

Turkey

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.²

¹ The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

² The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

► *Precedence of international human rights treaties*

With a view to improving the implementation of the ECHR, the Constitution was amended in 2004 giving international human rights conventions precedence over ordinary legislation.

In 2012, an individual right to complain to the Constitutional Court was introduced as an effective remedy for all violations of the ECHR.

United Communist Party
(19392/92+)

[Final Resolution](#)
[CM/ResDH\(2007\)100](#)

Özbek (25327/04)

[Final Resolution](#)
[CM/ResDH\(2013\)254](#)

► *Actions of security forces and effective investigations*

The protection against the use of torture and other forms of ill-treatment has been gradually reinforced over time. The general prohibition of ill-treatment by civil servants was enshrined in the Constitution of 1982 and constitutes an offence under the Penal Code. The Code of Criminal Procedure (as revised in 1992) prohibited, in particular, ill-treatment as a method of interrogation specifying that evidence obtained as a result thereof is null and void regardless of the consent of the person concerned. Specific educational and training activities were periodically organised for members of the police to prevent the risk of ill-treatment during police custody.

The Code of Criminal Procedure of 2005 set out more elaborate standards for the protection against arbitrary police interventions, including search measures.

A law on compensation was adopted in 2004 and revised in 2005, providing for a simplified alternative to judicial proceedings to allow internally displaced persons to obtain directly from administrative commissions compensation for pecuniary damage resulting from terrorism and measures taken by the State against terrorism.

Erdagöz (17128/90)

[Final Resolution](#)
[CM/ResDH\(96\)17](#)

H.M. (34494/97)

[Final Resolution](#)
[CM/ResDH\(2013\)253](#)

Dogan and Others
(8803/02)

[Final Resolution](#)
[CM/ResDH\(2008\)60](#)

► *Risk of ill-treatment in case of expulsion*

The 1999 Regulations on political asylum seekers established the authorities' obligation to assess the concrete threat of torture and other forms of ill-treatment on a case to case basis. Also, the deadline for requesting political asylum increased from five to ten days since one's entry into the territory.

Jabari and D. and others
(40035/98+)

[Final Resolution](#)
[CM/ResDH\(2011\)311](#)

► *Protection against ill-treatment by individuals*

Following the fatal stabbing of a pupil by a schoolmate outside a school in 2002, additional security measures for pupils were taken, including the installation of security gates and video systems. Furthermore, measures raising awareness about escalating peer violence among teenagers as well as relating to prevention and supervision of school premises were taken by the Ministry of Education.

Kayak (60444/08)

[Final Resolution](#)
[CM/ResDH\(2016\)302](#)

► *Right to liberty and security*

▭ *Arrest and police custody*

Aware of the link between shortcomings in the police custody system and the risk of detainees' ill-treatment, a number of laws and regulations reducing the length of possible police custody and introducing important procedural safeguards were adopted. The excessively long periods of up to 15 days' detention in police custody before presenting the detainee to a judge (in regions under a state of emergency it could be extended to 30 days) were reduced to seven days by law in 1997.

Demir and Others
(21380/93+)

[Final Resolution](#)
[CM/ResDH\(2002\)107](#)

In order to comply with ECHR standards, the Constitution was amended in 2001 to limit to four days the maximum length of police custody before presenting the detainee before a judge, except in cases of a derogation due to a state of emergency. The provisions of the Code of Criminal Procedure relating to police custody were subsequently aligned with the Constitution.

Finally, the Code of Criminal Procedure of 2005 provided that detainees are to be presented to a judge within 24 hours in ordinary cases and three days in exceptional cases. Courts shall render their custody-related decisions within three days.

Special rules for minors were introduced in 2005 together with the establishment of juvenile courts.

➤ Access to a lawyer

All detained persons are granted the right of access to a lawyer from the moment they are taken into police custody. Additional legislative amendments were made in 2016, providing that, by a court order, the right of access to a lawyer can be restricted during the first 24 hours of police custody in respect of an exhaustive list of crimes. Suspects cannot be interrogated while denied access to a lawyer during this period. The appointment of a lawyer was made obligatory in respect of minors or persons accused of an offence punishable by a maximum of at least five years' imprisonment.

➤ Judicial review

In 2013, the adversarial principle was introduced for remand-related judicial review hearings. The possibility to order detention *in absentia* and to extend detention on remand without hearing the accused or his lawyer was abolished in 2005 and protection against arbitrariness was reinforced in 2015.

➤ Compensation for unlawful detention

The right to effective compensation for unlawful arrest and detention was, in principle, granted after the constitutional amendments of 2001, codified in the Code of Criminal Procedure in 2005 and amended in 2013.

Sakik and Others
(23878/94+)

[Final Resolution
CM/ResDH\(2002\)110](#)

Ayaz and Others
(11804/02+)

[Final Resolution
CM/ResDH\(2008\)29](#)

Nart (20817/04)

[Final Resolution
CM/ResDH\(2016\)304](#)

Salduz (36391/02+)

[Final Resolution
CM/ResDH\(2018\)219](#)

Parlak (22459/04)

[Final Resolution
CM/ResDH\(2017\)90](#)

Aksoy group (21987/93)

[Final Resolution
CM/ResDH\(2019\)51](#)

Sakik and Others
(23878/94+)

[Final Resolution
CM/ResDH\(2002\)110](#)

Hamşioğlu (2036/04)

[Final Resolution
CM/ResDH\(2014\)123](#)

Demirel (39324/98+)

[Final Resolution
CM/ResDH\(2016\)332](#)

➤ Functioning of justice

➤ Fairness of proceedings and access to justice

— *Criminal proceedings*: In the context of legislative reforms aiming at improving fairness, martial law courts were abolished in 1993. Later, the State Security Courts' lack of independence and impartiality due to the presence of a military judge on the bench resulted in their abolition following a constitutional reform in 2004. Their jurisdiction was transferred to assize courts.

Çıraklar (19601/92)

[Final Resolution
CM/ResDH\(99\)555](#)

Incal (22678/93)

[Final Resolution
CM/ResDH\(2018\)356](#)

Gencel (53431/99)

The provision requiring the presence of active military officers on military court panels was abolished by the Law on the Establishment and Procedure of Military Courts 2010. In 2013, the military disciplinary courts' jurisdiction was limited to disciplinary issues taking place at times of war. Military courts were completely abolished in April 2017.

Juvenile justice was reformed in 2005, with the creation of special juvenile courts and the development of alternative sanctions to deprivation of liberty.

The practice of imposing fines through "sentence orders" without trial, which had been declared unconstitutional by the Constitutional Court, was abolished in 2004.

Defence rights were strengthened in the new Code of Criminal Procedure 2005 and gradually extended at later stages: oral hearings became obligatory, as did the notification of the Public Prosecutor's written opinions to the parties, and proceedings cannot be closed in the absence of the defendant (except in cases of an acquittal).

A new framework for "undercover investigators", who are now to be appointed by a court decision and are subject to special supervision, was introduced in 2005.

In particular, it is forbidden to incite the commission of offenses and no conviction can be based on illegally obtained evidence. The Audio/Visual Information System (SEGBIS) was introduced in 2011 to take statements from any parties, as well as witnesses, by a public prosecutor, judge or court outside the local/regional jurisdiction of the court or the public prosecutor's office, thus permitting interrogation of anonymous witnesses.

— *Civil proceedings:* A new framework for legal aid was introduced in Code of Civil Procedure 2011 and amended in 2013. Requests for legal aid are granted if the merits of the claim cannot be regarded as manifestly ill-founded *prima facie* and if the claimants are not able to partially or fully pay the costs and expenses of proceedings without carrying a significant financial burden. The amendment also introduced the possibility to appeal the decision.

Remedies against excessive length of proceedings

The 2013 "Law on the Settlement of some Applications Lodged with the European Court of Human Rights by means of Compensation" introduced an effective domestic remedy by providing that applications relating to excessive length of proceedings or non-execution, delayed execution or partial execution of final judicial decisions and those pending before the European Court could be settled by payment of compensation. Under this law, a State Commission

[Final Resolution
CM/ResDH\(2013\)256](#)

Ibrahim Gürkan (10987/10)
[Final Resolution
CM/ResDH\(2016\)303](#)

Bayrak (39429/98+)
[Final Resolution
CM/ResDH\(2018\)22](#)

Selcuk (21768/02)
[Final Resolution
CM/ResDH\(2010\)115](#)

Arslan (75836/01+)
[Final Resolution
CM/ResDH\(2010\)64](#)

Goc (36590/97+)
[Final Resolution
CM/ResDH\(2011\)307](#)

Kizilyaprak (9844/02)
[Final Resolution
CM/ResDH\(2009\)108](#)

Burak Hun (17570/04+)
[Final Resolution
CM/ResDH\(2018\)217](#)

Balta and Demir (48628/12)
[Final Resolution
CM/ResDH\(2018\)160](#)

Bakan (50939/99+)
[Final Resolution
CM/ResDH\(2018\)37](#)

*Ormanci and others group
(24240/07) and
Ümmühan Kaplan
(43647/98)*

[Final Resolution
CM/ResDH\(2014\)298](#)

may award compensation within nine months, after an assessment of the complaint in the light of European Court's case-law. The Commission's decision may be appealed before the Ankara Regional Administrative Court and the appeal decision must be rendered within three months. The compensation awarded shall be paid by the Ministry of Finance within three months as from the date when the Regional Administrative Court's decision becomes final.

▢ Organisation of the judiciary

The High Military Administrative Court was abolished in 2017, following constitutional amendments. The cases before it were transferred to the Court of Cassation and the Council of State. Cases in which the High Military Administrative Court had first-instance jurisdiction were transferred to the competent civil courts of first instance. Cases that were previously within its jurisdiction fell under the jurisdiction of civil administrative tribunals. No member of the armed forces may sit in these tribunals.

Tanisma group (32219/05+)
[Final Resolution](#)
[CM/ResDH\(2018\)422](#)

➤ **Protection of private and family life**

▢ Access to and custody of one's children

In order to improve effectiveness, family courts were created in 2003. The failure to abide by access or custody orders was defined as a criminal offence. Sanctions for non-compliance were increased shortly thereafter. The new framework provided that a social worker, a pedagogue, a psychologist or social officer shall be present during enforcement operations.

Hansen (36141/97)
[Final Resolution](#)
[CM/ResDH\(2008\)61](#)

▢ Filiation / paternity actions

Under the 2001 Civil Code, in paternity cases where the defendant does not consent to an inquiry and examination, the court may consider this fact as being against the defendant. The 2011 Code of Civil Procedure allowed courts to order the defendant's examination by force. According to the Court of Cassation's new case-law, the domestic courts have the duty to determine whether the defendant is the father following examination of all evidence.

*Ebru and Tayfun Engin
Çolak (60176/00)*
[Final Resolution](#)
[CM/ResDH\(2018\)189](#)

▢ Gender identity

The requirement of being unable to procreate as a prerequisite to being eligible for a gender conversion operation, laid down in Article 40 of the Civil Code, was repealed by a decision of 29 November 2017 of the Constitutional Court.

Y.Y. (14793/08)
[Final Resolution](#)
[CM/ResDH\(2018\)395](#)

➤ **Freedom of religion and conscience**

In 2014, a law abrogated the Criminal Code provision that provided for an imprisonment sentence for wearing religious headgear and garments in public areas.

*Ahmet Arslan and Others
(41135/98)*
[Final Resolution](#)
[CM/ResDH\(2016\)330](#)

A secure legal framework governing identity cards was introduced in 2016. The new identity cards contain an electronic chip, which may comprise information on a person's religious affiliation only if they expressly consent to it in their ID application form. Information on electronic chips is classified and the right of authorities to access

Sinan Isik (21924/05)
[Final Resolution](#)
[CM/ResDH\(2018\)221](#)

it must be granted by law only as far as deemed strictly necessary for the exercise of their duties.

► Freedom of expression

In 2003, in the context of an extensive programme of reform to comply with ECHR standards on freedom of expression, certain provisions in the Law against Terrorism and the Criminal Code, which constituted the legal basis for numerous criminal convictions and prohibitions of publication of periodicals, were abrogated.

Arslan (23462/94+)
[Final Resolution CM/ResDH\(2006\)79](#)
Eytişim Basın Yayın Reklam Sanat Hizmetleri Ticaret Limited Şirketi (69763/01+)
[Final Resolution CM/ResDH\(2009\)151](#)

Furthermore, the Criminal Code was amended in 2013 to restrict the conditions for prosecution for the crime of incitement to immediate desertion or to abstain from compulsory military service. Mere criticism of military service is no longer sufficient.

Ergin No. 6 group (47533/99+)
[Final Resolution CM/ResDH\(2019\)148](#)

The case-law of domestic courts was developed and applied the amended provisions in a manner consistent with the ECHR, notably stating that “declaring a conscientious objection in and of itself does not constitute a crime”.

Ürper and Others (14526/07+)
[Final Resolution CM/ResDH\(2014\)130](#)

► Freedom of association

To improve the political parties’ legal status, 2001 constitutional amendments, followed by 2003 amendments to the law on political parties, ensured that a political party would not be sanctioned on the sole basis of its manifesto or without any evidence of clearly anti-democratic activity.

United Communist Party (19392/92)
[Final Resolution CM/ResDH\(2007\)100](#)

In 2004, the new Associations Law was enacted with a view to strengthening civil society and securing freedom of association: most of the restrictions of the right to found associations, including prohibiting political activities and insults of the State at stake in this case, were lifted. The automatic dissolution of associations following the criminal conviction of one of their members for having carried out activities or made statements against the association’s aims was abolished by law in 2004.

IPSD and Others (35832/97)
[Final Resolution CM/ResDH\(2018\)161](#)

In 2010, civil servants were granted the right to form and join trade unions with the competence to engage in collective bargaining. Dismissal based on membership in a trade union is prohibited.

Demir and Baykara (34503/97)
[Final Resolution CM/ResDH\(2011\)308](#)

► Protection of property rights

◁ Compensation for real property expropriation

The provision of the Act on Expropriation granting compensation exclusively in cases of expropriation but not for occupation of land for public use was declared unconstitutional by the Constitutional Court in 2003.

I.R.S. (26338/95)
[Final Resolution CM/ResDH\(2007\)98](#)

The possibility of default interest payment covering the difference in the value of the compensation for the expropriation on the date on which the court action had been brought and the value when compensation had actually been paid as a result of the combined effect of the length of proceedings and inflation was introduced by a 2013 amendment to the Expropriation Law. Subsequently, a new Compensation Commission was established to deal with applications concerning excessive length of proceedings, delayed or non-execution of judgments. In 2014, the competence of the Compensation

Yetis and Others (40349/05)
[Final Resolution CM/ResDH\(2018\)223](#)

Commission was subsequently extended to also examine complaints relating to, *inter alia*, loss of value in expropriation-related compensation due to inflation and length of proceedings.

► **Electoral rights**

Following decisions by the Supreme Electoral Board between 2013 and 2015, certain prisoners (notably, those convicted for negligent offences, released on probation or conditional release or subject to suspended sentences) were allowed to vote in the general elections held in 2014 and 2015. In 2015, the Constitutional Court partially abrogated the Criminal Code on the prisoners' right to vote. By decisions rendered from 2015 to 2018, the Supreme Election Board accepted that voting rights be held also by prisoners on remand, persons convicted of offences committed involuntarily, conditionally released persons, persons whose prison sentences had been suspended and those who were released on probation. As a consequence, only persons convicted of intentional crimes are disenfranchised during the period they serve their prison sentences.

Soyler (29411/07)

[Final Resolution
CM/ResDH\(2019\)147](#)

► **Protection against discrimination in education**

In 2012, the Law on Higher Education was amended to provide that grades obtained at the university entrance exams are to be calculated in the same manner for students holding diplomas from vocational and ordinary high schools.

Altınay (37222/04)

[Final Resolution
CM/ResDH\(2017\)89](#)