indicates the suspicion that the individual has committed an offence". Therefore, taking an individual into custody requires that this measure is necessary concerning the investigation and that concrete evidence exists, which indicates the suspicion that the individual has committed an offence. In this sense, it is believed that paragraph two of Article 91 of the Criminal Procedure Code No. 5271 complies with the case of the ECtHR because it requires the existence of concrete evidence that indicates the suspicion that the individual has committed the crime rather than solely suspicion.

- **DGLeg comment on Paragraph 71;**

DGLeg: The report states that “Article 91(4) is problematic in that this gives the head of administration in towns and provinces the authority to detain persons without any court supervision or prosecutor’s order for up to 2 days. This power is exercisable in respect of “crimes committed during social disturbances when violent acts have been broadened, and are suitable to disturb public order, and during collectively committed crimes”. The possibility of the detention lasting for up to 2 days without any consideration of the practicality of bringing the persons concerned before a court has the potential to lead to a violation of the obligation under Article 5(3) of the ECHR for this to be done “promptly”.”

Article 13 of the Law no. 6638 dated 27/3/2015 and the paragraph added to Article 91 of Law no. 5271 states "(4) Including but not limited to the crimes detected in the act; the police chief designated by the governor is entitled to rule on custody up to twenty-four hours for crimes listed below by crimes committed to flagrant, and up to forty-eight hours for crimes committed during social disturbances when violent acts have been broadened, and are suitable likely to disturb public order, and during collectively committed crimes. When the reason for custody is abated or immediately after the proceedings are completed and in any case at the end of the duration periods mentioned above, the information shall be given to the Public Prosecutor and it will be acted in according to actions that will be pursued per his/her instructions. If the individual is not released, proceedings will be done according to the above paragraphs. However, the individual shall be brought before a judge in forty-eight hours at the latest, and in four days for crimes that have been committed collectively. Provisions on custody shall apply for the individuals taken into custody by law enforcement as per this paragraph.

The amendment made in Article 13 of Law no. 6638 provided that the police chief designated by the governor is entitled to rule on custody up to twenty-four hours for crimes listed below by crimes

committed to flagrant, and up to forty-eight hours for crimes committed during social disturbances when violent acts have been broadened, and are suitable to disturb public order, and during collectively committed crimes for crimes detected by counting including but not limited to the crimes detected in the act.

The same provision sets forth that when the reason for custody is abated or immediately after the proceedings are completed and in any case at the end of the durations mentioned above, the information shall be given to the Public Prosecutor and it will be acted per his/her instructions, thus guaranteeing, in line with the Constitution, that the person shall be present at the hearing that shall take place in forty-eight hours at the latest, and four days for crimes that have been committed collectively.

In this sense, It is thought that adequate mechanisms have been provided in the legislation in accordance with the ECHR, given the fact that the relevant paragraph shall be applied for crimes detected by counting and crimes committed during social disturbances when violent acts have been broadened including but not limited to the crimes detected in the act; safeguarding that the trial shall be made in a reasonable time in the scope of the Constitution and the ECHR, holding more than one condition and in that sense preventing the arbitrariness.

- **TCC comment on Section "3. Recording initial arrival at a police station" under heading C. THE RIGHT TO LIBERTY AND SECURITY**

TCC: The report mentions deficiencies concerning recording people's arrival at a police station. In this sense, it might be useful to highlight that calling a person to request them to go to a police station and their detention at the station – under any practice – may cause interference with the right to freedom and security, particularly in cases where there is no investigation against the person. It should be kept in mind that the issue of the aforementioned practice was reviewed by the TCC in an individual application and the Court ruled that keeping the applicant at the police station for a short time (36 minutes) before an investigation has violated the right to freedom and security. (see. Mehmet Baydan [GK], B.No.: 2014/16308, 12/4/2018).

- **TCC comment on Section "5. Alternatives to detention" under heading C. THE RIGHT TO LIBERTY AND SECURITY**

TCC: It is stated CPC should clearly set forth that the detention orders should be given only when the "judicial control" measures are not adequate. Given Article 13 and 19 of the Constitution together with Articles 100, 101 and 109 of the CPC, it is not possible to say that there is a deficiency in this sense. There is also no hesitation in practice that detention is a measure that is to be taken in cases where judicial control measures are not adequate. Many of the detention orders subject to individual application review of the TCC includes statements – formally – that the judicial control measures would not suffice. Yet, the main problem is encountered in the execution of this principle. It is observed that many of the detention orders are lacking detailed evaluation on why the judicial control measures would be inadequate or on possible judicial control measures that could be taken. Therefore, it would be appropriate to take the actions necessary to eliminate the problems faced in practice rather than amending the legislation.

On the other hand, the report states that judicial control measures can be taken in the absence of the person without holding a trial and that legislative changes are recommended. It would be useful to make necessary amendments in the CPC in a way to explain whether it is necessary to hold a trial to decide on judicial control measures – as it might be necessary to take judicial control measures in

some cases in the absence of the suspect – or in what conditions it might be possible to decide on judicial control measures without a trial.

- **DGLeg comment on Paragraph 77;**

DGLeg: The report states that "The CPC does not make it clear that, prior to any decision to impose detention it should be established that measures other than such detention – referred to as "judicial control" – would be inadequate to address the "grounds" set out in Article 100(2) of the Law no. 5271, even though the prosecutor is supposed to indicate that this is the case in his or her submissions. Indeed, it is insufficiently clear from the CPC that the use of detention should only ever be used as a last resort."

Paragraph one of Article 101 of the Law no. 5271 titled "Detention order" states "During the investigation phase, upon the request of the public prosecutor, the Justice of the Peace in Criminal Matters shall issue a pre-trial detention warrant for the suspect, and during the prosecution phase the trial court shall issue a warrant for the accused upon the request of the public prosecutor or its own motion. The aforementioned requests must contain reasons and must contain an explanation for why judicial control would not be sufficient in a given case, based on legal and factual grounds" As stipulated in the Article it is possible to rule for a detention order in cases where judicial control measures are not adequately providing that the order is reasoned. Similarly, paragraph one of Article 100 of the Law no. 5271 titled "Grounds for pre-trial detention" states "There shall be no arrest warrant rendered if an arrest is not proportionate to the importance of the case, expected punishment or security measure." Therefore, it is evaluated that the problem arises from the practices rather than the legislation.

- **DGLeg comment on Paragraph 81;**

DGLeg: Restrictive measures defined under the Law no. 5271 have different qualifications. In this sense, they differ from one another depending on conditions and features. It is thought that every restrictive measure should be evaluated in the framework of its own conditions and that the legislation provides for this.

- **TCC comment on Section "6. Justifying the use of detention" under heading C. THE RIGHT TO LIBERTY AND SECURITY**

TCC: It is stated that there is often an absence of sufficient reasoning in detention orders both for reasonable suspicion and also for legal grounds for detention. Detention stands for one of the most problematic areas in terms of the right to freedom liberty and security. In this sense, it is not possible to say that the detention orders (detention, continuation of detention, decision denying the motion of release, decision denying the appeal against detention order) include sufficient reasoning on what constitutes the strong suspicion of offence, the ground/s for detention, why the detention is deemed proportionate and why alternative measures (judicial control) are deemed inadequate. It is possible to say that the majority of violation judgments of the TCC and the ECtHR are based on the lack of reasoning in that sense.

On the other hand, it should not be ignored that a clear evaluation of facts indicating strong suspicion of an offence – even if they are included in the casefile mostly – in detention orders might be interpreted as providing an opinion on guiltiness by the judges, which drives judges to write reasoning using stereotyped statements. It is understood that comprehensive in-service training for the judges, prosecutors and lawyers is needed to overcome this approach. It would also contribute to the solution of this problem to raise awareness on the judgments of the TCC in terms of all judicial processes.

On the other hand, the statement provided in the report "However, in the meeting with the TCC it was also indicated that there were no clear guidelines as to how to appreciate the reasonable nature of detention" was not clearly understood. Yet, the TCC has repeatedly stated that the lawfulness of detention or whether the duration of detention has exceeded the legal limits should be evaluated according to concrete facts of every application. The TCC also clearly indicated what the review criteria are in its judgments (see among many other judgments, Şahin Alpay [GK], B. No: 2016/16092, 11/1/2018; Erdal Tercan [GK], B. No: 2016/15637, 12/4/2018).

- **DGCA comment on Paragraph 86;**

DGCA: It is evaluated that it would be more appropriate if the prosecutors evaluate detention as the law enforcement officers do not have legal training as often as the prosecutors.

- **DGCA comment on Paragraph 87;**

DGCA: It is evaluated that it would be more appropriate if the law enforcement officers put the findings in the case file in full and the prosecutors make an evaluation on detention in the light of these findings.

- **DGCA comment on Paragraph 89;**

DGCA: Attention should be paid to the intensity of such cases. It would be useful to differentiate between issues arising from some individual bad practice examples and systematic problems.

- **DGCA comment on Paragraph 105;**

DGCA: Statements taken in the absence of legal counsel cannot be accepted as grounds for the ruling later on if the suspect rejects the statement. There is not such a guarantee for statements taken in the absence of legal counsel.

- **TCC comment on under the section "8. Challenging the use of detention"**

TCC: As stated in the report, restriction of access to the case file under Article 153 of the CPC may stand as a serious requirement for certain offences, especially for the organised crime. Yet, it is necessary to provide guarantees for defence against restriction orders and to ensure that the period of restriction does not last for too long. In this sense, it poses importance is important that the notification be made to the suspect and the legal counsel is as comprehensive as possible and that to ensure accessibility of the information and documents which are not restricted is ensured. Additionally, it might be useful to make a legal amendment to enlarge the information and documents which are not restricted and to define the maximum period of restriction (6 months or 1 year).

On the other hand, it is observed that the report does not fully reflect the approach of the TCC concerning non-communication of the opinion of the public prosecutor during a review of appeal against detention to the suspect/accused or the legal counsel. In many of its judgments, the Court ruled that non-communication of the opinion of the public prosecutor during ongoing proceedings of detention violated the right to liberty and security as per paragraph eight of the Article 19 of the TCC (see, among many others, Firas Aslan and Hebat Aslan, 2012/1158, 21/11/2013; Erman Ergin, 2014/2680, 27/10/2016). On the other hand, in the case of Devran Duran (2014/10405, 25/5/2017), the Court stated that it identified its principles on this issue in many of its judgments and therefore the review of the subject matter is not of Constitutional importance. As for the individual importance, the Court highlighted that non-communication of the public prosecutor's stereotypical opinion (it is requested that the appeal is denied) does not cause a serious loss (aggrievement). Therefore, the

Court ruled that the aforementioned claim is not of constitutional or individual importance. This approach should not be interpreted. However, it would be a wrong interpretation to think that non-communication of the public prosecutor's opinion is categorically unimportant and all claims in this regard would be deemed inadmissible.

- **DGCA comment on Paragraph 117;**

DGCA: Although TCC ruled in many judgments that non-communication of the opinion of the public prosecutor during proceedings to the ongoing detention violates the right to individual liberty and security, it highlighted that non-communication of stereotypical public prosecutor's opinion (it is requested that the appeal is denied) does not cause a serious loss (aggravation). It would be helpful to clarify this sense to prevent misunderstandings.

- **DGLeg comment on Paragraph 123;**

DGLeg: Article 100 of Law no. 5271 states that if there is concrete evidence that tends to show the existence of a strong suspicion of a crime and an existing "ground for detention", a detention order against the suspect or accused may be rendered. There shall be no detention order rendered if the detention is not proportionate to the importance of the case, expected punishment or security measure. On the other hand, paragraphs two and three listed the grounds for detention.

It is worth highlighting that paragraph three of Article 100 of Law no. 5271 does not directly provide authorisation for detention, but it lists the grounds for detention. In other words, even if the grounds mentioned in the paragraph exist, the court or the judge should keep in mind that the detention is a restrictive measure, and it is the last resort and should evaluate a fortiori evaluate whether in the concrete specific case the detention order would be proportionate to the Constitution or the ECHR as well as whether judicial control measures would be adequate. Hence, detention decisions, a continuation of detention or on denial of the motion of release shall clearly indicate the strong suspicion of a crime, existence of the ground for detention, and the evidence that shows that the detention order is proportionate with reasoning based on concrete facts. Therefore, it is considered that paragraph three of Article 100 of the Law no. 5271 is not in contradiction with ECHR due to the fact that it does not provide directly or individually the authorisation to render a detention order and that, even in the existence of the grounds for detention, the court or the judge would not act with the presumption that the suspect is guilty.

- **Chief public prosecutor's office, Court of Cassation comment on Paragraph 123;**

Chief public prosecutor's office, Court of Cassation: Although it is suggested to omit paragraph three of Article 100 of the CPC, the aforementioned paragraph plays a significant role in ensuring the consistency of practices. Therefore, instead of amending the legislation, it would be more useful to explain the meaning and importance of the "Presumption of Innocence" to implementers of training, starting from the education provided at law faculties to other in-service training seminars.

- **18th CC, Court of Cassation comment on Paragraph 123;**

18th CC, Court of Cassation: Even though it is recommended to abolish paragraph four of Article 100/3 of the CPC, it should not be forgotten that while the paragraph states "if there are grounds for strong suspicion of a crime, they may constitute a ground for detention", the aforementioned catalogue is not commanding but it is rather guiding.

- **DGLeg comment on Paragraph 131;**

DGLeg: The report states “in many cases the period of detention is not in compliance with Article 5(3) of the ECHR and in addition to violation judgments of the ECtHR, TCC has also ruled that the period of detention was excessive in many of the cases.”

The maximum period for pre-trial detention has been defined with Law no. 7188 dated 24/10/2019 amending Article 102 of law No. 5271. Even though the maximum detention periods have been identified, this should not be interpreted in the way that the maximum detention periods shall always be applied. Additionally, detention shall stay as a restrictive measure, which will be applied as a last resort. In this sense, Article 102 of the Law no. 5271 titled "Pre-trial detention period" has been amended by the Law no. 7188 as follows:

“(4) (Addition: 17/10/2019 – 7188/18) Pre-trial detention period shall not exceed six months for crimes which are not under the jurisdiction of the Court of Assize and one year for crimes under the jurisdiction of the Court of Assize. However, this period shall be one year six months at maximum, to be extended for another six months with reasoning for crimes defined in Section Four, Five, Six and Seven of Part Four, Book Two of the Turkish Criminal Law, crimes that are under the Anti-Terror Law and the organised crime.

(5) (Addition: 17/10/2019-7188/18) Pre-trial detention period specified in this Article shall be applied in half for children who haven't turned sixteen at the time of the offence and applied at the ratio of ¾ for children who haven't turned nineteen at the time of the offence.

132. Therefore it is thought that review and evaluation on the impact of detention orders and decisions on continuation of the detention are made by the court or the judge providing reasoning and that the principles of the trial in a reasonable time and the release pending trial are well supported by the legislation; the criticisms mentioned in the recommendation are based on practices rather than the law itself."

- **TCC comment on former Section «11. Objecting to detention after conviction »**

TCC: As specified in the domestic case-law of the TCC and the ECtHR, when the conviction order is given by the court of first instance, detention on accusation ends and turns into detention upon a ruling. Therefore, the period of the conviction order of the court of first instance is not taken into consideration for the calculation of the pre-trial detention. As for reversal of the conviction order, detention becomes dependent on accusation again at the date of reversal. In other words, the period of pre-trial detention starts over. It is known that the Court of Cassation adopts the same approach in this sense. Therefore, it should be kept in mind that it is not necessary to continue making an ex-officio evaluation on detention after the conviction order of the court of first instance and even that such an evaluation would be in contradiction of the nature of the work.

- **DGLeg comment on former Paragraph 135;**

DGLeg: The report states that “After conviction by a first instance court, a defendant who appeals will continue to be regarded as a detainee until the conviction becomes final. During this period, automatic reviews regarding the prolongation of his or her detention will not, however, be carried out by regional appeal courts and the Court of Cassation. At the appeal stage before a regional court, a review concerning prolongation of detention can only be carried out if the court decides to examine the appeal application by organizing a hearing. However, such possibility does not exist in proceedings before the Court of Cassation”

Paragraph three of Article 104 of the Law no. 5271 states "(3) When the file gets in the hands of the Regional Court of Appeal on Facts and Law, or the Court of Cassation, the decision on the motion of release shall be rendered by the related Chamber of the Regional Court of Appeal on Facts and Law or the related Chamber of the Court of Cassation, or the General Assembly of the Court of Cassation after reviewing the file; this decision may be rendered also by the courts' own motion." This provision does not allow for an automatic evaluation of the necessity of prolongation of the detention and ensures who is authorised to render a motion of release under what conditions at the phase of legal remedy. On the other hand, paragraph three of Article 108 of the CPC states "The judge or court on their own motion shall evaluate the status of the accused who is in jail on each trial day or, if the conditions make it necessary, between the trial days, or within the time limits foreseen in the first subparagraph whether it is necessary that the detention period to continue." As per the relevant paragraph, it is evaluated that it is possible to evaluate the status of the detention at any stage.

It is evaluated that our legislation has many arrangements to allow for the most expeditious investigation and prosecution in terms of detention proceedings and that the current arrangements are sufficient for the courts of first instance and the supervision courts.

- **TCC comment on section "12. Compensation for unjustified or excessive detention"**

TCC: The main problem encountered under this title is that the amount of compensation ordered by the instance courts is not proportional to the compensation amount identified to be paid upon a violation judgment by the TCC or ECtHR. Especially in cases where the instance courts order for compensation of TRY 100 for (unlawful) custody measures, the amount to be paid may not really compensate for the aggravations suffered by the individuals.

- **DGCA comment on Paragraph 135;**

DGCA: It would be useful to include the issue of compensation in training seminars and harmonise the practices of the courts of first instance with the case-law of TCC.

- **DGCA comment on Paragraph 146;**

DGCA: Unlike many other countries, prosecutors in Turkey do not only accuse but also try to reach concrete facts and can deliver a motion for release. Therefore, It is evaluated that close cooperation between prosecutors and judges would not have a negative impact on a fair trial.

- **DGCA comment on Paragraph 147;**

DGCA: Concerns stated under this title are usually caused by the perspective raised by the society and it is evaluated that the main cause is not based on legislation or practices. It would be helpful to organize open court days and similar activities to increase the reliability of the judiciary in the eyes of the public.

- **DGCA comment on Paragraph 164;**

DGCA: It would be more appropriate to authorise the Public prosecutors for the control over investigations from the beginning given the fact that the law enforcement officers do not participate in legal training as much as the prosecutors; therefore, they may have problems in filtering the claims, put unnecessary effort on following cases that have no ground for legal action or make mistakes in evaluation of sensitive/important conditions.

- **DGLeg comment on Paragraph 164;**

DGLeg: Although the report claims that it would not be possible to authorise Public prosecutors for supervision of the police in cases where they directly start and implement investigation, they can make any kind of examination of any kind through the judicial law enforcement affiliated with them as per paragraph one of Article 161 "Duties and powers of the Public Prosecutor" of the Law no. 5271. In this case, the law enforcement can always participate in the investigation process in line with the directives and orders given and, as the judicial law enforcement joins the investigation after the first action in practice, it is evaluated that the current legislation provides empowerment in terms of claiming individuals' rights. Additionally, it is thought that the recommendation would shrink the application opportunity for individual applications.

- **18th CC, Court of Cassation comment on Paragraph 164;**

18th CC, Court of Cassation: It is seen that there is a recommendation on removing the possibility of prosecutors receiving the first report of a crime. It can be considered that this recommendation is directed towards decreasing the investigation periods. However, in our legal system, the Public prosecutor is the only ruler of the investigation. While a part of investigations performed by the prosecution offices is referred to by the law enforcement, there may also be investigations ex officio opened by the prosecutor. Investigations performed by the Public prosecutors upon official complaints made concerning reports of the committee of inspection of the relevant public institutions are finalised without referral to the law enforcement. It should be considered that such a practice would not contribute to lightening the workload of the Public prosecutors and lead to unnecessary workload for the law enforcement officers. As a matter of fact, applications made to the Public prosecution offices are sent to the law enforcement are filtered and not all of them are sent to the law enforcement. Public prosecutors may decide that the dispute before them are not concerning an offence thus rendering a decision on no ground for prosecution. It is not possible for law enforcement to make such filtering. Therefore, it is considered that such a legislative amendment would not be appropriate.

- **DGCA comment on Paragraph 180;**

DGCA: Statements given at law enforcement offices in the absence of legal counsel are not used as a basis for the judgment if the suspect rejects the relevant statement. There is not such a guarantee for the statements taken in the absence of legal counsel.

- **TCC comment on Paragraph 197/3;**

TCC: While agreeing with the identifications and evaluations made in the report concerning the right to examine witnesses as stipulated in subparagraph (d) of paragraph (3) of Article 6 of the European Convention on Human Rights (the Convention), it should also be noted that, in practice, the witnesses whose statements play a role as the sole or decisive evidence in the conviction were heard "between the hearings" in some cases and that this situation is the subject of violation judgments of the ECHR and the TCC. According to the ECtHR, taking statements of the witnesses before and under the supervision of the court but in the absence of the defendant and his counsel does not replace the right of the accused to confront the witness and question him.

- ECtHR holds that where, without a justification or compensating measures, a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence are restricted to an extent that is incompatible with the

guarantees provided by Article 6 of the Convention. Therefore, unless there is force majeure, rogatory should not opt for and, if applied, the courts requesting rogatory should prepare the letter of rogatory with due diligence and attach all necessary documents as well as questions to be asked to the accused to the letter. As there is a lack of such diligence in practice, the courts responsible for rogatory usually fail not to hear the accused and read his/her statement in the records and does not identify whether there is a conflict between the previous and next statements. Additionally, Criminal Procedure Code no. 5271 dated 4/12/2004 does not provide compensatory measures concerning the fact that the witnesses to be heard through rogatory shall not be questioned by the accused or the legal counsel at the hearing. Therefore, it would be useful to take necessary actions to make legislation and policy changes to inform the accused and the legal counsel about the rogatory Court and the date and hour when the witness will be heard, thus providing an opportunity for them to be present at the hearing of the witness.

- **TCC comment on Paragraph 197/9;**

TCC: It is seen that the report does not provide any observation on being present at the hearing, which is a part of the right to a fair trial. However, the case law of the ECtHR states that it poses great importance that the accused is present before the court for an equitable criminal procedure. In this context, without being present at the hearing, it is difficult for the accused to exercise his right to "defend himself in person", "question or have a witness questioned" and "to have the assistance of an interpreter", which are the special aspects of the right to a fair trial regulated in Article 6 (3) of the Convention. Therefore, safeguarding the accused's right to be present at the hearing is one of the fundamental requirements of Article 6 of the Convention.

According to ECtHR, there is not an absolute way to be present at the hearing and the use of technological facilities such as video conferencing does not contradict the purpose of being present at the hearing. According to the ECtHR, the videoconferencing measure, among others, was aimed at reducing the delays incurred in transferring detainees and thus simplifying and accelerating criminal proceedings.

In its judgments regarding this right, the ECtHR, in summary, requires that there is a legal ground, legitimate reasoning and necessity for the use of video conferencing which interferes with the right to be present at the hearing. As for the necessity, the Court states that if there is a lighter measure that interferes with the relevant right, it should be preferred. On the other hand, the opportunity should be provided for the accused. The accused should be provided with an opportunity to be heard in this way to talk to his/her legal counsel on a phone life, a line that is safe from the risk of interception. Therefore, it might be useful to work on legislative changes to harmonise the legislation with the ECtHR judgments concerning video conferencing.

Paragraph (4) of Article 196 of Law no. 5271 states "In cases where the judge or the court deems it necessary, the interrogation of the accused who is present in the homeland, may be conducted by video conference broadcasting simultaneously using vision and voice transmitting or his presence at the main hearing may be ordered." Both in TCC and ECtHR judgments; it poses great importance is important, especially for the criminal procedures that require imprisonment, that the accused is present at the hearing during critical stages during when evaluations are made that may change the judgments are made or when any other important actions are taken. It is essential that the accused is present at a stage where essential transactions are made in the scope of trials on an accusation; in exceptional cases, a trial can be made in the absence of the accused. Therefore, the right to be present at the hearing can only be restricted when it is deemed necessary due to concrete individual conditions of the case. In this sense, it should be proven that any measure restricting the right to be

present at the hearing is necessary. At this point, the instance courts should show, concretely and in compliance with the facts of the case, the existence of a fact that requires the accused not to be present at the hearing the existence of a fact that requires the accused not to be present at the hearing should be shown concretely and in compliance with the facts of the case by the instance courts. Holding all hearings through SEGBIS (Sound and Video Information System) may lead to a violation of the right. Therefore, it might be useful to prepare training modules/materials/activities on requirements identified by the ECtHR and TCC on the usage of the SEGBIS system for candidates and currently working judges and prosecutors.

- **TCC comment on Paragraph 200;**

TCC: The ECtHR considers the principle of directly as part of the right to a fair trial. This principle was formed basing elaborated based on paragraph (1) of Article 6 of the Convention. According to the ECtHR, a change in the composition of the Court shall not always constitute a problem for the implementation of the trial under Article 6(1) of the Convention. Nevertheless, if there has been a change in the composition of the Court after an important witness was heard and there are appeals against the reliability of the witness, it shall be necessary to hear the relevant witness again.

As a rule, if there is a change in the court after the hearing of an important witness, that witness should be heard again. However, for obvious procedural or administrative reasons, the judge may be unable to continue to participate in a trial. In this situation, measures should be taken to ensure that the replacing/continuing judges can fully understand the evidence and the opinions expressed in the case. According to the ECtHR, these measures include - in cases where there is no problem with the reliability of the witness – the video recording of the statements of the witnesses or the hearing of an important witness at a hearing to be held by the newly formed court. Therefore, informing judges and prosecutors on this issue would be useful, yet it does not require a legislative change. it would be useful to inform judges and prosecutors on this issue, which does not require a legislative change.

According to the ECtHR, finalisation of the judgment by judges who only participate in the judgment session or participation of temporary judges in a process where decisive evidence is collected/discussed is not so much different than making a judgment based solely on the case file. Such a practice creates the impression that the judges "make a judgment on the case without knowledge" and casts doubt on the impartiality of the courts. For this reason, it may be useful to review the current situation in terms of legislative or policy amendments to change the duty stations or permanent authorisation of the judges.

- **TCC comment on Paragraph 208 ;**

TCC: The right to a fair trial regulated in Article 36 of the Constitution also includes the guarantee of the right to reasoned judgment. Article 141 of the Constitution obliges all courts to provide "reasoning" for their judgments. It is understood from this provision that interim decisions should also be reasoned. However, the lack of reasons for interim decisions may violate other guarantees of the right to a fair trial. Rejecting the requests on presenting and collecting evidence without reasoning may violate the principle of equality of arms, and the rejection of the requests for hearing and questioning witnesses may violate the right to listen and question witnesses. Likewise, using the evidence obtained without the help of a defence counsel as a basis for the conviction is also examined within the scope of the right to a fair trial or the right to benefit from a defence counsel in connection with it. From this point of view, the right to a reasoned judgment is also included in other guarantees of the right to a fair trial. Therefore, we consider that the right to a reasoned judgement needs to be

a focus of interest within the scope of the project we consider that one of the issues that need to be focused on a lot within the scope of the project is the right to a reasoned judgment.

In the report, only the judgments of the first instance courts were evaluated in terms of the right to a reasoned judgment. However, the right to a reasoned decision is also valid in the processes of objection, appeal or cassation. According to the ECtHR, although the Convention does not oblige states to establish appeal or cassation courts, if the legal remedies mentioned in the domestic law are established, the decisions of these courts performing legal remedy audits must also be justified. However, in cases where the court conducting legal remedy audit agrees with the decision, it has audited, its failure to provide reasoned judgment in detail does not violate the right to a reasoned decision.

Moreover, the court conducting the legal remedy audit should show that it examined the main elements expressed in the legal remedy and the decision of the instance court. On the other hand, the authority conducting the legal remedy audit should show that it has examined the main elements that are mentioned for the first time in the legal remedy and the decision of the court of instance. Passing over the essential claims, which are stated in the legal remedy for the first time and may change the result of the case, with references to the decision of the instance court may violate the right to a reasoned judgment. Therefore, it may be useful to prepare manuals on required approaches on the right to a reasoned judgment under Article 6 of the Convention, organise thematic meetings with the participation of the members of the Court of Cassation and the regional courts of appeal and provide training for the candidate and currently working judges and prosecutors at the Justice Academy of Turkey.

- **TCC comment on Paragraph 242;**

TCC: It is observed that the report did not make a direct evaluation of the differences in case law. As it is known, abstract norms are embraced by judicial case law. However, the interpretation/evaluation of the same norms by different courts occasionally causes differences in case law. Courts may not find by not find the legal solution they have previously reached satisfactory and fair and may change their case-law, on the condition that they provide justification. Additionally, the principle of legal security, which is one of the fundamental elements of the rule of law, does not provide a right such as unchangeability of the case law. However, the persistence of conflicting court decisions on the same specific case, on the other hand, can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law and such a situation which is would be clearly against the principles of legal security and certainty, which are implicit elements of the right to a fair trial. In accordance with these principles, such case-law differences should not form stability there should not be constant differences in the case law. To prevent constant differences in this sense, it is expected that judgments are consistent and stable. Continuity of conflicting court judgments reduces the public trust in the judiciary and causes legal uncertainty. In such a case, the higher judicial bodies - according to their due diligence - have to put in place procedural safeguards to eliminate different practices. In other words, higher judicial bodies should not be the source of legal uncertainties.

It is clear that the evaluations made with regard to differences between the judgments of the criminal chambers of the Court of Cassation, namely the fact that a certain decision might be approved by a chamber or quashed by another, is against the principles of legal security and certainty. It is inevitable that there will be differences in the case-laws of the criminal chambers of the Court of Cassation or reversal from the previous case law of the same chamber. The ECtHR made a notification to the Government about the consistency of the Court of Cassation's decisions with similar cases. Considering the notifications made by the ECtHR to the Government, it is seen that there is a problematic area. For this reason, it may be beneficial to hold thematic meetings within the scope of the project for the

functioning of mechanisms to eliminate the differences in the case-law between the criminal chambers and to ensure that the criminal chambers can only reverse from the previous case-law with reasoning.

- **DG HR comment on Section "11. Retrials following rulings by the ECtHR" under heading "D".**

DG HR: Our Presidency fulfils the duties assigned to it in the light of Article 49 of Presidential Decree No.1 and plays an active role with regard to taking necessary measures for the prevention of similar violations mentioned in ECtHR judgments.

Within the scope of the task of disseminating the decisions of the ECtHR, our Presidency performs the Turkish translation of the ECtHR decisions through its translation office and sends it to the relevant units with an explanatory note. If the subject of the ECtHR violation judgment is related to a judicial activity, the Turkish translation of the judgment is sent to the relevant court or prosecutor's office with an explanatory note summarizing the reason for the violation. As it is known, in accordance with article 311/1-f of Law no. 5271, the relevant party can make a request for retrial to the relevant court within one year after the finalization of the ECtHR judgment. In case of an application in this context, the relevant court requests the translation of the ECtHR judgment from our Presidency (if a re-trial request is made before the translation of the judgment is completed and delivered to the court) and the translation of the judgment is completed and delivered to the court by our Presidency as soon as possible. Additionally, ECtHR judgments regarding procedural activities are also conveyed to the relevant institutions such as the Grand National Assembly of Turkey, Council of Judges and Prosecutors, High judicial bodies and other relevant human rights institutions.

It is evaluated that it would be appropriate to revisit paragraphs 244-248 of the report which is in relation to our Presidency in consideration of the provisions set forth in Article 49 of the Presidential Decree No. 1 and Article 138 of our Constitution.

- **TNP comment on Paragraph 250;**

TNP: It is evaluated that the matter stated in paragraph 251 is not addressed in Article 6 and 7 of the Police Powers and Duties Law and it is thought that the intention was to make a reference to Additional articles 6 and 7 of Police Powers and Duties Law. These matters should be the additional Articles 6 and 7. Considering that the aforementioned articles are related to the authority of the police to gather intelligence and to conduct studies throughout the country, and the areas of responsibility for the gendarmerie and police also differ, it is considered that the current law article in force is sufficient.

- **TNP comment on Paragraph 252;**

TNP: Works and matters subject to paragraph 253 are conducted by our Presidency as per additional Article 7 of the Police Powers and Duties Law for intelligence purposes in a way that they shall not solely constitute judicial evidence. However, it is evaluated that the matters mentioned in the report are open to interpretation in the scope of the judicial proceedings and it would be appropriate that they are included in the scope of the Criminal Procedure Code no. 5271. As for the preventive activities, it is evaluated that it would be useful to detail the issues mentioned in the report under the additional Article 7 of the Police Powers and Duties Law.

- **DGleg and DGCA comment on 257**

DGLeg: It is evaluated that it would be appropriate to delete paragraph 257

DGCA: It is evaluated that it would be appropriate to omit this paragraph.

- **DGLeg comment on Paragraph 260;**

DGLeg: The report states that "The provision set forth in Article 134(2) of the CPC is potentially problematic as its observance could result in a suspect receiving back a device on which there are indecent images of children or cryptocurrency accounts such as Bitcoin and Monero, allowing him or her to have continued access to those images or to move the currencies concerned beyond the reach of law enforcement."

Article 134(2) of the CPC regulates that "If computers, Computer programs and Computer records are inaccessible, as the passwords are not known, or if the hidden information is unreachable, or cases where the copying procedure would take a long period, then the Computer and equipment may be seized. Seized devices shall be returned without delay when the password has been solved and the necessary copies are produced." Additionally, according to the justification of the paragraph "If computers, Computer programs and Computer records are inaccessible, as the passwords are not known, then the Computer and equipment may be seized temporarily to solve the password and have the necessary copies." It is clear that the materials are temporarily seized.

It should be noted that although in general practice, it is not decided to return devices seized under the article without the request of a suspect or a defence lawyer, it is believed that a return decision should not be made if an element of a crime is found in electronic devices after a temporary seizure, and if no criminal element is found, a return decision can be rendered.

- **FMI comment on Paragraph 280-282;**

FMI: Currently, these analyses are not only carried out by the Forensic Medicine Institute in practice. Forensic Informatics Specialization Departments under the FMI are located only in Istanbul and Ankara, and most of the cybercrime analyses are carried out in laboratories under law enforcement. It is important to have such laboratories within the Forensic Medicine Institute so that an independent analysis can be made in case of objection to the analyses performed by the law enforcement laboratories.

- **FMI comment on Paragraph 285-286;**

FMI: The Forensic Medicine Institute is affiliated with the Ministry of Justice only in the administrative sense and this is not an obstacle to its independence in terms of its scientific expertise. In many of the European countries, such laboratories function under different ministries such as the Ministry of Interior, Ministry of Justice and Ministry of Health. This affiliation is required for administrative issues such as the financial arrangement for the staff members and the organizational structure, and it does not have an impact on the independence of the institute in its decision-making processes. The Forensic Medicine Institute has independently carried out provided and will continue to carry out provide its expertise, with its history and experience of more than a century, within the framework of scientific principles.

- **DGLeg:** It is evaluated that it would be appropriate to remove the 286th paragraph.

- **Ministry of Justice DG FR & EUA comment on Paragraph 289;**

Ministry of Justice DG EU and IA: Ministry of Justice, Directorate General for the European Union and International Affairs follows up and contributes to all activities conducted for mutual legal assistance in relation to the mentioned issues.

- **Ministry of Justice DG FR & EUA comment on Paragraph 295;**

Ministry of Justice DG EU and IA: It is evaluated that it would be appropriate to edit this paragraph as “Ministry of Justice DG Foreign Relations and the EU stated that it would be fruitful to increase the national capacity for international legal cooperation in the field of cybercrime”.

- **Ministry of Justice DG FR & EUA comment on Paragraph 296;**

Ministry of Justice DG EU and IA: It is evaluated that it would be appropriate to edit this paragraph as “Therefore, the Ministry of Justice DG EU and IA is working on updating the circular on implementation of guidelines and templates in order to accelerate judicial cooperation and communication including mutual legal assistance”.

- **DG FR & EUA comment on Paragraph 314;**

DG EU & IA: In the relevant paragraph it is stated that "the way in which certain activities are characterised as "terrorism" by Turkish law and practice is not entirely reflected in the approach taken in other countries with which it wishes to cooperate. The lack of full cooperation on the part of the States concerned in response to requests for mutual legal assistance and for the removal of material from websites tends to reflect their wish to protect the right to freedom of expression." The European Convention on Mutual Legal Assistance in Criminal Matters signed under the Council of Europe in 1959 forms the basis of international legal assistance/rogatory procedures in criminal matters. In accordance with the aforementioned Convention, except for the "search and seizure" requests, the fulfilment of the dual criminality condition is not sought for the legal assistance requests. In this respect, it is considered that the failure to fulfil the legal assistance/rogatory requests regarding the crime of terrorism crime by the state parties do not have a contractual basis and is the result of the failure of relevant states in making objective evaluations.

- **DG FR & EUA comment on Paragraph 316;**

DG EU & IA: In the relevant paragraph it is stated that “Full cooperation on the part of other States might be more readily obtained if there were a narrower scope than at present as to what is considered to amount to terrorism. This would also assist in ensuring that the ECHR’s foreseeability requirement is fulfilled.”

It is believed that the definition of terrorism in Law No. 3713 has been interpreted and implemented in accordance with the main international sources, especially the Council of Europe and the United Nations Conventions.

- **DG FR & EUA comment on former Paragraph 317;**

DG EU & IA: Regarding the evaluation that "funding terrorist organizations" under Article 4 of the Law on Combating Financing of Terrorism and "aiding and abetting terrorist organisations" under Article 220(7) of the Turkish Criminal Code are duplicate: It is stated in the case-law of the Court of Cassation that aid, whose value cannot be measured in money, is punished as "aiding and abetting a terrorist organization"; on the other hand, it is known that aid, whose value can be measured in money, is considered as "funding a terrorist organization".

As per the similar Decision No. 2017/692 E, 2018/41 K. dated 13.02.2018 of the General Assembly of Criminal Chambers of the Court of Cassation, deliberately and willingly providing food and living materials (flour, butter, sugar, tea, bread, bulgur, detergent, sheep, books and digital cameras) to the terrorist organization or its members is accepted as "financing".

In our practice, terrorism financing crime is different in its nature than what is defined as aiding and abetting as per Article 220(7) of the Turkish Criminal Code. Therefore, it is evaluated that they are not duplicate.

This issue was not mentioned or criticized in the scope of technical compliance and effectiveness review in the scope in FATF Turkey 4th Round Mutual Evaluation Report either.

- **MASAK comment on former Paragraph 317;**

MASAK: (Regarding para. 315, 316, 317): According to the decision we have submitted to FATF during the mutual evaluation process of our country, all elements whose value can be measured in money constitute the terrorism financing offence; in this context, the small or large value does not affect the formation of the crime but can be taken into consideration within the scope of the penal sanction to be given for the crime. Therefore, the criteria for financing terrorism are defined, and there are cases where low and high amounts of financing are punished. For example, the sending 5TL in an envelope with the attached note "I wish we could fight in the mountains as you do, but this is what we can do" is also deemed terrorism financing crime by our courts.

In addition, as required by FATF's 5.4 Methodology criteria and Article 2 of the "International Convention for the Suppression of the Financing of Terrorism", the "purpose of providing" the fund to a terrorist or terrorist organization is not important in our country; in other words, the connection between the provided fund and a terrorist attack or activity it is not sought.

In the light of the explanations above, the execution of Article 220/7 and 314/2 of the Turkish Criminal Code is only possible with regard to elements “whose value cannot be measured by money”, and there is a clear distinction between the Law no. 6451 and the Law no. 5237 in this context. Within this framework, an evaluation is only possible within the scope of the criterion "its value can be measured in money".

- **MASAK comment on Paragraph 320 - 323;**

MASAK: As a result of the detailed evaluation made by FATF, no proposal was made except to increase the penalties for the terrorism financing offence pursuant to Article 4 of Law no. 6415. In addition, considering the explanations made within the scope of paragraphs 315 and 316 above in this context, it is considered that there is no need for any legislative amendment.

Therefore, it is necessary to revise paragraphs 320, 321, 322 and 323 in this way.

- **MASAK comment on Paragraph 325;**

MASAK: There are two issues to be revised regarding paragraph 325.

First, the definition of MASAK as a financial intelligence unit does not come from MASAK describing itself as such but is a result of the authorisation given (to MASAK) by Law No.5549being a financial intelligence unit is not a situation related to MASAK defining itself in this way, but a result of the authorisation given to MASAK by Law No. 5549.

Secondly, MASAK is not an investigation unit, and Article 128 of the CPC does not give MASAK such authority. MASAK, like other units listed under Article 128 of the CPC, is not among the judicial law enforcement units conducting investigations. Institutions for which a report can be requested pursuant to the relevant article do not carry out an "investigation", they only provide technical support for the determination of the amount obtained from the crime proceeds. As stated in Article 128 (9) of the CPC, a seizure can only be done by the judge, and MASAK or other institutions are not authorized

in this sense. In addition, the seizure should not be confused with the confiscation regulated by Articles 54 and 55 of the TCC, as the confiscation is subject to the finalization of the verdict and can be ruled by the judge.

Therefore, it is necessary to revise Article 325 as follows:

“325. MASAK is a Financial Intelligence Unit. Accordingly, MASAK is a central and independent administrative structure which functions as a tampon between the financial institutions and the law enforcement.”

- **MASAK comment on Paragraph 326;**

MASAK: Regarding paragraph 326, MASAK does not have the function of collecting evidence, and the financial intelligence produced by MASAK contributes to the evidential work of the law enforcement officers in the investigation process.

Paragraph 326, therefore, needs to be revised as follows:

"MASAK does not have an evidence-collecting function, and financial intelligence produced by MASAK has a quality that contributes to the evidence-making efforts of law enforcement and prosecutors during the investigation process.

326. Although MASAK states that its jurisdiction is limited to intelligence and analysis, in practice it prepares financial data reports similar to the financial inspector reports for the prosecution and law enforcement. As a result, it can be said that MASAK plays a mixed role, with reports included in the chain of evidence. The Court of Cassation sees MASAK as an institution that collects not only intelligence but also evidence. "

- **MASAK comment on Paragraph 328 and 330;**

MASAK: Regarding paragraphs 328 and 330, it is deemed important to consider the following: In accordance with Articles 7 and 9 of Law no.5549 and paragraph 1 of Article 231 of the Presidential Decree No.1, MASAK has the authority to obtain all kinds of information and documents from public institutions and organizations, natural and legal persons and organizations without legal personality in the scope of anti-money laundering and terrorism efforts.

Therefore paragraphs 328 and 330 need to be revised as follows:

MASAK can access UYAP data, tax information, bank account and transactions and title deed registration information without a court decision or order. If requested MASAK's authority to collect information and document from public institutions and organisations, natural and legal persons and organizations without legal personality shall be judged under Articles 7 and 9 of Law No. 5549 on the Prevention of Laundering Proceeds of Crime and Article 231 of the Presidential Decree No. 1"

- **MASAK comment on Paragraph 331;**

MASAK: Regarding paragraph 331, while forensic rogatory is a legal tool that enables the sharing of information on investigation and prosecution processes, EGMONT is a platform that provides for sharing of financial intelligence among financial intelligence units.

Paragraph 329, therefore, needs to be revised as follows:

"331. In addition, MASAK can benefit from other international intelligence-sharing agreements such as Egmont Group."

- **MASAK comment on Paragraph 333;**

MASAK: Paragraph 331 should be revised as follows:

> 333. "In this context, we can say that MASAK has two roles. The first role is to collect information and financial intelligence to make evaluations on the suspicion of money laundering and terrorism financing, and the other one is to share these evaluations with prosecutors, courts, law enforcement and other relevant public institutions when needed."

- **MASAK comment on Paragraph 339;**

MASAK: The assessment made in paragraph 337 is considered erroneous. As stated above, in accordance with Article 7 and 9 of Law No. 5549 on the Prevention of Laundering Proceeds of Crime and Article 231 of Presidential Decree No. 1, MASAK has a law-based authority to access information and documents.

Therefore, it is considered that it would be appropriate to remove paragraph 339.

- **MASAK comment on Paragraph 341;**

MASAK: Regarding paragraph 341; According to the legislation, MASAK personnel can only act as experts in prosecutions in which their institution is not involved.

It is therefore considered necessary to remove paragraph 341 completely.

- **MASAK comment on Paragraph 350;**

MASAK: Regarding paragraph 347; In order to investigate and examine the issues that fall within the scope of its duty in accordance with paragraph 3 of Article 231 of the Presidential Decree No. 1, the inspectors of other institutions listed in Article 2 of the Law on Prevention of Laundering Proceeds of Crime No. 5549 may be assigned by MASAK.

Paragraph 348, therefore, needs to be revised as follows:

> “347. There is an internal assurance system regarding the deficiencies that can be seen in MASAK reports. In this context, the reports prepared by MASAK staff are read by a commission within the institution to check whether the required standards are met or not. "

- **MASAK comment on Paragraph 350 & 351;**

MASAK: Regarding paragraphs 350 and 351; It is useful to underline the following point: MASAK provides intelligence support to law enforcement officers and prosecutors during the investigation process, and sometimes these studies provided by MASAK can be used as evidence by the courts during the prosecution process.

Therefore, it is not possible to object to this information used in the investigation process as it has the nature of intelligence and due to the rule of confidentiality of the investigation. However, since this information is considered as evidence in the court during the prosecution phase, it is of course possible to object.

Therefore paragraphs 350 and 351 should be removed.

- **DG FR & EUA comment on Paragraph 355;**

DG EU & IA: The relation between the forensic units (forensics aspect) and MASAK should be limited to obtaining reports on the merits, not asking for opinions or taking them into considerations. It should

be limited to specific catalogue crimes, and instead of returning the documents by finally giving a negative response to the requests for a report, MASAK should clearly state, which deficiencies of the report can be corrected before it can be issued, when a report is requested by the prosecutor's office or the court, as in the practice of the Forensic Medicine Institution. In this manner, it is considered that unnecessary waste of time will be prevented.

- **MASAK comment on section "5. Applicability of UN sanctions" under heading Financing Terrorism (comments reflected as it can be seen in the paragraph 362)**

MASAK: Objections regarding name similarities are made to MASAK according to Article 14 (6) of the Regulation on Procedures and Principles Regarding the Implementation of the Law on Prevention of the Financing of Terrorism. If the aforesaid applications are found to be justified, the said freezing decisions are corrected immediately.

Therefore, paragraph 360 should be removed.

MASAK: Freezing decision is an "administrative decision", to be given by MASAK and enforced by publishing in the Official Gazette as a result of the objection explained in the comment to paragraph 360 and within this framework, it is possible to claim an objection against a freezing decision as per the Administrative Law. This issue is clearly stated in section 6.6 (c) of page 173 of the FATF report.

DGCA: It would be appropriate to remove the paragraph in line with the paragraph above and revise the other paragraphs.

DGLeg: It is stated in the report that "Where sanctions have been adopted by the United Nations Security Council, it is possible the person against whom they are being implemented to challenge this on the basis that he or she is actually not the person who has been listed in the Security Council resolutions concerned. This is important as many people have the same or similar names and they may find that their assets have been wrongly frozen."

As is known, in Article 135 "Judicial Review" of the Constitution of the Turkish Republic no. 2709 it is stated that recourse to judicial review shall be available against all actions and acts of administration. In this context, within the scope of Article 5 titled "United Nations Security Council Resolutions" of the Law No. 6415 on the Prevention of the Financing of Terrorism, the Presidential decisions on the freezing of assets can be appealed before the Council of State.

363. In addition, according to paragraph six of Article 14 of the Regulation on Procedures and Principles Regarding the Implementation of the Law on the Prevention of the Financing of Terrorism, published in the Official Gazette dated 31/05/2013 and numbered 28633, "Objections on name similarity, wrong or incomplete identity information and similar errors in a decision to freeze assets taken by the President are made to the Presidency with justification and, if any, attachment of the relevant documents. If the objections are approved by the Presidency, it is ensured that the erroneous freezing procedures are corrected by notifying the institutions and organizations mentioned in this article and real and legal persons. ".

As a result, it is thought that there is, in fact, an objection mechanism to correct the errors in fact, since it is possible to apply either to both to the Presidency of the Financial Crimes Investigation Board or to the Council of State for the decisions of the President to freeze the assets. Therefore, it is evaluated that there is no need for a legislative amendment.

MASAK: Pursuant to Article 12 (2) of the Regulation on Procedures and Principles Regarding the Implementation of the Law on the Prevention of the Financing of Terrorism, the legal remedies to be

applied are specified in the content of the decision on freezing of assets. For example, please visit www.resmigazete.gov.tr/eskiler/2018/11/20181127-1.pdf As can be seen in the link, the second article of the decision addresses this issue. In addition, in accordance with Article 16 (1) (b) of the same regulation, MASAK is obliged to convey the objections of the relevant persons, institutions and organizations against the UNSC Decisions to the UNSC through the Ministry of Foreign Affairs.

Therefore, it is necessary to remove paragraph 362.

- **DG FR & EUA comment on Paragraph 360 ;**

DG EU & IA: The paragraph states that the prosecution and law enforcement representatives claimed that there is a lack of information on what is generally needed generally to implement an investigation on the financing of terrorism and that there are some problems in terms of mutual legal assistance, especially based on the fact that the terrorist organizations do not use banks and financial systems.

In this regard, it is considered that both in-service and pre-service training activities for a candidate and currently working judges and prosecutors are deemed important.

- **2nd CC, Court of Cassation comment on former "R. 6 - Provide in the CPC for an automatic review to be held of the need for detention to be continued during appeal proceedings (para. 134);"**

2nd CC, Court of Cassation: As is known, Criminal Chambers of the Court of Cassations prioritise the case file of detainees and they are resolved by review on merits of the case. In case of any deficiency such as issuing an additional notification, the examination of the file is completed after this deficiency is corrected; moreover, and since the file is sent to the Chief Public Prosecutor's Office of the Court of Cassation for an additional notification with the note that it is the file of a detainee, prolongation of detention is prevented.

- **DG FR & EUA comment on R. 26**

DG EU & IA: Regarding R.24 and R.25 are observed, the Budapest convention does not have any provisions on "Establishing a centralised file system for investigations concerned with cybercrimes in different jurisdictions within the country" and "Establishing a central coordination prosecution office to deal with preserving evidence requested by parties to the Budapest Convention"

- **DGCA comment on R 26;**

DGCA: It is evaluated that it would be appropriate to remove these recommendations.

- **DGCA comment on R 28;**

DGCA: It would be appropriate to remove this recommendation.

- **2nd CC, Court of Cassation comment on R 84;**

2nd CC, Court of Cassation: Recommendations on the inclusion of the case-law of the ECtHR and the TCC into the curriculum applied for the candidate judges and prosecutors by the Justice Academy of Turkey and organisation of training seminars for the judges and prosecutors on this issue is evaluated as positive.

GENERAL REMARKS:

1- Although the referenced ECtHR judgments were made in 2015 and afterwards, considering that the incidents subject to the violation judgments date back to the early 2000s, it is evaluated that the legislative amendments stated under the heading "legal developments" of the report are quite narrow and do not cover many reforms made in and after 2002. For this reason, it is considered appropriate to review the report and not refer to the ECtHR judgments whose grounds of violation have lost validity as a result of the legislative amendments performed, or to expand the scope of the legislative amendments under the heading "legal developments". It is also evaluated that it would be fruitful to attach the note that the legislation that caused the violation was amended when reference is made to such judgments.

In addition, it is thought that it would be more appropriate to focus on the ongoing systematic problems rather than individual examples of bad practice and to make inferences over the number/rates of violations on a relevant subject.

2 – Chief Public Prosecution Office, Court of Cassation: The Chief Prosecutor's Office reiterated the problem and suggested solutions regarding sexual abuse crimes in the letter titled "Procedural Safeguards in Criminal Matters" dated 30/09/2019 since they were not included in the report.

Problem- It has been stated that child monitoring centres, which have an important role in taking statements and examining children who are victims of sexual abuse, have legal and physical infrastructure problems.

Offered Solution Suggestions:

Completing the legislative infrastructure of child monitoring centres

Financial support

National dissemination

Specialization of the Public Prosecutors, lawyers and pedagogues who will work in these centres.

3- 18th CC, Court of Cassation: When the examples given in the report regarding the incidents that led to the violation judgments by the European Court of Human Rights are examined, it is seen that the problem is mainly arising from bad practices, which are not generally due to legislation. On the other hand, it should be taken into consideration that both pre-service and in-service training seminars for judges and prosecutors will play a significant role in solving these problems.

The aforementioned negativities in the practices are based on the fact that the professional seniority of the majority of judges and public prosecutors currently on duty is not sufficient yet. However, it is thought that the swift implementation of routine inspections will also be effective in reducing such negative practices.

On the other hand, regarding the issues for which legislative amendments are proposed in the report, big steps are taken to address such issues with the Judicial Reform Strategy Document announced to the public by the Ministry of Justice, and the Law on Amendment to the Criminal Procedure Code no. 5271 and other Laws. It is also stated that laws that are the continuation of this will be enacted. However, it would be appropriate to make the mentioned legislative

amendments after the long-term evaluations made by working groups which will include academicians and field experts.

Regarding the prohibited evidence, our Department has a large number of well-established case laws stating that such evidence cannot be used. Convictions based on such evidence are reversed if there is no other evidence about the accused.

4- **Department of Public Order:** The transactions of the citizens (complainant, suspect, information owner, victim) who apply to the Police Stations are carried out and recorded through the system. The information of the citizens who come to get information about any subject is not registered because there is no regulation in the legislation.

There are outdoor and indoor camera systems that are recording in Police Stations. All the work and transactions made about the suspects under custody in police cells are carried out in accordance with the Police Cell Instructions, recorded in the detention room logbook and monitored by camera systems that can make an audio-visual recording. In accordance with the Regulation on Apprehension, Custody and Interrogation, the supervision of the police cells, police cell logbook and interrogation rooms are carried out by the authorized superiors.

Police officers working in police stations are provided with Basic Training on Police Stations on certain periods by the superiors who have completed the Training of Trainers for Police Stations.

4- **Anti-Smuggling and Organized Crime Department:** it is considered that activities such as focusing on training for law enforcement personnel, a law enforcement guide that includes examples of international good practise and activities on strengthening cooperation with judicial authorities will further increase the law enforcement investigation capacity and the functioning of the existing criminal justice system in our country.

5- **Anti-Terrorism Department:** 4th round of the FATF mutual evaluation was carried out under the presidency of MASAK with the participation of other stakeholder institutions, and it is considered that detailed explanations for the recommendations and criticisms expressed in this report on the combat against money laundering and terrorism financing can be obtained from MASAK Presidency.

In this context, our Department has established 81 provincial Anti-Terror units under the central and local structure for more effective combat against the financing of terrorism. In addition, a "Guide to Combating Financing of Terrorism" was published at the service of relevant units working in the field of combat against the financing of terrorism, and training activities continue in order to increase the qualification of the personnel in this field.

In addition, as regards the subject of "interview" in the report, judicial law enforcement carries out the post-offence works in accordance with the directives of the Public prosecutor as per Criminal Procedure Code no. 5271 and the Regulation on Apprehension, Detention and Interrogation.

NOTES: **Turkish Penal Law Association** did not convey any opinion on the report and they sent the report on Independence of Judiciary dated 2 October 2019.

ANNEX 3. List of comments on the draft Report that were not accommodated

The following comments were not accommodated in the Report:

- DGCA stated that the issues mentioned in paragraph 31 are mainly related to Administrative Jurisdiction and Disciplinary Law and are not directly related to Criminal Justice; therefore, it would be appropriate not to include it.
- DGCA suggested that paragraph 59 should be worded in a different way;
- DGCA considered that it would be appropriate to omit the recommendation in paragraph 157 concerning the strengthening of the independence and professionalism of the police structures and increasing their specialisation;
- DGCA considered that a proposal to change the Regulation or Law instead of the Protocol will have more effective results in practice regarding the recommendation in paragraph 158;
- DGLeg considered that the problem of insufficient reasoning in rulings of courts of first instance could be remedied through the Council of Judges and Prosecutors and the Justice Academy of Turkey rather than, as recommended in paragraph 208, conferring the power on regional courts of appeal to quash the decisions concerned;
- DGLeg considered that it would be appropriate to delete the recommendations in paragraphs 268 and 270 for consideration to be given to respectively (a) establishing a centralised file system for investigations concerned with cybercrimes in different jurisdictions within the country and (b) establishing a central coordination prosecution office to deal with preserving evidence requested by parties to the Budapest Convention;
- DGLeg considered that the amendments to the Internet Law recommended in paragraph 306 were unnecessary as the current legislation and the Constitution were seen as sufficient to address the issues involved;
- DGCA commented on paragraphs 309 and 310 that ECHR 10, i.e. freedom of expression, is not an issue that is tackled within the project;
- DGLeg considered that the definition of terrorism satisfied the predictability requirement of the ECHR and so the recommendation in paragraph 322 for some revision to the legislation was unnecessary;
- DGLeg and MASAK considered that it would be appropriate to omit the recommendation in paragraph 339 that MASAK either discontinue undertaking financial investigation activities and continue solely in its role as a FIU or divide itself so that a different department deals with each role;
- DGLeg considered that it would be appropriate to omit the recommendations in paragraphs 340 and 341 that (a) whichever bodies undertake the roles currently performed by MASAK be subject to the safeguards required under Articles 6 and 8 of the ECHR and Article 64(2) of the CPC and (b) material produced by MASAK (or its successor bodies) should not be included in the case file on account of this being intelligence and not evidence;
- DGLeg and MASAK considered that it would be appropriate to omit the recommendation in paragraph 343 that whichever bodies undertake the roles currently performed by MASAK to be given a statutory basis that secures their autonomy;
- DGLeg and MASAK considered that it would be appropriate to omit the recommendation in paragraph 350 to introduce (a) the possibility of challenging the accuracy of financial investigation reports on matters beyond clerical material errors and (b) the duty to inform persons subject to an investigation about the outcome on the basis of the confidentiality of the investigation and the existing possibility of objecting to evidence in court. However, it is

not being suggested that the proposed challenge be before the court stage and objections to evidence can only be very narrow in scope;

- DG FR & EUA considered that, instead of the recommendations in paragraphs 359 and 360 concerning Suggestions for MASAK (or its successor body), judges and prosecutors and regular meetings and workshops, the relationship between the judicial units and MASAK should be limited to receiving reports on the merits, rather than asking for opinions. Moreover, this should be limited to certain catalogue crimes and instead of rejecting the requests of reporting and reversal of the documents, MASAK should clearly provide information on deficiencies to be eliminated for provision of reporting when requested by the court as in the practice of FMI. In this way, it was evaluated that unnecessary waste of time will be prevented;
- DGLeg considered, in connection with the recommendation in paragraph 363 to establish a central prosecution mechanism – operating countrywide - for money laundering and financing terrorism crimes that the present provisions are adequate. In addition, DG FR & EUA stated in paragraph 366 that the proposed mechanism was not on the agenda; and
- DG FR & EUA suggested that it would be more appropriate to update existing circulars instead of preparing guidelines and templates as recommended in paragraphs 380.

ANNEX 4. Agenda of the First Legislation Needs Assessment Mission

6-8.11.2019, Ankara

Wednesday 06/11/2019 Çarşamba		
Meeting with MASAK	**09:00**	**MASAK ile toplantı**
Meeting with prosecutors of Ankara Courthouse Prosecutors dealing with organised crimes– Prosecutors dealing with terror crimes – Prosecutors dealing with cybercrimes – Prosecutors dealing with general investigation–	**11:15**	**Ankara Adliyesi Savcıları ile toplantı** - Organize suçlar hususunda çalışan savcılar - Terör suçları hususunda çalışan savcılar - Bilişim suçları hususunda çalışan savcılar - Genel Soruşturma hususunda çalışan savcılar
Meeting with Constitutional Court	**14:30**	**Anayasa Mahkemesi ile Görüşme (*Anayasa Mahkemesi binası)***
Thursday 07/11/2019 Perşembe		
Meeting with MOJ-General Directorate of Foreign Affairs and EU	**09:00**	**Adalet Bakanlığı - Dış İlişkiler ve Avrupa Birliği Genel Müdürlüğü ile Görüşme**
Meeting with MOJ-Department of Human Rights	**10:45**	**Adalet Bakanlığı - İnsan Hakları Daire Başkanlığı ile Görüşme**
Meeting with Court of Cassation	**14:00**	**Yargıtay ile Görüşme**
Meeting with Ankara Bar Association	**17:30**	**Ankara Barosu ile Görüşme**
Friday 08/11/2019 Cuma		
Organised Crime Departments of Gendarmerie and DG Security	**09:00**	**Jandarma ve Emniyet Genel Müdürlüğü Organize Suçlar Daireleri ile Görüşme**
Cybercrime Departments of Gendarmerie and DG Security	**10:45**	**Jandarma ve Emniyet Genel Müdürlüğü Siber Suçlar Daireleri ile Görüşme**
Anti-Terror Departments of Gendarmerie and DG Security	**14:00**	**Jandarma ve Emniyet Genel Müdürlüğü Terörle Mücadele Daireleri ile Görüşme**
Public Security Departments of Gendarmerie and DG Security	**15:30**	**Jandarma ve Emniyet Genel Müdürlüğü Asayiş Daireleri ile Görüşme**
End of Program	**18:00**	Program Sonu

ANNEX 5. Agenda of the Second Legislation Needs Assessment Mission

17-20 December 2019 in Istanbul on

Tuesday	**17/12/2019**	**Salı**
İstanbul Bar Association	**09:30**	**İstanbul Barosu ile toplantı**
Centre for Fair Trial Tracking Personal Data Protection Committee Information Technology Law Committee Human Rights Centre Centre for Criminal Procedure Code		Adil Yargılanma Takip Merkezi Kişisel Verilerin Korunması Komisyonu Bilişim Hukuku Komisyonu İnsan Hakları Merkezi CMK Uygulama Servisi
Turkish Penal Law Association	**11:30**	**Türk Ceza Hukuku Derneği ile toplantı**
The Banks Association of Turkey	**15:00**	**Türkiye Bankalar Birliği ile toplantı**
Wednesday	**18/12/2019**	**Çarşamba**
Çağlayan Courthouse (First instance)		*Çağlayan Adliyesi*
Meeting with Prosecutors	**09:00**	**Savcılar ile toplantı**
Prosecutors dealing with Organized Crimes, Cybercrime, anti-Terror issues		Organize Suçlar Siber suçlar Terörle Mücadele
Meeting with Criminal Peace Judges	**11:00**	**Sulh Ceza Hâkimleri ile toplantı**
Meeting with Judges of the Courts of Assize	**14:00**	**Ağır Ceza Hâkimleri ile toplantı**
Thursday	**19/12/2019**	**Perşembe**
Court of Appeals – Kartal		*Bölge Adliye Mahkemesi– Kartal*
Meeting with Prosecutors	**10:00**	**Savcılar ile toplantı**
Prosecutors dealing with anti-terror issues and organised crimes Prosecutors dealing with detention and the right to a fair trial		Terörle mücadele ve siber suçlarla ilgili savcılar Tutukluluk ve adil yargılanma ile ilgili diğer savcılar
Meeting with Criminal Judges Chambers dealing with anti-terror issues and organised crimes Chambers dealing with detention and the right to a fair trial	**14:00**	**Ceza hâkimleri ile toplantı** Terörle mücadele ve siber suçlarla ilgili dairelerin hâkimleri Tutukluluk ve adil yargılanma ile ilgili diğer dairelerin hâkimleri
Friday	**20/12/2019**	**Cuma**
Forensic Medicine Institution	**09:30**	**Adli Tıp Kurumu ile toplantı**
Evidences – Digital evidences Specialized department of digital forensics.		Deliller – Dijital deliller Adli bilişim ihtisas dairesi
Debriefing	**14:00**	**Değerlendirme Toplantısı**
Sharing preliminary findings with the Ministry and the project staff		Bakanlık ve Proje yetkilileri ile ilk bulguların paylaşımı
End of the Programme	**16:00**	**Programın sonu**

ANNEX 6. Interviewees of the Legislation Needs Assessment Missions

A. First Needs Assessment Mission in Ankara on 6-8 November 2019

Ministry of Treasury and Finance (Financial Crimes Investigation Board**)**

Ö. Artun AKTİMUR	Treasury and Finance Expert
Çağatay USLUOĞLU	Treasury and Finance Expert
Saygın GÖKÇE	Treasury and Finance Expert

Ankara Courthouse

Mahmut Kaan YÜKSEL	Public Prosecutor
Ekrem ÖZPOLAT	Public Prosecutor
Ferhat CELALOĞLU	Public Prosecutor
Alev ERSAN ALBUZ	Public Prosecutor
Mehmet İlhan KÖMÜRCÜCİL	Public Prosecutor
Abbas ARINAN	Public Prosecutor

TCC

Mustafa Eyyub DEMİRBAŞ	Deputy Secretary General
Akif YILDIRIM	Rapporteur
Aydın ŞİMŞEK	Rapporteur
Gülsüm Gizem GÜRSOY	Rapporteur

Ankara Bar Association

Erinç SAĞKAN	President
Kemal KORANEL	Secretary General
Çağrı ERYILMAZ	Executive Board Member
Doğan ERKAN	Lawyer
Ayşen AKÇAY SENEM	Lawyer
Sercan ARAN	Lawyer
Burak Emre ÖZILHAN	Lawyer

Ministry of Justice

Gökçen ÇEVİK	Reporter Judge	DG Foreign Affairs and European Union
Recep EMRE	Reporter Judge	DG Foreign Affairs and European Union
Ayla SERÇE	Expert	DG Foreign Affairs and European Union
Alper Hakkı YAZICI	Head of Department	Human Rights Department
Mehmet Fatih KIRBAŞ	Reporter Judge	Human Rights Department
Jülide TAVLI	Reporter Judge	Human Rights Department
Ömer YILMAZ	Reporter Judge	Human Rights Department

Court of Cassation

Ahmet ÖMEROĞLU	Member	16th Criminal Chamber
Ertan AYDIN	Member	8th Criminal Chamber
Berrin AKSOYAK	Member	7th Criminal Chamber
Mustafa SALDIRIM	Deputy Secretary General	
Gülşah AKBULUT	Reporter Judge	

Directorate General of Security

Özkan AYGÜN	Deputy Inspector	Counter Terrorism
Yılmaz BURGUCU	Police officer	Counter Terrorism
Abdullah TOPAL	Chief Superintendent	Counter Terrorism
İhsan Tufan FIRTINA	Chief Superintendent	Public Order
Ersin BAŞKAYA	Deputy Inspector	Public Order
Volkan Nevzat MAVİŞ	Chief Superintendent	Anti-smuggling and organized crime
Yusuf Rıdvan DURMUŞCAN	Inspector	Anti-smuggling and organized crime
Enes Koray KOÇAK	Inspector	Cybercrime

Gendarmerie General Command

Nursi ÇAĞLAK	Chief of the Crime Section	Public Order
Talat ASLAN	Crime Procedures Sergeant	Public Order
Serdar ATAKAN	Head of Division	Counter Terrorism
Kemal DÖNMEZ	Head of Division	Counter Terrorism
Engin ARSLAN	Head of Fighting against Financial Crimes and Crime Proceeds Division	Anti-smuggling and organized crime
Erdoğan SÖYLİYEN	Head of Narcotics Division	Anti-smuggling and organized crime
Güven ÖNGÖREN	Head of Anti-smuggling Division	Anti-smuggling and organized crime
Suat DÖNMEZ	Head of Department	Cybercrime
Volkan Güner GÜNGÖR	Head of Division	Cybercrime

B. Second Needs Assessment Mission in Istanbul on 17-20 December 2019

Istanbul Bar Association

Emre ÇOKGEZEN	Lawyer	
Hasan Selçuk TURAN	Lawyer	
M. Gökhan AHİ	Lawyer	IT Law Commission
Tuğçe Duygu KÖKSAL	Lawyer	Human Rights Center
Volkan BAHADIR	Lawyer	Criminal Procedure Code Implementation Center

Turkish Criminal Law Association

Barış ERMAN	Academic	Yeditepe University
Hasan SINAR	Academic	Altınbaş University
Kazım Yiğit AKALIN	Lawyer	
Mehmet İPEK	President	TCLA

Turkish Banks Association

Ümit ÜNSAL	Economist	
Emre Alpay İNAN	Director	
N. Cenk ERBİL	Manager	Akbank
Ertuğrul KOÇAK	Head of Unit	Türkiye İş Bankası

Çağlayan Courthouse

Özgür DURSUN	Judge	Criminal Peace Judgeship
Veli GÜRSOY	Judge	Criminal Peace Judgeship
Ramazan ÇİÇEK	Judge	Criminal Peace Judgeship
Mehmet AKMEŞE	Judge	Criminal Peace Judgeship
Furkan Bilgehan ERTEM	Judge	Criminal Peace Judgeship
Mücteba AKKAYA	Judge	14th Court of Assize
Murat ÖZER	President of Court of Assize	14th Court of Assize
Okay Nur ERTEM	Judge	28th Court of Assize
Ömer YILDIRIM	President of Court of Assize	23th Court of Assize
Ali Nazmi DANDİN	Public Prosecutor	
Caner BABALOĞLU	Public Prosecutor	
Ercan DEVRİM	Public Prosecutor	
Gökhan YOLASIĞMAZ	Public Prosecutor	
İsa DALGIÇ	Public Prosecutor	
Kemal GÜVENİŞ	Public Prosecutor	
Muammer KÖSEOĞLU	Public Prosecutor	
Necip SARI	Public Prosecutor	
Orhan AYDIN	Public Prosecutor	
Orhan TÜRÜDİ	Public Prosecutor	
Ufuk Can GAZEZOĞLU	Public Prosecutor	
Yakup Ali KAHVECİ	Public Prosecutor	
Bülent BAŞAR	Deputy Chief Public Prosecutor	

Burhan GÖRGÜLÜ	Public Prosecutor	
Fahri Mutlu TOSUN	Deputy Chief Public Prosecutor	
Hasan YILMAZ	Deputy Chief Public Prosecutor	
Kemal AKTAŞ	Public Prosecutor	
Mehmet KÜÇÜK	Public Prosecutor	
Münür BÜYÜKELÇİ	Public Prosecutor	
Murat ÇAĞLAK	Deputy Chief Public Prosecutor	
Ömer Faruk YILDIRIM	Deputy Chief Public Prosecutor	
Sami ŞAHİN	Public Prosecutor	
Zafer KOÇ	Deputy Chief Public Prosecutor	

Istanbul Court of Appeals

Mehmet Sıddık ÇİNKO	Public Prosecutor	
Ali PARLAR	Public Prosecutor	
Ahmet ÇETİN	Public Prosecutor	
İbrahim BAĞCI	Public Prosecutor	
Fevzi BÜYÜMTÜMTÜRK	Public Prosecutor	
Mustafa ÖZTÜRK	Public Prosecutor	
Kadir GÜNÜÇ	Public Prosecutor	
Metin SARIHAN	Public Prosecutor	
Abdurrahman ÜŞENMEZ	Public Prosecutor	
Alev MENTEŞ	President of Chamber	17th Criminal Chamber
Bülent ALTUN	Member	23rd Criminal Chamber
Doğan GEDİK	Member	19th Criminal Chamber
Erdem DEMİRCANLI	Member	3rd Criminal Chamber
Ersoy YÜCE	President of Chamber	20th Criminal Chamber
Hüseyin KILIÇ	President of Chamber	13th Criminal Chamber
Murat BOYLU	President	
Peyman HÜRMÜZ	Member	15th Criminal Chamber
Serkan AĞALDAY	President of Chamber	21st Criminal Chamber
Taner AKINCI	President of Chamber	2nd Criminal Chamber
Yaşar KILINÇ	Member	9th Criminal Chamber
Yılmaz KAYA	Member	27th Criminal Chamber

Forensic Medicine Institution

Ömer MÜSLÜMANOĞLU	Vice President
Bülent DOĞAN	Forensic Medicine Expert
Meltem YAVUZ	Examination Expert
Mehmet Nadir KURNAZ	Examination Expert
İsmail EREN	Electrics Electronics Engineer
Özlem MUTLU	Computer Engineer
Abdülaziz YAŞAR	Computer Technician
Hızır ASLIYÜKSEK	Vice President
Timur Kaan GÜNDÜZ	President