PERMANENT MISSION OF THE REPUBLIC OF TURKEY
TO THE UNITED NATIONS OFFICE IN GENEVA

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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the joint urgent appeal letter dated 4 May 2018 (Ref: UA TUR 7/2018), has the honour to enclose herewith an information note comprising the response of the Government of the Republic of Turkey.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 2 August 2018

Encl: As stated.

Office of the High Commissioner for Human Rights
Special Procedures Branch
Geneva

INFORMATION NOTE IN REPLY TO THE JOINT URGENT APPEAL REGARDING THE APPLICATIONS OF THIRTEEN INDIVIDUALS TO UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION DATED 4 MAY 2018

1. With reference to the joint urgent appeal dated 4 May 2018, sent by the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the promotion and protection of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on the torture and other cruel, inhuman or degrading treatment or punishment, the Government would like to submit its observations herein below.

I. INTRODUCTION

2. Article 19 of the Turkish Constitution regulates personal freedom and security. First sentence of the said article underlines that all shall enjoy personal freedoms and security, and the cases and conditions to deprive a person's freedom are stipulated in the following articles thereof. This provision of the Turkish Constitution guarantees the right to personal liberty and security as a human right.

3. Taking into custody is restraining and impeding the apprehended person's freedom to complete his/her procedures in such a way that will not harm his/her health until releasing him/her or bringing him/her to trial. It is also defined as putting the apprehended person under the supervision of law enforcement since the detention warrant of the public prosecutor is effectual and bears consequences from the moment of apprehension.

4. The suspect apprehended or taken under custody has rights such as being informed of his/her rights and the accusation against him/her, right to silence, benefiting from legal assistance, communication with his/her family, providing evidence in his/her favour and demanding for collection of these, being brought to trial and requesting to see a doctor.

5. The arrested person, his attorney or his/her legal representative, the spouse or the first or second degree relatives may appeal to ensure immediate release against the written order of the public prosecutor for apprehension, custody and extension of the custody period. The petition of the arrested person is delivered to the competent judge in the most immediate manner. The

judge’s decision to release upon the appeal against the order of the public prosecutor shall be immediately applied.

6. Arrest is the limitation, with the judge's decision, of freedom of the suspect or defendant with concrete evidence indicating the existence of a strong criminal suspicion and a reason of arrest, while there is no definite verdict on his/her guilt, provided that it will be proportionate with the importance of the work and to the punishment that may be given when the verdict is finalized.

7. The arrest is not a punishment of a person before being sentenced, but it is a protection measure that is applicable for certain purposes and in certain circumstances in order to be able to render a lawful, effective judgement.

8. Three different causes for arrest are stated in Article 100 of the Code of Criminal Procedure (CCP or the Law No. 5271). The decision to arrest can be made when one of these causes exists provided that other circumstances accrue.

9. Hiding or escape of the suspect or the accused or presence of tangible facts raising doubts on the escape thereof are stipulated as causes for arrest in Article 100 of the Law No. 5271. Suspicion of spoliation of evidence is also another cause for arrest. It is clearly set out by the above mentioned Article of Law No. 5271 which circumstances raise doubts on spoliation of evidence. Presence of strong suspicion of the crimes mentioned in the third paragraph of Article 100 of Law No. 5271 could also be admitted as a cause for arrest.

10. According to Article 101 of Law No. 5271, at the stage of criminal investigation, the Magistrates’ Court judge decides on the arrest of the suspect upon the request of public prosecutor; however, during prosecution process, the court can decide on the arrest of the suspect on its own motion as well as at request of the public prosecutor.

11. “Objection” to the decisions of arrest of the suspect or the accused is prescribed as a legal remedy in the fifth paragraph of Article 101 of Law No. 5271. The public prosecutor can also appeal against the court’s decision to arrest meaning that the public prosecutor can take legal action in favour of the accused.

12. The general principles regarding the objection in Article 268 and following articles of Law No. 5271 shall prevail in respect of objection procedure and instance for reviewing. An

appeal may also be made against the decisions of the judge or the court that reject claims of release of the arrested.

13. On the other hand, it is provided in the Article 149 of the Law No. 5271 that the suspect or the accused can benefit from the help of one or more attorneys at every stage of the investigation and the prosecution, if the suspect has a legal representative, he/she can also appoint an attorney for the suspect or the accused. Three attorneys at most can be present in the investigation phase, the attorney shall not be prevented and restricted from the right of meeting with the suspect or the accused, accompanying him during interrogation or query, and providing legal assistance at every stage of the investigation and prosecution.

14. The crime of armed organization set out in Article 314 of the Turkish Criminal Code No. 5237 implies the armed organizations formed to commit the crimes prescribed in the fourth and fifth section of the said Law, titled 'Offences Against National Security' and 'Offences against Constitutional Order And Operation of Constitutional Rules'. In Paragraph 1 of this Article, forming or leading an armed organization for the purpose of committing offences within the scope of this Paragraph is defined as a separate offence. In Paragraph 2, being a member of such an organization is sanctioned as a separate offence.

15. Although sanctions are imposed in Law No. 5237 upon forming, managing or being a member of an organization for the purpose of committing a crime, Article 314 sets a limit upon the intended offences. Likewise, there is a difference between the two offences in terms of the nature of the organization. Because the organization within the scope of Article 314 must be armed. In other words, arms constitute an element of this offence. However, it is not necessary for all members to be armed for the organization to be classified as "armed". Certain armed members in a level sufficient to commit the crimes intended are enough for classifying an organization as "armed".

16. Membership to an armed organization is to join in, be committed to and enter into the service of the hierarchical power of an organization described in the first paragraph of Article 314. When a person joins in an organization, he/she is considered to accept being a member of the organization. In order for someone to be considered a member of an armed organization, it is required from him/her to show the will to join the organization with a perceptible behaviour, and this will must be towards continued participation.

17. On the other hand, as required by Article 154 of the Code of Criminal Procedure, the attorneys have the right to see the suspects. The suspects and their attorneys have the right to request the investigation file.

18. It should also be noted that freedom of press and the right to make news and commentaries are causes of compliance with the law. The prohibition introduced in the Article 285 of the Turkish Criminal Code does not aim to prevent informing the public of the prohibition, offence or the proceeding. The prohibition imposed with the article is about the aspects of the investigation or prosecution that must remain undisclosed. Freedom of press has been regulated in Articles 28 to 32 of the Constitution, Article 10 of the European Convention on Human Rights (ECHR) and Articles 1 and 3 of the Press Law. As an inseparable element of freedom of expression, freedom of press not only guarantees the right to disseminate opinions, comments and news, but also the right for people to enjoy thereof. In other words, the purposes of freedom of press are to create and disseminate scientific, artistic and intellectual works; to inform the public on current events, political matters and the persons of concern to the public; to criticize and share the criticisms via media tools and, in this way, to provide the necessary environment for the people's individual development on one hand, and on the other hand, to guarantee people's rights to produce ideas about, and participate in the administration.

19. Indeed, for the European Court of Human Rights, the freedom of press constitutes the unalienable basis of a libertarian and democratic society. Within this scope, pursuant to the right to make news, publishing or broadcasting the events regarding judicial investigations and prosecutions should be considered in the context of the freedom of press.

20. On the other hand, the following matters should be expressed with respect to the compliance of the state of emergency measures to international human rights law and freedoms affected by the state of emergency measures.

21. The Republic of Turkey is a democratic State of Law, is a member of the United Nations and a founding member of the Council of Europe and is devoted to human rights, rule of law and democracy. Besides, Turkey continues to fight against separatist terrorist organizations within the framework of the Constitution and the laws and in compliance with the fundamental principles of democratic state of law and of international law.

22. It is a state's duty to bring the armed coup plotters to justice in order for them to give account for their actions, and to eliminate the continuing coup threat. Within this scope, it is a

necessity to determine and take the required legal actions against the civil servants that are affiliated with FETÖ/PDY terrorist organization which has infiltrated into various ranks within the State's structure. It is also the responsibility of the State to take measures in order to prevent future threats against the national will.

23. Two types of procedures for the state of emergency have been stipulated in the Constitution, taking into account the reason of its declaration. The first state of emergency regulated in Article 119 of the Constitution can be resorted to "in the event of natural disaster, dangerous epidemic diseases or a deep economic crisis", and the second state of emergency regulated in Article 119 of the Constitution can be resorted to "in the event of serious indications of widespread violence o serious deterioration of public order". Besides, in the Law no. 2935 on State of Emergency, issued within the framework of the authority given by the Constitution, it is determined in detail how to use these powers.

24. It is allowed in some international human rights documents for states to derogate from the normal legal regime during a war or other emergency threatening a nation's existence, and given the nature of the situation, limiting the fundamental rights and freedoms more than it is allowed in normal conditions. Derogation has been regulated in Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and Article 15 of the European Convention on Human Rights (ECHR).

25. Within this context, considering the scope of the threat posed by the coup attempt in Turkey against the democratic constitutional system, the limitations introduced to fundamental rights and freedoms are in compliance with the Constitution and international obligations.

26. Indeed, in both its decisions, namely Aydın Yavuz and Others (D.No: 2016/22169, 20 June 2017, paragraphs 164 and 230) regarding individual applications and its annulment/rejection decision no. 2016/177 and decision no. 2016/160 upon the application for annulment that was made with the allegation that the decree-laws violate the Constitution, the Constitutional Court did not uphold the allegations of contradiction to the Constitution on the grounds that the State of Emergency is a constitutional and legal institution and that action was taken in accordance with the powers given by the Constitution. These decisions have been published in the Official Gazette and can also be found on the website of the Constitutional Court.

27. Within this context, according to Article 4 of the ICCPR and Article 15 of the ECHR, Turkey availed itself of this right and a statement of derogation was submitted.

28. It is necessary to address the case law and practice of the European Court of Human Rights (ECHR) in the context of the application of Article 15 of the ECHR in order to shed light on the issue and make a comparative assessment. According to the ECHR, for example; in an extraordinary situation, greater intervention in the freedom of expression than ordinary times for better protecting the public order may be "necessary in a democratic society" (Brind v. United Kingdom, no. 18714/91, 77-A DR 42, 1994). A similar interpretation could be made regarding the explicit limitations which are related to the right to respect for private life when there is a need that requires the confidential surveillance of terror suspects (Klass v. FAC, A 28, 1978). More importantly, following the suspension of the ECHR on the activities of the IRA in Northern Ireland, it has been adopted by the ECHR that the usual criminal procedure is inadequate to eliminate the broad and serious danger posed by the great wave of violence and fear caused by IRA's activities in Northern Ireland. In this respect, as contrary to the provisions of paragraph 1 of Article 5 of the ECHR in the ordinary period, deprivation of the freedom of persons without a judicial decision, and as contrary to the provisions of paragraph 4 of Article 5 in the ordinary period, the removal of procedural safeguards that regulate the deprivation of liberty were found necessary by ECHR for the elimination of the emergency. (Ireland v. United Kingdom, A 25, 1978).

29. Article 15 of the Constitution of the Republic of Turkey, similar to the Article 4 of the ICCPR and Article 15 of the ECHR, clearly regulates the action that should be taken by the administration in such situations. According to these regulations, the measures taken during the state of emergency period after the coup attempt precisely conform to the principles of "absolute necessity" and "proportionality".

30. The measures taken during the state of emergency did not lead to any changes in daily life since fundamental rights and freedoms were not limited in a way to affect everyday life. The measures taken were limited to the matters necessitated by the State of Emergency. The State of Emergency decision was taken not to limit rights and freedoms, but to be able to act faster and in a more effective manner against FETÖ/PDY and other terrorist organizations. It is the most natural right of the State to use this legal authority to protect democracy and national will.

31. Following the coup attempt, decree-laws were issued to swiftly clear the Public Institutions of people affiliated, in contact, and in allegiance with FETÖ/PDY. During this process, all actions are taken in accordance with legal procedures and all cases are addressed with utmost care.

32. There are domestic remedies for those claiming that their rights have been violated. Many civil servants were reinstated to duty and many institutions, foundations and associations were re-opened as a result of the evaluations made in response to the objections including the applications to appeal boards.

33. The State of Emergency measures are reviewed regularly, in line with the changing conditions. Issues brought by the Council of Europe (CoE) and the recommendations of the bodies of the CoE, primarily the Venice Commission and the European Committee for the Prevention of Torture are taken into account. Within this framework, some regulations were made in terms of State of Emergency measures.

34. Within this scope, the custody period of 30 days (which was never fully utilized in practice) has been reduced to 7 days (It can be extended for another 7 days only by public prosecutor's decision.), in accordance with the case-law of ECHR, namely Aksoy v. Turkey and Lawless v. United Kingdom.

35. It should be indicated that in terms of all crimes except for the above-mentioned ones, and for all crimes committed after the termination of the SoE, the detention period is one day according to the general provisions and four days in the event of extension in necessary cases.

36. The regulation made during the state of emergency, which allows the limitation of the right of the suspect to see his/her attorney up to five days, have been revoked upon the decision of the Public Prosecutor. General investigation provisions in Article 154/2 of the Code of Criminal Procedure are now in effect. Accordingly, the right of the suspect in custody to see his/her attorney can be restricted to twenty-four hours upon the request of the public prosecutor, and he/she cannot be interrogated during this period. Therefore, this legal arrangement is harmonized with the decisions of the ECHR, namely İbrahim v. United Kingdom, Simeonovi v. Bulgaria, and Salduz v. Turkey.

37. In addition, with the decree-law no. 682, it was provided for that civil servants who torture others shall be expelled from public office.

38. The Inquiry Commission on State of Emergency Measures (the Commission) was established to make assessments and decisions on the applications made regarding the proceedings conducted solely through decree-laws (without conducting any other administrative proceedings) such as direct dismissals, expulsions from studentship, closure of institutions and organizations and decree revocation of retired personnel; on the grounds that they have membership, coherence or contact with terrorist organizations. Opportunity to apply is also given to those against whom legal action is taken before the establishment of the Commission. (The Commission has started to accept the applications.)

39. Turkey safeguards its democracy while remaining inside the realm of democracy, and is determined to solve its problems within the principles of a state of law. Turkey is a country where everyone has the freedom to seek their rights and where all persons and organizations can request administrative and judicial review of all procedures and actions with legal consequences concerning them. Measures taken against the threats of coup and terrorism within the scope of the state of emergency had been taken to make sure that Turkey maintains a country where the abovementioned rights are guaranteed.

40. Turkey is a founding member of the Council of Europe and a state of law that follows international standards of human rights. Democracy and rule of law have also been strongly underlined in our Constitution. As being a state of law necessitates, Turkey's fight against terrorism is carried out in accordance with the laws issued, which are in line with international law and constitutional principles.

41. On the other hand, the following was stated in the aforementioned joint urgent appeal by the UN Working Group on Arbitrary Arrests and UN Special Rapporteurs: "*The arrest and detention of the above-mentioned individuals take place in the context of an ongoing widespread crackdown by the Turkish authorities against suspected opponents, following the failed coup on 15 July 2016; even though the attempt was reportedly perpetrated by soldiers and military officers, starting the next day, judges, prosecutors, journalists, businessmen, academics, civil servants, teachers and others were detained accused of being members of the FETÖ; tens of thousands of public sector employees have been dismissed, and hundreds of media outlets and non-governmental organizations have been shut down; there is growing consensus that the rule of law has been effectively suspended under the renewed emergency rule and that the courts are practically controlled by the Government of the Turkish President, who allegedly continues to use the criminal justice system, counter terrorism legislation and*

emergency powers to persecute its political opponents; most of these opponents are in pre-trial detention, on trumped-up charges of terrorism and coup plotting; since July 2016, more than 150,000 people have been arrested; there is an emerging pattern involving the arbitrary deprivation of liberty of FETÖ followers in Turkey; the Government has outlined a number of actions as pretexts for the arrest and detention of alleged members of the terrorist organization FETÖ including the above individuals, although they are not defined as crimes in the law; subscriptions to the FETO affiliated Zaman newspaper, journal or magazine; being a client of Bank Asya; Union membership; Membership in a business association like TUSKON, Volunteering for the charity organization "Kimse Yok Mu"; Possession of the books or other published materials of the leader of the terrorist organization FETÖ; Cancellation of Digiturk subscriptions; Possession of one-dollar bills; and Criminalization of an encrypted software (Bylock) ... While we do not wish to prejudge the accuracy of these allegations, we are raising our serious concerns at the arrest and detention of and charges against ... (the thirteen individuals). Our concerns arise from the vague and imprecise charge of "membership of an armed terrorist organization", which we have seen to be repeatedly misused to target critics of the Government's policies, particularly since the imposition of the state of emergency, and to criminalize the real or imputed peaceful association of people with the terrorist organization FETÖ and its legitimate activities. We also reiterate our concerns at the scale of the state of emergency measures, and the repressive environment they have established for the exercise of fundamental rights in Turkey. Grave concerns are also expressed at the allegations of torture and ill treatment of the above individuals, in particular during police custody, as well as their inadequate access to healthcare, including for a child of one of these individuals, and the potential resulting impact on their physical and mental integrity."

42. We have serious concerns regarding the compliance of the abovementioned phrases used in the joint urgent appeal to the powers, duties and responsibilities of the UN Working Groups and Special Rapporteurs, attributions of whom include independence and impartiality. It is considered surprising that such general, abstract, political and prejudiced statements were expressed by the UN Working Groups and Special Rapporteurs who are mandated with investigating the individual claims to protect human rights and prevent human rights violations, and to provide guidance to the member states of the United Nations.

43. Statements such as "*...these opponents are in pre-trial detention, on trumped-up charges of terrorism and coup plotting; since July 2016, more than 150,000 people have been arrested; the courts are practically controlled by the Government of the Turkish President; the rule of*

law has been effectively suspended under the renewed emergency rule; since July 2016, more than 150,000 people have been arrested..." are considered as biased and abstract. It cannot be understood from these statements, what kind of explanation is expected in response, especially to the phrases indicating that the courts are controlled and the rule of law is suspended.

44. As stated in the Constitution, the Republic of Turkey is a democratic, secular and social State governed by the rule of law, upholding the notions of public peace, national solidarity, justice, and respect for human rights. The judicial authority is exercised by independent and impartial courts on behalf of the Turkish Nation.

45. It is stated in the joint urgent appeal that "*The Government has outlined a number of actions as pretexts for the arrest and detention of alleged members of the terrorist organization FETÖ although they are not defined as crimes in the law; subscriptions to the FETO affiliated Zaman newspaper, journal or magazine; being a client of Bank Asya…..*" ignoring the evaluation of evidence conducted by first instance courts, appeal courts, the Council of State, Court of Cassation and Constitutional Court.

46. As it is thoroughly explained above, statements made in the joint urgent appeal address certain matters that are outside the scope of authority and responsibility of the UN Working Groups and Special Rapporteurs, tarnishing the prestige of the United Nations, an important international organization shaping of the world. Immediately after that statement: "*...while we do not wish to prejudge the accuracy of these allegations...*", other statements were made that can be described as abstract and out-of-scope, such as " *the criminalization the real or imputed peaceful association of people with the terrorist organization FETÖ and its legitimate activities"* and *"we also reiterate our concerns at the scale of the state of emergency measures, and the repressive environment they have established for the exercise of fundamental rights in Turkey*" that cast a serious doubt on the independency and impartiality of the UN Working Groups and Special Rapporteurs.

II. CLAIMS

47. It is seen that the Joint Urgent Appeal, in summary, brings forward various claims regarding 13 individuals (Muhittin Akman, Fatma Alan, Muhammet Turgay Baskan, Nesrin Çavuş, Savaş Demirel, Suat Durgun, Hasan Gemi, Gülnur Gemi, Nuh Görgün, Bekir Karayel, Bahtiyar Öztürk, Hasan Yaşar, Sinan Yılmaz), legal proceedings against whom are ongoing

under the accusation of being members of the FETÖ/PDY terrorist organization, and requests observations/information on whether their deprivation of liberty is arbitrary.

III. OVERVIEW

48. It is seen fit to first provide information on the structure and operation of the FETÖ/PDY terrorist organization, the events that took place during and after the 15 July Coup Attempt, and the measures taken by the Republic of Turkey during this process, before moving on to the particular cimcumstances of the present communication.

A. FETÖ/PDY AND THE 15 JULY COUP ATTEMPT

1. Overall Structure and Operation of the FETÖ/PDY Terrorist Organization

49. FETÖ/PDY is an armed terrorist organization established by Fetullah Gülen, which aims to suppress, debilitate and direct all the Constitutional institutions, to overthrow the elected President and Government of the Republic of Turkey and to dismantle the constitutional order in order to establish an oppressive and totalitarian system through resorting to force, violence, threat, blackmailing and other unlawful means.

50. Before the terrorist coup attempt, a parallel structure was established by the FETÖ/PDY within all public institutions and organizations of the State, notably the judiciary, security directorates, civil administration and armed forces. To attain its goals, the FETÖ/PDY used different methods; such as, unlawfully obtaining the questions of important official exams (the Public Personnel Selection Exam and the University Student Placement Exam etc.) and making its members pass these exams by way of cheating; placing its members in public institutions and also in prominent schools and universities abroad, dismissing the non-members by fabricating false documents and evidence to initiate judicial and administrative investigations against them; replacing its members to these cadres.

51. They formed structures in the public institutions by creating cells. The FETÖ/PDY established the intra-organizational communication among its members through confidential and encrypted means. Investigations revealed that an encrypted smart phone application "Bylock" was used for the intra-organizational communication.

52. The National Security Council (NSC) has made various decisions, identifying FETÖ/PDY as terrorist organization which cooperates with other terrorist organizations and

constitutes a threat to Turkey's national security. The first decision in this manner, was taken in the meeting on 26 February 2014. As of this date, various assessments were made on FETÖ/PDY in NSC meetings. The organization's "parallel structure" was underscored in the meeting on 30 December 2014.

53. In the meeting that was held shortly before the 15 July Coup Attempt, on 26 May 2016, FETÖ/PDY was included in the list of terrorist organizations; and this decision was presented to the public and appeared in various media outlets. Moreover, all the public institutions have been informed of this decision as the recommendations of the NSC have been submitted to the Council of Ministers.

54. The fact that the FETÖ/PDY is an armed terrorist organization had been established with the decision rendered by the Erzincan Assize Court prior to 15 July 2016. In addition, numerous cases were brought against the organization in question and its members after 15 July 2016. In this regard, members of the armed terrorist organization FETÖ/PDY, including public officials, were convicted in numerous cases, and the members of FETÖ/PDY who participated in the coup attempt were sentenced to aggravated life imprisonment for attempting to eliminate the order set forth in the Constitution of the Republic of Turkey. Some of these judgments were upheld by the Court of Cassation and finalized. The Turkish Constitutional Court also stated in its various judgments rendered on the individual applications that FETÖ/PDY is an armed terrorist organization. Consequently, the fact that FETÖ/PDY is an armed terrorist organization was confirmed by final court judgments.

2. The Events that Took Place on the Night of the 15 July Coup Attempt

55. On the night of 15 July 2016, upon the instruction of the founder and leader of the FETÖ/PDY, Fetullah Gülen, and in line with the plan approved by him, "a group of terrorists in uniforms" within the Turkish Armed Forces attempted an armed terrorist coup against the Turkish democracy for the purpose of overthrowing the elected President, the Parliament and the Government together with the Constitutional order. The Presidential Compound, the hotel where the President was staying at, the Grand National Assembly of Turkey (GNAT), the Police Special Operations Centre and the security units, the premises of the National Intelligence Organization and various military units were attacked with bombs and arms.

The attack on the hotel where the democratically elected President was staying at during his holiday with the aim of assassinating him is the arch evidence of the plotters' determination to sieze control of the government. A public action was filed regarding this attack and the legal

proceeding is ongoing.

56. A declaration was published by force at the official website of the Turkish Armed Forces, and announced on the state-run television (TRT) seized by terrorists. In the declaration, it was stated that the army had seized power and that martial law and a curfew were declared in Turkey. The headquarters of private TV organizations, and the printed media were raided. The coup plotters also attacked the satellite control stations and wanted to cut off internet and all television broadcastings, except for the TRT which was siezed by plotters.

57. During that night, the Boğaziçi and Fatih Sultan Mehmet Bridges in İstanbul were blocked by armed soldiers, and İstanbul Atatürk Airport was also occupied. During the 15 July 2016 coup attempt, bombings and armed attacks were perpetrated by use of aircraft and helicopters against many targets, including the premises of the GNAT, the Presidential Compound, the Directorate General of Security of Ankara, the Special Operations Department of the Directorate General, the National Intelligence Organization (MIT); an assassination attempt was made against the President, the Prime Minister's convoy was fired with guns, many senior military officials, including the Chief of General Staff, were taken hostage, and a great number of public institutions were occupied or attempted to be occupied. 8,651 military personnel were involved in the coup attempt and 35 aircraft, including combat aircraft of the Turkish Armed Forces, 3 ships, 37 helicopters, 246 armoured vehicles including 74 tanks and nearly 4,000 light weapons were used. As a result of the terrorist attacks, a total of 251 citizens were killed, whereas more than 2.000 people were injured.

58. The Turkish Parliament building, which reflects the public's will and constitutes heart of democracy, was bombed for the first time in the history of the Republic of Turkey. Fighter jets (F-16) carried out bomb attacks in the course of the extraordinary meeting of the Plenary Session against the coup attempt. During the attack, Parliament officials, some civilians and many police officers were injured, and extensive damage was inflicted to the Parliament building.

59. We adhere to the rule of law principle. We allow no interference with the independent judiciary On the night of 15 July 2016, tanks ran over the civilians who took to the streets to defend their democracy with bare hands, some of whom were killed and injured as a result of

being trapped under the tanks. Fighter jets made low altitude flights over the cities by breaking the sound barrier, in a manner which led to fear and panic in the public. The GNAT and people were shot randomly by the coup plotters, snipers directly targeted people from strategic points, the crowds were bombed and shot from fighter jets and helicopters. In brief, the civilians, who defended the democratic regime at the cost of their lives were massacred by coup plotters.

60. The democratic resolve of the Turkish people saved the democratic order against this terrorist campaign. The Turkish people from all walks of life and regardless of their political affiliations united on the streets on the night of 15 July 2016. Putting all the political and ideological differences aside, they peacefully gathered and jointly defended common democratic values and bravely stood against tanks, helicopters and fighter jets with only national flags in their hands in an exemplary unity for the democracy.

61. In all public squares in Turkey, the people were on democracy vigil for approximately one month. With this stand, the Turkish nation has declared its loyalty to the democratic institutions and the rule of law. On 16 July 2016, all political parties represented at the Parliament signed a joint statement against the coup attempt. Representatives of the media, academia, business circles and all other segments of Turkish society uniformly condemned the coup attempt.

62. In the aftermath of the coup attempt, there are ongoing investigations and pending trials against the members of the FETÖ/PDY in particular according to Article 312 (attempt to overthrow the Government of Republic of Turkey by way of coercion and violation) and Article 314 (being a member of the armed terrorist organization) of the Turkish Criminal Code (TCC) and also other unlawful acts within the context of the TCC.

63. The Government would like to emphasize that the terrorist coup plotters attempted to overthrow the democratic constitutional order and thus threatened rights and fundamental freedoms of people. Therefore, the Turkish state has assumed its legitimate right and duty to take all the necessary measures to completely eliminate this severe threat and danger posed against the survival of the nation and the state in accordance with its constitution and legislation, as permitted by international norms and obligations.

3. Declaration of the State of Emergency and Derogation

64. Considering the magnitude of the threat posed by the 15 July Coup Attempt, it is not sufficient to only take into consideration the damages caused by the attempted coup. The risks that could have emerged if the said coup attempt was not prevented promptly or had managed

to succeed should also be taken into consideration. Considering the situation in our neighboring countries, in the event of exhaustion of the state authority, not only the democratic order ceases to function, but atmosphere of disarray and chaos arises where the most fundamental freedoms are constantly under attack.

65. Following the attempted coup of 15 July, in order to restore public order, to reinstate democratic institutions and to eliminate promptly the threat faced with and to fight effectively against the FETÖ/PDY in line with the recommendation of the NSC and in conformity with the Constitutional and legal framework, a State of Emergency ("SoE") has been declared throughout the country for 90 days by the Decree-Law of the Council of Ministers dated 20 July 2016, under Article 120 of the Constitution and Article 3 § 1 (b) of the Law no. 2935 on State of Emergency. This decision was upheld by the decision of the General Assembly of the GNAT dated 21 July 2016 and numbered 1116.

66. Over the years, FETÖ/PDY members have infiltrated state institutions and spread into educational, health and media sectors and academic institutions. Thus, with a view to ensuring continuity of the effective implementation of measures for the protection of Turkish democracy, the principle of the rule of law, as well as the rights and freedoms of the citizens, the extension of the emergency rule has become an exigency. Consequently, the Council of Ministers decided to extend the State of Emergency for seven times and each decision was upheld by the GNAT. Lastly, the Council of Ministers decided to extend the State of Emergency until 19 July 2018. (The SoE has ended as from 19 July 2018.)

67. It should once more be noted that the SoE was declared strictly out of exigency. It is known that member states of Council of Europe (CoE) have resorted to SoE in response to terrorist threats that are much smaller in scale. The threats faced by Turkey are incomparable to those faced by other countries in the CoE.

68. Following the declaration of State of Emergency, Turkey resorted to the right of derogation from the obligations in the European Convention on Human Rights ("ECHR") and International Covenant on Civil and Political Rights ("ICCPR"). Notifications of derogation from Convention obligations were submitted to the Council of Europe in accordance with Article 15 of the ECHR and to the Secretariat of the United Nations in accordance with Article 4 of the ICCPR, concerning the rights permitted by the Conventions.

69. In line with Article 4 of the ICCPR, the Decree-Laws are issued and measures are taken to the extent strictly required by the exigencies of the situation and proportionate to the current crisis faced. All measures were needed to be taken to eliminate the influence of terrorist organizations within the State.

70. During this process, legal principles are followed and each case is assessed with utmost care. Turkey is fully aware of its obligations under international conventions and acts in full respect for democracy, human rights and the principle of rule of law. The principles of "necessity", "proportionality" and "legality" have been sensitively complied with as regards to the measures taken under the State of Emergency. The Government would also like to underline that while taking the measures under Article 15 of the ECHR, the State parties naturally continue to be subject to the supervision of the European Court of Human Rights (ECtHR).

71. Unlike other terrorist organizations such as PKK or DAESH, FETÖ/PDY is an atypical armed terrorist organization. In this perspective, the required measures are taken with a view to avert the organization's strength within the state. The scope of the Decree-Laws issued in this respect has been limited to the terrorist organizations in order not to interfere with the rights and freedoms of others. Furthermore, SoE measures are regularly monitored in line with changing conditions.

4. Constitutional and Legal Framework for the State of Emergency and Derogation

72. Emergency rule procedures have been laid down in Articles 119 to 122 of the Constitution. Moreover in Article 15, it has been stated that "the exercise of fundamental rights and freedoms may be partially or entirely derogated […] to the extent required by the exigencies of the situation, as long as obligations under international law are not violated."

73. In addition to Constitutional provisions, the legal framework governing the State of Emergency has been circumscribed by the Law on State of Emergency (No. 2935). Moreover, under emergency rule, the Council of Ministers, headed by the President, has been empowered to issue Decree-Laws relating to matters necessitated by the State of Emergency, under Article 121 of the Constitution. No other law is required for the exercise of this power.

74. As can be seen above, Articles 121 and 15 of the Constitution are in similar wording with

Articles 4 of the ICCPR and 15 of the ECHR. Thus, the national protection and legal review in this respect is similar to those at the international level.

75. As explained above in detail, by the attempted coup, Turkey was exposed to a public emergency affecting the whole population and threatening the life of the nation and the SoE has been declared following the attempted coup of 15 July to restore public order, to reinstate democratic institutions and to promptly eliminate the facing threats.

76. However, the measures taken under the emergency rule have not made any changes in daily life. No restrictions have been brought with regard to the exercise of fundamental rights and freedoms in a way that would affect the daily lives of the people. The measures taken remained limited to issues made necessary by the State of Emergency. The decision to declare a State of Emergency was not taken to restrict individual rights and freedoms but rather to allow a prompt response by the State in its fight against terrorist organizations including the FETÖ/PDY. With a view to protecting democracy and the will of the people, it is the natural right of the State to use this legal power.

77. Since the measures are based on Decrees which have legal force, the principle of legality has been satisfied. Besides, legal remedies are available. Fair trial and defense rights have been respected.

78. In the light of the foregoing, it is considered that the measures are in conformity with international law and required by the exigencies of the situation.

5. An Overview of the Proceedings of Custody Following the 15 July Coup Attempt

79. The Government would like to state that on the night of 15 July 2016 coup attempt and in its aftermath, a number of arrest and custody proceedings were initiated with a view to ensuring that the persons who are responsible are brought before justice. When the investigations have been initiated and become deeper, the number of the people taken into custody has increased.

80. Taking into account the magnitude of the coup attempt and the extent of the structure of the organization, the Decree-Laws enacted during the State of Emergency stipulated a number of measures which were necessary for the effectiveness of investigations conducted regarding Constitutional offenses, which shall be applicable during the State of Emergency and which

serve a legitimate purpose. Naturally, the general provisions of the Code of Criminal Procedure (CCP) no. 5271 remain in effect. In this respect, taking into consideration the large number of those involved in the coup attempt and members of the terrorist organization, the maximum duration of police custody was raised up to 30 days by the Decree-Law no 667, the duration of which is limited to the duration of the State of Emergency. The purposes sought by this measure were to take statements in a proper manner, to collect evidence for and against the suspects and thus ensuring the State's obligation of conducting effective investigations.

81. On the other hand, persons in custody, their defendants or their legal representatives, spouses or blood relatives of the first or second degree, can apply to the Criminal Magistrates' Office against the order of the Public Prosecutor to request immediate release, in accordance with Article 91 and paragraph 5 of the CCP. Furthermore, this maximum period was limited to offenses against State security, Constitutional order, national defense, State secrets, terror and collective offenses. However, the 30 days upper limit of custody period has never been applied in full and the vast majority of the suspects remained in custody for four or five days.

82. It should be emphasized once more that, persons in custody, their defense lawyers or legal representatives, spouses or first to second-degree relatives may appeal against the written order of the Public Prosecutor as per Article 91/5 of the CCP before the Criminal Magistrates' Office.

83. In addition, legal assistance is provided during police custody and health reports are obtained upon entry and release.

84. Later on, considering the changing circumstances, the measure of extended custody period has been reviewed. With the Decree-Law No. 684 of 27 January 2017, the maximum duration of police custody has been reduced to 7 days. It can be extended for another 7 days only by public prosecutor's decision, taking into account difficulties of collecting evidence and the high number of suspects.

IV. PARTICULAR CIRCUMSTANCES OF THE PRESENT COMMUNICATION

85. In this chapter, information regarding the investigation and prosecution will be delivered under separate titles for each of 13 applicants.

1. Investigation in General

Nuh Görgün:

86. Under the investigation carried out by the Prosecutor's Office, Nuh Görgün was taken into custody with the suspicion of "committing the crime of being member of an armed terrorist organization" on 27.09.2016 and was arrested on 30.09.2016 due to the aforementioned crime.

87. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

88. The applicant also enjoyed his right to see an attorney while in custody.

89. A criminal case was lodged at Bayburt Assize Court demanding his punishment with the allegation that he committed a crime of being a member of an armed terrorist organization as per the Articles 3, 5/1, and 8/A of the Anti-Terror Law and the Articles 314/2, 53/1-2, 58/9, 63/1 of the Turkish Criminal Code.

90. In the decision of Bayburt Assize Court dated 24/05/2017 (docket no: 2017/108, decision no: 2017/64); the applicant was sentenced to imprisonment of 6 Years 10 Months and 15 Days "*considering that the defendant committed the alleged crime of being a member of an armed terrorist organization and as prescribed in the Article 314/2 of the Anti-Terror Law, also considering the type of committal of the crime, time and place thereof, the purpose and motive of the defendant, the volume of the emerging hazard and the threat, the intensity of the intention of the defendant and considering the fact that the program which is the secret communication tool of the organization was installed, the defendant took part in the organization meetings until recently, also considering other information and documents in the folder."*

91. On the other hand, considering all the factors including *the period of arrest of the defendant, the magnitude of the punishment inflicted, and the impossibility of the escape of the defendant, his release was decided on as per the Article 100 and the following articles of the CCP.* Therefore, the arrest of the individual has ended.

92. An appeal against the court's decision was lodged and the case is pending before the 2nd Criminal Office of the Erzurum District Court of Justice (docket no: 2017/1387)

Suat Durgun:

93. Suat Durgun was taken into custody on 14/06/2017 by Istanbul Chief Public Prosecutor's Office for the crime of "Being a Member of the FETÖ/PDY Armed Terrorist Organization" and was arrested for the mentioned crime with the decision of Istanbul 3rd Magistrate's Court dated 17/06/2017 and no: 2017/333.

94. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

95. The applicant also enjoyed his right to see an attorney while in custody.

96. Continuation of the applicant's arrest was decided on by Istanbul 3rd Criminal Court of Peace on 17/06/2017 (docket no: 2017/333). The following script was taken from the transcript of the said court's judgement:

"*The arrest of the suspect Suat Durgun was demanded for the crime of Being a Member of an Armed Terrorist Organization for the following reasons: the defendant created a Twitter account with the profile name of "DEŞİFRE", @007analiz (twitter user 2319922198) user name, said account was created with the GSM number 0545 948 10 35 and the e-mail account gunessadi38@gmail.com, this account was administrated by the defendant who shared considerable number of messages through the mentioned twitter account, all of which included praises for the FETÖ/PDY terrorist organization and humiliating and insulting statements against the President, statesmen and the state. The mentioned account has 10743 followers, the suspect shared the slogan of "we should start over by reciting Bismillah (in the name of God) with a strong under-current", the suspect retweeted the tweets of "Fuat Avni" whose connection with the FETÖ/PDY terrorist organization was proved as early as 2013. The suspect worked as a senior manager for three years in the company "NT", one of the sub-companies of "Kaynak Holding", which is one of the establishments of the FETÖ/PDY terrorist organization. Considering the attribution of the crime in question, and the strong doubt emanating from the evidence gathered that the suspect may have committed this crime; also considering the fact that the crime the suspect is charged with is one of the crimes prescribed in the Article 100/3-a-11 of the Code of Criminal Procedure (CCP), and the fact that quite a number of suspects are runaway at home and abroad due to the similar investigations; also considering concrete evidence that raise doubts that the suspect may escape or spoil the evidence; it was decided that the judicial control measures would be insufficient and the arrest of the suspect will continue for the crime of Being a Member of an Armed Terrorist Organization in accordance with the Article 100 and the following articles of the CCP."*

97. Continuation of the applicant's arrest was decided on by Istanbul 1st Criminal Court of Peace on 26/09/2017 (docket no: 2017/3630). The following script was taken from the transcript

of the said court's judgement:

"*Considering the nature of the crime of Being a Member of on Armed Terrorist Organization, the fact that the evidence is yet being collected, the magnitude of the punishment stipulated for the attributed crime, the strong doubt emanating from the concrete evidence gathered that the suspect may have committed this crime, the fact that the crime the suspect is charged with is one of the crimes prescribed in the Article 100 of the CCP, and the fact that judicial control measures would be insufficient when the gravity of the crime is taken into consideration, the proportionality of the suspect's arrest to the punishment he may face if he is found guilty of the said crime, and the fact that no new evidence was found that would require the termination of his arrest, it was decided that the arrest of the suspect will continue for the crime of Being a Member of an Armed Terrorist Organization in accordance with the Articles 100 and 108 of the CCP.*"

98. Continuation of the applicant's arrest was decided on by Istanbul 14th Criminal Court of Peace (docket no: 2017/3934). The following script was taken from the transcript of the said court's judgement:

"*Considering the strong doubt emanating from the concrete evidence gathered that the suspect may have committed this crime, gravity of the crime and the punishment prescribed for the said crime, it was decided that the arrest of the suspect will continue for the crime of Being a Member of an Armed Terrorist Organization in accordance with the Article 108/1 of the CCP.*"

99. Continuation of the applicant's arrest was decided on by Istanbul 2nd Criminal Court of Peace on 20/11/2017 (docket no: 2017/5523). The following script was taken from the transcript of the said court's judgement:

"*Considering the attribution of the crime in question, the fact that the evidence is yet being collected, the magnitude of the punishment stipulated for the attributed crime, the strong doubt emanating from the concrete evidence gathered that the suspect may have committed this crime, the proportionality of the suspect's arrest to the punishment he may face if he is found guilty of the said crime, and the fact that no new evidence was found that would require the termination of his arrest; it was decided that the arrest of the suspect will continue for the crime of Being a Member of an Armed Terrorist Organization in accordance with the Article 100 and the following articles of the CCP.*"

100. Istanbul Criminal Courts of Peace decided on the continuation of the arrest of the suspect

as per the Articles 100 and 108 of the CCP on 17/07/2017, 25/10/2017, 07/12/2017. Adequate justifications have also been provided in these decisions.

101. Another criminal case was lodged against Suat DURGUN at Bingöl 2nd Assize Court for the crime of Being a Member of an Armed Terrorist Organization. The proceedings against Suat DURGUN have been ongoing before Bingöl 2nd Assize Court (docket no:2018/55). Bingöl 2nd Assize Court also ruled on the continuation of his arrest as per the Articles 100 and 108 of the CCP in the decisions dated 08/02/2018, 08/03/2018, 05/04/2018 and 03/05/2018.
102. The proceedings against Suat DURGUN are ongoing and the final verdict has not been given yet.

Bekir Karayel:

103. Bekir Karayel was taken into custody on 26/04/2017 by Izmir Chief Public Prosecutor's Office for the crime of "Being a Leader of the FETÖ/PDY Armed Terrorist Organization" and was arrested for the mentioned crime with the decision of Izmir Criminal Court of Peace dated 04/05/2017 and no: 2017/339.

104. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

105. The applicant also enjoyed his right to see an attorney while in custody.

106. In its decision (docket no: 2017/339) regarding the applicant's arrest, Izmir 4th Criminal Court of Peace ruled on the following:
"*Considering the forensic medical reports of the suspect, the evidence gathered, the strong doubt emanating from the concrete evidence gathered that the suspect may have committed this crime, the fact that the crime attributed is among the catalogue crimes stated in Article 100/3 of the CCP, necessity of the arrest of the suspect in order to protect the public order and prevent the repetition of the said crime, the attribution of the crime in question, concrete evidence that raise doubts that the suspect may escape if he is released at this stage of the proceedings..... As stated in Article 90 of the Constitution and Article 5 of the ECHR, and the jurisprudence of the European Court of Human Rights regarding the arrest measure, said measure can be imposed in order to prevent the committal of a new crime and to protect the public order, and in case*

there is a risk of the suspect escaping. The criteria set out in the ECHR and the jurisprudence of the European Court of Human Rights is met in the present case. It is decided that the suspect shall be arrested as per Articles 100 and 101 of the CCP."

107. Upon the appeal made for Karayel's release, Izmir 5th Criminal Court of Peace examined the situation of arrest of the suspect and ruled on the following on 26/05/2017 (docket no: 2017/3019)

"*Considering the nature of the crime attributed to the suspect, the fact that the evidence is yet being collected and that no new evidence was found that would require the termination of his arrest, and the fact that the judicial control measures would be insufficient, the appeal made for the release of the suspect is refused and it was decided that the arrest of the suspect will continue in accordance with the Article 108/1 of the CCP"*

108. Izmir Criminal Courts of Peace ruled on the rejection of the appeal made for his release and the continuation of his arrest in the decisions dated 24/08/2017, 24/09/2017, and 24/10/2017.

109. Another criminal case was lodged against Bekir Karayel at Izmir 15th Assize Court for the crime of Being a Member of an Armed Terrorist Organization. The court also ruled on the continuation of his arrest in the decisions dated 01/01/2018, 07/02/2018, 07/03/2018, 05/04/2018, and 02/05/2018 (under the docket number: 2017/787); "*Considering the nature of the crime attributed to the suspect, the strong doubt emanating from the concrete evidence gathered that the suspect may have committed this crime, (evidence showing that he installed Bylock special communication program in his mobile phone, the statements of the witnesse and anonymous witnesses, his Bank Asya records, his HTS (phone call reports), identification report), the fact that the crime attributed is among the catalogue crimes stated in Article 100/3 of the CCP."*

110. Izmir 15th Assize Court, in its most recent judgement (17/05/2018) regarding Bekir Karayel rendered on the following:

"*1-Time will be granted to Karayel's attorney until the following hearing for the preparation of the final defense on the merits of the case,*

2- Considering the attribution of the crime of being a member of terrorist organization, the detection of the use and installation of Bylock on the suspect's mobile phone, the IP records of

Bylock, data examination report on the suspect which is obtained from the anonymous witness, HTS records, his affiliations with the closed schools and associations linked to FETÖ/PDY, his bank transactions, the strong doubt emanating from the concrete evidence gathered that the suspect may have committed this crime, the fact that no new evidence was found that would require the termination of his arrest, the proportionality of the suspect's arrest to the punishment he may face if he is found guilty of the said crime, it was decided that the judicial control measures would be insufficient and the arrest of the suspect will continue. The next hearing will be held on 08/08/2018."

111. The proceedings against Bekir KARAYEL are still ongoing.

Nesrin Çavuş:

112. Nesrin Çavuş was taken into custody on 26/04/2017 by Izmir Chief Public Prosecutor's Office for the crime of "Being a Member of an Armed Terrorist Organization".

113. While in custody, the applicant was informed about the charges against her and the rights she has according to the legislation in force.

114. The applicant also enjoyed her right to see an attorney while in custody.

115. Izmir 3rd Criminal Court of Peace decided on the applicant's arrest on 27/04/2017 (docket no: 2017/329). The following script was taken from the transcript of the said court's judgement: *"Considering the nature of the crime of being a member of an armed terrorist organization attributed to the suspect, the current state of the evidence, the identification report proving that the Bylock program which is installed and used by the members of FETÖ/PDY armed terrorist organization was installed and used by the suspect, the testimony of the suspect asserting that she used the GSM line through which Bylock was installed, the records of the transactions at Bank Asya, the fact that the evidence is yet being collected, and the fact that the crime attributed is among the catalogue crimes stated in Article 100/3 of the CCP and therefore there is a reason for arrest stipulated in the law, concrete evidence that raise doubts that the suspect may escape if she is released at this stage of the proceedings, and the proportionality of the suspect's arrest to the punishment she may face if she is found guilty of the said crime….. taking all these factors into consideration, it was decided that the suspect will be arrested as per the Article 100 and following articles of the CCP."*

116. Upon the appeal made for Çavuş's release, Izmir 5th Criminal Court of Peace examined the situation of arrest of the suspect and ruled on the following on 26/05/2017 (docket no: 2017/3019)

"*Considering the nature of the crime attributed to the suspect, the fact that the evidence is yet being collected and that no new evidence was found that would require the termination of his arrest, and the fact that the judicial control measures would be insufficient, the appeal made for the release of the suspect is refused and it was decided that the arrest of the suspect will continue in accordance with the Article 108/1 of the CCP"*

117. Izmir Criminal Courts of Peace ruled on the rejection of the appeal made for her release and the continuation of her arrest in the decisions dated 24/08/2017, 24/09/2017, and 24/10/2017. (These rulings also contained strong justifications.)

118. As a result of the investigation carried out, a criminal case was lodged against Nesrin ÇAVUŞ at Izmir 15th Assize Court (docket no. 2017/715) for the crime of Being a Member of an Armed Terrorist Organization. In the verdict of Izmir Assize Court dated 26/04/2018 (decision no: 2018/238); the applicant was sentenced to imprisonment of 7 Years and 6 Months. (Continuation of the applicant's arrest was decided on by the same Court); "*when the evidence gathered are evaluated together with the fact that suspect had used the codename "kevsersu" within the organization and the fact that she installed and used the Bylock Program, sent her children to the schools closed as per the Decree Laws because of FETÖ/PDY's ownership thereof..... Also considering the fact that judicial control measures were not deemed efficient when the gravity and the nature of the crime she has committed is taken into account."*

119. "The appeal phase" of the proceedings against Nesrin Çavuş is still ongoing.

Bahtiyar Öztürk:

120. Bahtiyar Öztürk was taken into custody on 11/08/2016 by Izmir Chief Public Prosecutor's Office for the crime of "Being a Member of an Armed Terrorist Organization".

121. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

122. The applicant also enjoyed his right to see an attorney while in custody.

123. Izmir 3rd Criminal Court of Peace decided on the applicant's arrest (docket no: 2016/297) for the crime of "Being a Member of an Armed Terrorist Organization", in accordance with the articles 100 and following of the CCP.

124. Izmir Criminal Courts of Peace ruled on the rejection of the appeal made for his release and the continuation of his arrest in the decisions dated 07/06/2017, 06/05/2017 ve 03/04/2017, 06/03/2017, 06/02/2017, 06/01/2017, 09/09/2016, 19/09/2016, and 08/10/2016, respectively.

125. A criminal case was lodged against Bahtiyar ÖZTÜRK on 31 May 2017 before Izmir 15th Assize Court for the crime of "Being a Member of an Armed Terrorist Organization". When the indictment was examined, it was established that the suspect used the Bylock communication system (which is used by the members of FETÖ/PDY armed terrorist organization) through the GSM lines 551 253 79 81 and 551 253 79 88 which are registered on his name, and through adsl; the device with the imei number 356 016 060 345 796 that was used to enter Bylock through the GSM line 551 253 79 81 was seized during the search conducted. During the prosecution, the content analyses of Bylock conversations made through the GSM line 551 253 79 81 were completed and included in the case file. The suspect's user ID number (155181), user name (Bahadir35) and the password (B.1453) were determined as a result of this analyses. The suspect continued to use Bylock conversation during the period in which prosecution was underway.

126. The applicant was sentenced to imprisonment of 7 years 10 months and 15 days on 04.04 2018 for the crime of being a member of FETÖ/PDY armed terrorist organization.

127. An appeal was lodged against the imprisonment sentence. The appeal phase of the proceedings against Bahtiyar Öztürk is still ongoing.

Hasan Gemi:

128. Under the investigation carried out by the Manisa Chief Public Prosecutor's Office, Hasan Gemi was taken into custody with the suspicion of "committing the crime of being member of an armed terrorist organization" on 03.09.2016 and was arrested on 21.09.2016 by the decision Manisa 1st Criminal Court of Peace (docket no: 2016/231) due to the aforementioned crime.

129. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

130. The applicant also enjoyed his right to see an attorney while in custody.

131. After the conclusion of the investigation, a criminal case was lodged by Manisa Chief Public Prosecutor's Office for the crime of Being a Member of an Armed Terrorist Organization before Manisa 3rd Assize Court. The Court ruled on the continuation of his arrest in its decisions dated 23/11/2017, 20/12/2017, 19/01/2018, 09/02/2018 and 28/02/2018, respectively. The objections made against these decisions were rejected by the decisions of Manisa 1st and 4th Assize Courts dated 01/12/2017, 26/12/2017, 30/01/2018 and 03/04/2018, respectively.

132. In the verdict of Manisa 3rd Assize Court dated 27/03/2018; the applicant was sentenced to imprisonment of 8 Years and 9 Months for the crime of being a member of an armed terrorist organization. (Continuation of the applicant's arrest was decided on by the same Court). The following script was taken from the transcript of the said court's verdict:

"*When the indictment by the Chief Public Prosecutor as well as all other documents and evidence collected are examined, it was established that the suspect Hasan Gemi has been working for many years in the educational institutions affiliated with FETÖ/PDY armed terrorist organization,… he became a secret "imam" in the organizations structure within the law enforcement agencies, meaning that he preached other FETÖ/PDY members working as law enforcement agents, the financial transactions of the defendant at Bank Asya were aiming to increase the trading volume of Bank Asya, as instructed to the depositors by the leader of the organization, the suspect was a member of "Pak Education Labour Union (Pak Eğitim İş Sendikası)" which is one of the establishments that FETÖ/PDY armed terrorist organization utilized to legalize its illegal actions, to allocate financial sources, and to recruit members… When all of the matters mentioned above are taken into account, it is clear that the suspect was involved in the hierarchical structure of the organization and has an organic link of continuous, intense, and diverse nature with the FETÖ/PDY armed terrorist organization. Abovementioned acts of the defendant, as a whole, constitutes the crime of Being a Member of An Armed Terrorist Organization as prescribed in Article 314/2 of the Turkish Criminal Code (with the reference of the Article 7/1 of the Anti-Terror Law). Even though the suspect stated that he did not accept the allegations against him, it was concluded that, in the light of the abovementioned assessments, the suspect's statements are merely seen as a last resort to free himself from the charges against him and therefore cannot be trusted.*

133. An appeal was lodged against the imprisonment sentence. The appeal phase of the proceedings against Hasan Gemi is still ongoing.

Gülnur Gemi:

134. Under the investigation carried out by the Manisa Chief Public Prosecutor's Office, Gülnur Gemi was taken into custody with the suspicion of "committing the crime of being member of an armed terrorist organization" on 03.09.2016 and was arrested on 21.09.2016 by the decision Manisa 1st Criminal Court of Peace due to the aforementioned crime. She had a meeting with the attorney Oğuz Ünal on 18.09.2016. Her objection against the arrest and request of release were rejected.

135. While in custody, the applicant was informed about the charges against her and the rights she has according to the legislation in force.

136. The applicant also enjoyed her right to see an attorney while in custody.

137. After the conclusion of the investigation, a criminal case was lodged by Manisa Chief Public Prosecutor's Office for the crime of Being a Member of an Armed Terrorist Organization. before Manisa 4th Assize Court.

138. In the verdict of Manisa 4th Assize Court dated 12/04/2018; the applicant was sentenced to imprisonment of 7 Years and 6 Months for the crime of being a member of an armed terrorist organization. (docket no: 2018/172, 2018/260) (Continuation of the applicant's arrest was decided on by the same Court). The following script was taken from the transcript of the said court's verdict:

"The suspect used the Bylock communication system (which is used by the members of FETÖ/PDY armed terrorist organization for spreading the instructions to its members in a confidential manner) for the first time on 28.08.2014 through the GSM line 551 126 59 63 which is registered on her name. TRY 393996,76 was found in the suspect's bank account in "Bank Asya" (which is the organization's finance institution) on 24/12/2014 while there were no assets registered under the same bank account on 31/12/2013. According to the content analyses of Bylock conversations, the suspect's user ID number (165261), user name (nisakul66) and the password (nisakul66@) were determined as a result of this analyses. The suspect has made many conversations on Bylock, where Bylock users with the ID numbers 123683 and 248289 adressed her as "hoca" (hodja, meaning "teacher/preacher"). She also had conversations with the Bylock user with the ID number 420225 about the matters within the organization such as changing GSM lines and bringing books. There are testimonies of the witnesses that the defendant is a hodja and is in charge within the organization of the

conversation and in charge within the organization. According to the HTS Identification and Examination Report dated 04/01/2018, the defendant met with senior officials of the organization among whom are the "district imam", "head of group" a "hodja"."

139. Moreover, Manisa 4th Assize Court decided on the release of the applicant *considering the period of arrest of the suspect, the absence of evidence indicating that the suspect may escape, the fact that her spouse is imprisoned, the amount of time required for the transfer of the case to the Court of Cassation if any appeal is lodged according to Article 286 of the CCP.* Therefore, the arrest of the individual has ended as of 12.04.2018. The prosecution is still ongoing before the Court of Appeal.

Fatma Alan:

140. Fatma Alan was taken into custody on 19.09.2016 with the suspicion of "committing the crime of being member of an armed terrorist organization" and "opposing the Law on the Prevention of the Financing of Terrorism".

141. While in custody, the applicant was informed about the charges against her and the rights she has according to the legislation in force.

142. The applicant also enjoyed her right to see an attorney while in custody.

143. Yalova Court of Peace decided on the applicant's arrest on 23.09.2016 (docket no: 2016/360) for the crime of "Being a Member of an Armed Terrorist Organization". The Court issued a number of rulings rejecting of the appeals made for her release and decided on the continuation of her arrest. When these rulings are examined, it is seen that the following justifications were made for the continuation of her arrest:

"*Taking into account the nature of the crime attributed to the suspect in the indictment, the evidence gathered, and the fact that evidence is yet being collected, the existence of suspicion of escape, the existence of suspicion of spoliation of evidence, the magnitude of the punishment stipulated for the attributed crime, the fact that the crime is one of the crimes listed in the Article 100 of CCP, and the fact that there is a strong criminal suspicion that the suspect committed the crime attributed."*

144. After the conclusion of the investigation, a criminal case was lodged before Yalova Assize Court for the crime of Being a Member of an Armed Terrorist Organization.

145. In the verdict of Yalova Assize Court dated 16/02/2018; the applicant was sentenced to imprisonment of 8 Years and 9 Months for the crime of being a member of an armed terrorist organization. (Continuation of the applicant's arrest was decided on by the same Court). The following script was taken from the transcript of the said court's verdict:

"It was determined that the suspect logged in to Bylock 15.115 times between 04/05/2015 - 08/02/2016 through her mobile phone (GSM line 0545 930 73 72). Her ID number was "351247", her codename was "elif140", and her password was "elif140", it was written "ELiFsema14". She logged in to Bylock 138.323 times between 13/08/2014 - 25/04/2015 through the mobile phone, belonging also to the defendant with GSM line 0507 008 16 03. Her ID no was"29617", her codename was "sema77", her password was "5262786.a". The persons with whom the defendant was in contact on Bylock were also identified. According to the expert report, she actively used her Bank Asya account until 05/12/2016, and deposited money many times following the instruction of the leader to the members of the organization to deposit money in the bank in order to prevent the bank from being handed over to the Savings Deposit Insurance Fund of Turkey (TMSF). It is not in line with the procedure of appointment of teachers for someone to work as a manager for 9 years at the educational institutions belonging to the organization since these institutions were places where new members were recruited through propaganda and ideological education for the purpose of taking control of the bureaucracy, especially through the parallel state structuring of the organization."

"According to the statements of "Meryem Elçi", wanting to benefit from the provisions on remorse ("etkin pişmanlık"), "Fatma Alan, who she has known as Sema, acted as a hodja, and gave preaches to other members in the houses and schools belonging to the organization." Her denial of the allegations against her were not found credible since, considering her education and experience, as well as the amount of information she had about the organization, she was in a position to understand that the organization she was affiliated with was an armed terrorist organization. It is clear that the suspect was involved in the hierarchical structure of the organization and has an organic link of continuous, intense, and diverse nature with the FETÖ/PDY armed terrorist organization which earned a certain level of legitimacy among the public prior to the attempted coup by exploiting the religious values as well as the justice system.....

"Observing the way crime was committed, the gravity of the crime, the severity of the damage occured, purpose and motive of the defendant and the intensity of her involvement in the organizational activities, the fact that she acted as a preacher and carried out duties such as recruitment and collecting forced donations (himmet), that she also acted as a dormitory manager for 9 years in 4 different cities in the schools owned by the organization, that she intensely used Bylock in two different GSM lines, that, according to Bylock contents, she was in contact with a lot of people in a way somebody positioned as an executive would do, that she was in a direct contact with the executive circle of the organization in provinces, that she was in charge in certain matters concluding from her correspondences regarding the marriages within the organization, the fact that she also used programme "coco" which was utilized by the organization "

146. An appeal was lodged against the imprisonment sentence. Penal Chamber No. 2 of Bursa Regional Court of Justice upheld the previous judgement on 11.04.2018 on the grounds that "*"all evidence collected legitimately, allegations and pleas alleged were debated on during the hearings, the pleas were denied with credible justifications, the Court's verdict was based on accurate, coherent and nonconflicting data, the suspect's acts were in conformity with the attributions of the crime ascribed to the her…. It is understood that there is no unlawfulness relating to the essence or the procedure of the case."*. The court also ruled on the continuation of the applicant's arrest considering that; "*when Article 5 and 6 of ECHR regulating the general principles of arrest are reviewed with the Article 19 of the Constitution of the Republic of Turkey and the decision no 2012/1137 (dated 02/07/2013) of the Constitutional Court; it is understood that the provisions requiring the execution of the arrest, prescribed in Article 100 and the following articles of the CCP are present in this case, also considering the risk of suspect escaping, judicial control measures regulated in the subparagraphs (a) and (f) of Article 109/3 of CCP would be insufficient, and the fact that continuation of the suspect's arrest is proportional to the imprisonment she is sentenced to."*

Hasan Yaşar:

147. Hasan Yaşar was taken into custody on 24/07/2016 for the crime of "Being a Member of Armed Terrorist Organization" and was arrested for the mentioned crime with the decision of Şanlıurfa 3rd Criminal Court of Peace dated 10/08/2016 and no: 2016/13.

148. While in custody, the applicant was informed about the charges against him and the rights

he has according to the legislation in force.

149. The applicant also enjoyed his right to see an attorney while in custody.

150. Following the investigation, Şanlıurfa Chief Public Prosecutor's Office lodged a criminal case against 20 suspects including Hasan Yaşar. The following statements are included in the part of the indictment concerning Hasan Yaşar: *"Upon receiving an information note from the Rectorship of Harran University explaning that the suspect was "responsible for personnel affairs on behalf of FETÖ/PDY, coordinated the organization's militants in the university, was in direct contact with the organization's senior staff particularly the province "imam"", investigation was initiated regarding the suspect serving as Assistant Secretary General of Harran University, other evidence indicating his involvement in the organization were also collected in the course of the investigation, which were enough to lodge a criminal case, such as the fact that the defendant's daughter received education between 2013-2016 in the institutions owned by FETÖ/PDY armed terrorist organization, and the fact that suspect deposited money into his account in Bank Asya upon instruction.*

151. The prosecution was carried out by Şanlıurfa 5th Assize Court. Within the course of the prosecution, the applicant's arrest was repeatedly reviewed, and judicial authorities decided on the continuation thereof, and the objections made against these decisions were denied. Şanlıurfa 5th Assize Court ruled on the release of Hasan Yaşar on 12.10.2017. Therefore he is no longer under arrest while the proceedings against him are still ongoing.

Sinan Yılmaz:

152. Sinan Yılmaz was taken into custody on 24.07.2016 for the crime of "Being a Member of Armed Terrorist Organization".

153. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

154. The applicant also enjoyed his right to see an attorney while in custody.

155. He was arrested for the crime of "Being a Member of Armed Terrorist Organization" on 20/07/2016 in accordance with the decision no: 2016/610 of Şanlıurfa 2nd Criminal Court of

Peace.

156. Prior to the investigation, while he was serving as a judge in Şanlıurfa, he was suspended due to his contact with the FETÖ/PDY armed terrorist organization in accordance with the decision no 2016/345 (dated 16.07.2016) of the 2nd Chamber of Council of Judges and Prosecutors. Later, he was dismissed from the profession in accordance with the decision no: 2016/426 (dated 24.08.2016) of the Council of Judges and Prosecutors. (The suspect's request of review was refused on 29.11.2016 in accordance with the decision no: 2016/434 of the Council of Judges and Prosecutors). The following script was taken from the indictment:
"It was established that the suspect Sinan YILMAZ used cryptographic telecommunication programme Bylock (used by the leaders and members of FETÖ/PDY armed terrorist organization in great secrecy) via ADSL line, it was stated in the testimonies against him that he was a member of the organization, he was assigned at ballot boxes during elections, the books written by the leader of FETÖ/PDY were seized during the search conducted, it was established by the digital search that he possessed the digital version of the "Sızıntı Magazine" which was one of the publications of the organization. The suspect stated that he went to the private teaching institutions of the organization, he was sent abroad for education among other judges and prosecutors affiliated with FETÖ/PDY in order for them to stand out among other judges and prosecutors (in organizaton's jargon, to make them "shine"),… Taking all of these into consideration, it was understood that the suspect was involved in the hierarchical structure of the organization."

157. Gaziantep 10th Assize Court ruled on the release of Sinan Yılmaz on 09.11.2017. Therefore he is no longer under arrest while the the proceedings against him are still ongoing before the same court.

Muhammet Turgay Başkan:

158. Muhammet Turgay Başkan was taken into custody on 17.07.2016 for the crime of "Being a Member of Armed Terrorist Organization" and an investigation against him was initiated by Gaziantep Chief Public Prosecutor's Office.

159. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

160. The applicant also enjoyed his right to see an attorney while in custody.

161. On 20.07.2016, his testimony was taken before the Public Prosecutor and Diyarbakır 1st Criminal Court of Peace ruled on his arrest 21.07.2016.

162. Within the scope of the investigation, it was established that *"when Muhammet Turgay Başkan served as a judge in Diyarbakır, he was dismissed from profession in accordance with the decision no: 2016/426 (dated 24/08/2016) of Council of Judges and Prosecutors on grounds that he was in contact with the FETÖ/PDY armed terrorist organization. The suspect used Bylock for the first time on 12.08.2017 through GSM line no 506 419 0631 and on the device with IMEI no 35158506024573 and it was determined that the frequency of Bylock use of the suspect was red, in other words, intense. He did not have an account in Bank Asya. Accoring to the statements of Selami Yılmaz, İbrahim Sonkaya, Ferhat Göl, Abdulkadir Polat, he was a member of the organization, he was involved in the election of the Council of Judges and Prosecutors in 2014 and acted on behalf of FETÖ/PDY Armed Terrorist Organization served at the ballot boxes on election day. It was mentioned in the witness statements that he listed the votes of independent candidates. According to the expert reports issued after the evaluation made on the digital materials seized during the searches, the suspect logged on the website called "rotahaber.com" belonging to the organization multiple times and also searched "Who's going to save you from me Fettullah GÜLEN" (Seni benim elimden kim kurtaracak Fettullah GÜLEN" and watched various videos of the organization's leader preaching, books written by the organization's leader were also found in his car during the search conducted.".* Gaziantep 10th Assize Court ruled on the release of Muhammet Turgay Başkan on 28.06.2017. Therefore he is no longer under arrest while the proceedings against him are still ongoing before the same court.

Muhittin Akman:

163. Muhittin Akman was taken into custody on 17.07.2016 for the crime of "Being a Member of Armed Terrorist Organization" and an investigation against him was initiated by Diyarbakır Chief Public Prosecutor's Office.

164. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

165. The applicant also enjoyed his right to see an attorney while in custody.

166. On 20.07.2016, his testimony was taken before the Public Prosecutor and Diyarbakır 1st Criminal Court of Peace ruled on his arrest 21.07.2016 (decision no: 2016/276).

167. Prior to the investigation, while he was serving as a judge in Diyarbakır, he was dismissed from the profession due to his contact with the FETÖ/PDY armed terrorist organization in accordance with the decision no: 2016/426 (dated 24.08.2016). Said decision was finalized on 29.11.2016. The following script was taken from the indictment:
"*The suspect used Bylock for the first time on 28.08.2014, through GSM line number 505 359 6119 and the device with the IMEI number 35954205021059, he did not have an account in Bank Asya, he was affiliated with the organization according to the statements of Faruk Büyükkaramuklu and Advocate Uğur Akay, he made a video recording in the Diyarbakır Courthouse during the elections of the Council of Judges and Prosecutors in 2014. According expert's report upon evaluation made on the digital materials seized during the searches, the suspect had files titled "Konya investigation 1.doc" and "Konya investigation 2.doc" among his digital materials, in the contents of both were names of the bailiffs and judges working at the Court Bailiffs Office whose records were examined, another file named "27 differences between a Gulenist ("Cemaatçi") and an İslamist" was found, in which there was a text written by columnist of "Taraf Newspaper" where the colomnist explained, in his view, differences between a Gulenist and an İslamist, in the file named "manual table 2.rtf" there was a spreadsheet of judges and public prosecutors across whose names were opinions written about them, and for whom they would vote in the elections for the membership to YARSAV (Union of Judges and Prosecutors), in another document titled "Fetullah Gülen-Kırık Mızrak 1-2. Txt" containing a text written by the leader Fetullah Gülen."*

168. Said indictment was issued on 14.07.2017. Gaziantep 9th Assize Court ruled on the release of Muhittin Akman on 10.01.2018. Therefore he is no longer under arrest while the proceedings against him are still ongoing before the same court (docket no: 2017/146).

Savaş Demirel:

169. Savaş Demirel was taken into custody by Ankara Chief Public Prosecutor's Office on 24/07/2016 for the crime of "Being a Member of Armed Terrorist Organization" and was arrested for the mentioned crime with the decision of Ankara 8th Criminal Court of Peace dated 04/08/2016.

170. While in custody, the applicant was informed about the charges against him and the rights he has according to the legislation in force.

171. The applicant also enjoyed his right to see an attorney while in custody.

172. Following the investigation, Ankara Chief Public Prosecutor's Office lodged a criminal case against 20 suspects including Savaş Demirel. The following statements are included in the part of the indictment concerning Savaş Demirel:

"Suspect Savaş Demirel was forced to retire when he was the Chief of Police serving in Pomem, Siirt and he was demoted because of his affiliation with FETÖ/PDY in accordance with the Decree Law no: 675. The suspect served as Çankaya District Police Chief in 2011, Assistant Provincial Police Chief responsible for Crime Scene Investigation and the Juvenile Department for 1 year in 2013, Assistant Provincial Police Chief responsible for Section of Traffic Supervision for 6 months. He then was transferred to Hasanoğlan Police Academy in 2014 as teaching assistant, also to Siirt Police Academy in the same year as teaching assistant. Considering the power of the organization within the law enforcement agency and the bureaucracy in the specified time period, it is against reason and purpose of the organization for someone who was not a member of the organization to hold abovementioned senior offices. Thee suspect, along with other members of the organization, enabled organization members to serve in active missions and non-members to serve in passive missions, while also working on strengthening the organization's persistence within the law enforcement agency. The suspect used Bylock; joined meetings, demonstrations, rallies and protests against the shutting down of the Police Colleges and Police Academies, which were understood to be organized under the instruction of the organization, from the reasons explained above, it is understood that he was a member of the organization."

Police Colleges and Police Academies, as explained above, were shut down because it was established that these schools were generally used for educating high ranking law enforcement personnel serving for the FETÖ/PDY armed terrorist organization. The suspect joined meetings, demonstrations, rallies and protests which were organized against shutting down of the Police Colleges and Police Academies under the instruction of the organization. In fact, he took part in the protest on Milli Müdafaa Street in on 02.05.2015, 23.05.2015 and 27.06.201. The aim of

the FETÖ/PDY armed terrorist organization was to create a base consisting of young people committed to its ideology by using its foundations, schools and private teaching institutions; control the decision-making mechanisms of the state by infiltrating in state institutions and bureaucracy, make its ideology dominant by prioritizing the organizational interests over each and every value, and become the main determining factor in domestic and foreign policies in order to implement thereof in regional and global context. The organization placed the children of the organization members in the Police Colleges and Police Academies by giving them the exam questions beforehand. It enabled them to work at key positions in state institutions after graduation. The police colleges and police academies were shut down after it was determined by the relevant state institutions that most of the graduates of these schools worked not for the state but for the organization. FETÖ/PDY Armed Terrorist Organization, especially after the events of 17-25 December, actively tried to transfer the law enforcement personnel serving in the active divisions of the law enforcement such as Department of Counter-Smuggling (KOM), Intelligence, Department of Counter-Terrorism (TEM) from active duty to passive duties, or forced them to retire. After the operations against its members started, the organization realized that it would lose its power in the upcoming years if its members were set aside or if the police academies were to close, it ordered its members to organize protests and demonstrations, acting as victims. Its members in the law enforcement agencies also tried to create a perception among the public to defame, humiliate and degrade the Government of Republic of Turkey, organizing press conferences with other senior members who were dismissed or forced to retire after 17-25 December, presenting them to the public as victims of the "government's tyranny".

"Books written by Fetullah Gülen were seized in the search conducted in the suspect's house, he received 443 salary rewards, 1 achievement certificate and 10 letters of commendation throughout his career,it was determined that Bylock was first used on 11.08.2014 through GSM line 0505 352 31 02 registered on the suspect's name, the suspect did not have a Bank Asya account, his wife had an account in the same bank but there was no money movement or transactions in the account. According to the report of The Financial Crimes Investigation Board (MASAK) sent on 18.01.2017, it was specified that the suspect had no membership of the foundations or associations closed on grounds that they had an affiliation or connection to FETÖ/PDY, there were transactions between the suspect and Necdet Bulut, and Mustafa Kocadağ, both of whom are being investigated by Ankara Chief Public Prosecutor's Office, there were no other suspicious transactions apart from those. No contact with senior directors of the organizations made via suspect's mobile phone was detected.

173. Continuation of the applicant's arrest was decided on multiple times by Ankara 24th Assize Court based on the periodic review. The following script was taken from the transcript of the said court's judgement:

"*Considering the nature of the crime of Being a Member of on Armed Terrorist Organization, the fact that the evidence is yet being collected, the magnitude of the punishment stipulated for the attributed crime, the strong doubt emanating from the concrete evidence gathered that the suspect may have committed this crime, the fact that judicial control measures would be insufficient when the gravity of the crime is taken into consideration, the proportionality of the suspect's arrest to the punishment he may face if he is found guilty of the said crime, also considering the concrete evidence that raise doubts that the suspect may escape or spoil the evidence; it was decided that the arrest of the suspect will continue for the crime of Being a Member of an Armed Terrorist Organization in accordance with the Articles 267 and 268 of the CCP."* The objections made against the decisions of the Ankara 24th Assize Court were rejected by higher courts.

174. The proceedings against Savaş Demirel are still ongoing before Ankara 24th Assize Court.

V. NATIONAL DOMESTIC REMEDIES

a. Right of Objection Stipulated in Article 91 of the Code of Criminal Procedure

175. In connection with the claim that detention of the suspect is arbitrary or the ongoing proceedings are contrary to law, there has not been any objection raised by the suspects or their attorneys against the decisions of apprehension, custody, or arrest.

176. Whereas, the Paragraph 5 of Article 91 of the CCP No: 5271 is as follows;

"...(5) The arrested person or his attorney or legal representative or his spouse or a blood relative of the first or second degree may apply to the Criminal Magistrate's Office against the written order by the public prosecutor regarding apprehension, arrest or extension of the arrest in order to obtain immediate release from custody. The judge shall immediately examine the file and decide on the request within 24 hours. If he considers that the apprehension, arrest or extension of the arrest is appropriate, the request shall be dismissed or it shall be decided that the person arrested is to be brought before the public prosecutor immediately together with the investigation documents..."

b. Action for Compensation in Accordance with Article 141 and Subsequent Articles of the CCP

177. The complaints relating to alleged arbitrary custody and arrest can be reviewed in domestic law by first instance courts. Article 141 of the CCP entitled "Claim for Compensation" is as follows:

*"**Article 141 -** (1) Persons who suffer damage during the investigation or prosecution of offenses may request from the State compensation for material and immaterial damages incurred, if:*

a) they were unlawfully apprehended, arrested or their arrest was unlawfully extended,

b) they were not brought before a judge within the statutory custody period,

c) they were arrested without being informed of their statutory rights or their request to exercise those rights was not met,

d) they were not brought before the court within a reasonable time and did not receive a judgment within a reasonable time, even though they were lawfully detained,

e) after they were lawfully arrested or detained it was decided not to prosecute them or they were acquitted,

...

g) they were not informed of the grounds for their apprehension or arrest and of the charges against them either in writing or, if this was not immediately possible, orally,

h) their relatives were not informed of their apprehension or arrest,

i) the search warrant was implemented in a disproportionate manner,

j) their belongings or other property were confiscated in the absence of the required conditions, or the necessary measures were not taken for their protection, or their belongings and other property were used for reasons outside the purpose or if they were not returned on time.

k) (Addition: Article 11/4/2013-6459/17) they were not allowed to enjoy the procedures enshrined in Law they can utilize against the apprehension or arrest.

..."

178. According to the national judicial records the suspects have not filed any action for compensation as per the CCP's Article 141 and subsequent articles.

179. The European Court of Human Rights (ECtHR), in its A.Ş v. Turkey (no: 58271/10) judgment of 13 September 2016, approved the Government's objection of inadmissibility on

the grounds that the applicant who submitted complaints regarding the prolonged detention should have primarily filed an action for compensation in accordance with the Article 141 of the CCP. The ECtHR held that the domestic courts' and Court of Cassation's approach in accordance with Article 141 and subsequent articles of the Court of Criminal Procedure are convincing in terms of the effectiveness of this remedy.

c. Individual Application to the Constitutional Court

180. In line with the principle of subsidiarity of the ECHR system, individual applications to the Constitutional Court, which can be regarded as a milestone in the protection and promotion of human rights in Turkey, was introduced on 24 September 2012 by the promulgation of the Law on the Establishment and Trial Procedures of the Constitutional Court No. 6216.

181. Under the said Law, those claiming that their rights and freedoms enshrined in the Constitution of the Republic of Turkey or in the ECHR and its protocols to which Turkey is a party have been violated, may apply to the Constitutional Court.

182. In many recent judgments, including those claiming that their rights and freedoms have been violated on account of the legal procedures following the attempted coup of 15 July 2016, the ECtHR has noted that individual application to the Constitutional Court is an effective remedy that should be exhausted before the case can be taken to the ECtHR (see *Mercan v. Turkey*, no. 56511/2016, 8 November 2016; *Bıdık v. Turkey*, no. 45222/15, 22 November 2016; *Zihni v. Turkey*, no. 59061/2016, 29 November 2016).

183. Below is information on whether applicants have lodged individual applications to the Constitutional Court (CC) in separate chapters for each applicant, whether a verdict has been given on the applications made, and the content of the verdicts given.

Muhittin Akman

184. Muhittin Akman has applied to the CC through his attorney against his dismissal from the public service along with the request for legal aid on 29.11.2016.

185. In its decision dated 24.07.2017, with reference to the application number 2016/29102, CC granted the applicant's request for the legal aid and and the applicant was exempted from all costs of trial. CC ruled that the application is inadmissible as the applicant has not exhausted

other remedies indicating that the judiciary members who were dismissed from the profession should first appeal to the Council of State and the individual applications made without exhausting this remedy cannot be examined.

186. Muhittin Akman made another individual application on 06.09.2016 claiming that the treatments during the apprehension, custody, and arrest violated the fundamental rights protected by the Constitution. The examination of the said individual application is still ongoin under the file number 2016/51268.

Fatma Alan:

187. Fatma ALAN has made an individual application to the CC. In her application, she alleged that the right to a fair trial and the right to personal liberty and security were violated through the investigation and prosecution carried out against her.

188. CC gave its verdict on the said application on 07.03.2018. It was noted in the decision that "the applicant is a Bylock user and the acknowledgement of the Court that using this application is an important indicator of the mentioned crime cannot be assessed as baseless and arbitrary attitude".

189. CC also ruled that the allegations that the arrest was not lawful and the detention period exceeded the reasonable period of time and the claims regarding the composition of the Magistrates' Court are manifestly ill-founded. In terms of other claims, CC ruled that the application is inadmissible as the applicant has not exhausted other remedies before lodging an application before the CC.

Savaş Demirel:

190. Savaş Demirel made an individual application numbered 2016/66487 to the Constitutional Court. He claimed that the right to a fair trial, prohibition of torture and ill treatment, the right to personal liberty and security and the right to respect for private and family life were violated through the investigation and prosecution carried out against him.

191. CC gave its verdict on the said application on 19.02.2018. In its decision, CC granted the applicant's request for the legal aid and the applicant was exempted from all costs of trial.
It was noted in the decision that "*the applicant is a Bylock user and the acknowledgement of the Court that using this application is an important indicator of the mentioned crime cannot*

be assessed as baseless and arbitrary attitude". CC found the allegations that the arrest was not lawful, the arrest exceeded the reasonable period, the access to investigation file was restricted and the claims regarding the composition of the Magistrates' Court manifestly ill-founded. Regarding the extension of the arrest and other right violations the applicant claimed, CC found the application inadmissible as the applicant has not exhausted other remedies.

Hasan Gemi:

192. Hasan Gemi made an individual application numbered 2016/66487 to the Constitutional Court along with the request for legal aid on 06.04.2017. He claimed that the prohibition of inhumane treatment, the right to life and the right to personal liberty and security were violated. The examination of the individual application is still ongoing.

Gülnur Gemi:

193. Gülnur Gemi made an individual application to the Constitutional Court on 28.09.2016 with the request for the determination of the alleged violation of the right resulting from the dismissal of public service and the restitution of her status.

194. CC ruled that the application is inadmissible as individual application was made without exhausting other remedies.

195. Gülnur Gemi made another individual application on 06.09.2016 (application number 2017/19693) demanding to be released stating that her life is in danger because of being held in prison despite her medical condition (rheumatism).

196. After the examination, CC, in its interlocutory judgement given on 14.04.2017, stated that when the information contained within the scope of the case are evaluated together with the information and documents submitted by the institutions to the CC, it was understood that the applicant's arrest in the penal institution where she had access to health services do not pose any threat to her life.

197. CC decided on the merits of the application no. 2017/19693 on 12.02.2018. It was noted in the decision that "*the applicant is a Bylock user and the acknowledgement of the Court that using this application is an important indicator of the mentioned crime cannot be assessed as baseless and arbitrary attitude"*. CC found the allegations that her right to personal liberty and security was violated and that she subjected to ill treatment were manifestly ill-founded. Regarding other violations the applicant claimed, CC found the application inadmissible as the

applicant has not exhausted the other remedies.

198. The applicant made another individual application on 07.09.2016. This application is regarding the "long period of arrest", and the examination thereof is still ongoing under the file number 2017/34528.

Nuh Görgün:

199. Nuh Görgün filed an individual application before the CC along with the request for legal aid, claiming that his dismissal from the public service violates the rights contained in the Constitution. In its verdict given on 24.07.2017, CC found the application inadmissible as the applicant has not exhausted other remedies.

200. The applicant made another individual application on 02.08.2017. In this application, he claimed that, principle of equality, prohibition of discrimination, along with his "right to sport" and right to education were violated. The examination thereof is still ongoing under the file number 2017/32591.

Bahtiyar Öztürk:

201. In the individual application against his dismissal from public service; Bahtiyar Öztürk claimed that his right of access to court, presumption of innocence, and the right to a fair trial were violated. (Application no: 2017/19693).

202. CC decided on the merits of the application on 28.02.2018. It was noted in the decision that "*the applicant is a Bylock user and the acknowledgement of the Court that using this application is an important indicator of the mentioned crime cannot be assessed as baseless and arbitrary attitude"*. CC found the allegation that his arrest was not lawful manifestly ill-founded. Regarding the allegation of "long period of arrest" the other allegations of violation the applicant claimed, CC found the application inadmissible as the applicant has not exhausted other remedies.

203. Bahtiyar Öztürk made two other individual applications on 29.01.2018 and 09.04.2018. The examination thereof are still ongoing under the files numbered 2018/4799 and 2018/10034.

Hasan Yaşar:

204. Hasan Yaşar, in the application he made on 18.10.2016 (application number: 2016/42743), claimed that the right to fair trial, prohibition of torture and ill treatment, the right to personal liberty and security and the right to respect for private and family life were violated through the investigation and prosecution carried out against him.

205. In its decision dated 05.04.2018, CC ruled that the application is inadmissible as the applicant has not exhausted other remedies since the decision regarding the applicant of Şanlıurfa 5th Assize Court is open to legal remedies.

206. Regarding the applicant's claim that the arrest exceeded the reasonable period of time; CC ruled that, the allegation of the applicant who was released on 12/10/2017 that his arrest exceeded the reasonable period of time, can be examined through filing a case within the scope of Article 141 of the CCP, in case it is determined that the applicant's arrest indeed exceeded the reasonable period of time, the competent court may award the applicant compensation. Therefore, the remedies referred to in Article 141 of Law no. 5271 constitutes an effective remedy in accordance with the applicant's situation. For this reason, this claim within the application is considered inadmissible as the applicant has not exhausted other remedies.

207. Regarding the applicant's claim that the duration of the arrest was not reasonable, CC ruled that the application is inadmissible as the applicant has not exhausted other remedies, and there is no need to be deviated from the conclusions reached above.

208. Regarding the applicant's claim that he was exposed the ill treatment during his arrest and his other claims of violations, CC ruled that the application is inadmissible as the applicant has not exhausted other remedies.

Sinan Yılmaz:

209. Sinan Yılmaz, in the application he made on 09.08.2016 (application number: 2016/15573), claimed that the right to fair trial, prohibition of torture and ill treatment, the right to personal liberty and security and the right to respect for private and family life were violated through the investigation and prosecution carried out against him.

210. After the examination of the said application, CC ruled that the application is inadmissible as the applicant has not exhausted other remedies regarding the claims that his arrest was not lawful and the prohibition of ill treatment was violated while he was under arrest; and the claims that his right of personal liberty and security was violated and his access to investigation file

was restricted, as well as the claims regarding the composition of the Magistrates' Court were found manifestly ill-founded.

211. Sinan Yılmaz made another individual application (no.2017/1803) on 30/9/2016 claiming that his right to personal liberty and security, the right to a fair trial and the right to respect for private and family life were violated in the investigation and prosecution carried out against him.

212. In its decision dated 05.04.2018 regarding the said application, CC ruled that the application is inadmissible as the applicant has not exhausted other remedies regarding the claim that his right of personal liberty and security was violated and the claim regarding the composition of the Magistrates' Court. CC found the application manifestly ill-founded regarding the claims that his arrest was not lawful and the prohibition of ill treatment was violated while he was arrested.

Other Applicants

213. No individual applications were made before CC by the other applicants: Muhammed Turgay Başkan, Nesrin Çavuş, Suat Durgun and Bekir Karayel.

VI. ASSESSMENT OF THE PRESENT COMMUNICATIONS

1. Admissibility of the Communications

A. PRELIMINARY OBJECTION OF DEROGATION

1. In General

214. As mentioned above, after the 15 July 2016 terrorist coup attempt, a State of Emergency was declared in accordance with the Constitution and international law. Within the context of the ICCPR, the notification of derogation was communicated to the United Nations Secretary General on 02.08.2016 in accordance with Article 4 of the Convention. These notifications have been renewed after every extension of the State of Emergency. It is clearly stated in these notifications which articles are subject to derogation. Therefore, there is a notice of derogation duly made and communicated in accordance with the procedure to be applied in the present communications.

215. When the complaints and accusations submitted to the Working Group are examined, it is understood that the said complaints are within the context of the right of freedom and security prescribed in Article 9 of the Convention and the right of fair trial prescribed in Article 14.

216. In this context, it is unequivocal that the complaints fall within the scope of the derogation notice. Therefore, it is essential to carry out the examination in conjunction with Article 4 of the ICCPR. In this scope, it is necessary to focus on the purpose, the legal value and the effect of the derogation notice on the present communications.

2. The Purpose and Nature of the Derogation

217. The derogation procedure has a very important function both in the ECHR and ICCPR. It enables the State in certain exceptional circumstances to unilaterally derogate from a number of obligations which are applicable during normal periods. In face of such an extraordinary crisis, a state's failure to restrict certain Convention obligations may become intolerable. Under such circumstances, the legitimate reason for restricting the rights, which can be derogated from, is that if the State fails to take such effective measures, a greater threat might arise against the independence and freedom of the people, the fundamental rights and freedoms, particularly the right to life, and against the life of the nation. In other words, the purpose of notification of derogation is taking the necessary measures for the protection of democracy and fundamental rights and freedoms, and securing the life of the nation.

218. Derogation by a State from its regular obligations emanating from the ECHR and ICCPR is the *raison d'etre* of Articles 15 of the ECHR and 4 of the ICCPR. As, under such circumstances, a general threat against the existence of the nation and an attempt to revoke the rule of law, democracy and the institutions of the State is present. Therefore, for the elimination of the threat and for the restoration of public order, public interests, which are both vital for the society and the State shall take precedence over individual interests. Accordingly, when the right to derogation is exercised on account of threats aiming at abolishing the free and democratic order established by the Constitution and the fundamental rights and freedoms, the necessary measures can be taken to maintain public safety and order.

219. Therefore, an examination to be made following a notification of derogation should take into account the purposes of the derogation and the conditions under which it was declared. It

is of vital importance that an assessment of the conditions during the emergency period should not be based on the principles and approach prevalent during normal periods. In this context, the examination of a case subject to a notice of derogation should take into account the conditions in the emergency period and be limited to international obligations and whether the interference in the present communication was proportionate to the threat faced. In other words, when a derogation is in force, the level of protection would not be equivalent to that granted during normal times. Claiming the opposite would be incompatible with the purpose and meaning of the derogation principles. Moreover, such an approach would render the application of the said articles of the conventions impossible.

220. As Judge MacDonald, one of the former judges who served in ECtHR, stated; "The situation of danger or crisis that a state party faces is also a test for the whole of Convention system... If the Convention system fulfills its function only in good times; but cannot respond to a real danger, then its authority and legitimacy will be damaged in all circumstances." *(MacDonald, Ryssdal Melanges, p. 817)*

3. The approach by the European Court of Human Rights

221. Within the scope of the examination of the present communication, it is necessary to address the case law and practice of the ECtHR in the context of the application of Article 15 of the ECHR in terms of shedding light on the issue. According to ECtHR, for example; further intervention in the freedom of expression in an extraordinary situation for more effective protection of public order may be "necessary in a democratic society" than it is in ordinary times. (Brind v. United Kingdom, no. 18714/91, 77-A DR 42, 1994). A similar interpretation can be made for obvious restrictions on the right to respect for private life when a need arises for terrorist suspects to be secretly monitored (Klass v. FAC, A 28, 1978). More importantly, following the suspension of the ECHR in connection with the activities of the IRA in Northern Ireland, it has been adopted by ECtHR that the usual criminal procedure is inadequate to eliminate the broad and serious danger posed by the great wave of violence and fear caused by IRA's activities in Northern Ireland. In this respect, in the ordinary period, deprivation of the freedom of persons without a judicial decision, in order to take the statement thereof, as contrary to the provisions of paragraph 1 of Article 5 of the ECHR and in the ordinary period again, the removal of procedural safeguards that regulate the deprivation of the liberty of a person as contrary to the provisions of paragraph 4 of Article 5 were found necessary by ECtHR for addressing the emergency. (*Ireland v. United Kingdom*, A 25, 1978).

222. In its judgments of Mehmet Hasan ALTAN/Turkey (no: 13237/17) and Şahin ALPAY/Turkey (no: 16538/17) dated 20 March 2018, the ECtHR also examined the declaration of State of Emergency in Turkey following the 15 July 2016 terrorist coup attempt as well as Turkey's derogation within the scope of Article 15 of the ECHR. ECtHR stated in its judgement that, by reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogation necessary to avert it. Accordingly, the ECtHR maintained that, in this matter a wide margin of appreciation should be left to the national authorities.

223. ECtHR has also taken into account the position of the Government asserting that the terrorist coup attempt and its consequences posed a serious threat to the democratic constitutional order and human rights, posing a threat to the nation's existence in the sense of Article 15 of the Convention.

224. ECtHR stated in its mentioned judgments that, in the light of the Constitutional Court's assessments and the whole of the elements presented to its examination, the terrorist coup attempt revealed the existence of a "public danger threatening the nation's existence" in the sense of the Convention.

4. Declaration of a State of Emergency in Turkey

225. State of Emergency is a form of emergency rule declared for certain reasons, that enable temporary restrictions to the fundamental rights and freedoms. Emergency rule procedures have been laid down in Articles 119 to 122 of the Constitution. Moreover as per Article 15 of the Constitution, the exercise of fundamental rights and freedoms may be partially or entirely derogated to the extent required by the exigencies of the situation, as long as obligations under international law are not breached.

226. In addition to the Constitutional provisions, the legal framework governing State of Emergency has been circumscribed by the Law on State of Emergency (No. 2935). Moreover, under emergency rule, the then Council of Ministers, headed by the President, has been empowered to issue Decree-Laws relating to matters necessitated by the State of Emergency, under Article 121 of the Constitution. No other law is required for the exercise of this power.

227. As seen above, Articles 121 and 15 of the Constitution are written in line with the spirit of the Articles 4 of the ICCPR and 15 of the ECHR. Thus, the national protection and legal review in this respect are in line with the international standards.

228. In practice, in conformity with this Constitutional and legal framework, a State of Emergency has been declared following the terrorist coup attempt of 15 July 2016 to restore public order, to reinstate democratic institutions and to eliminate promptly the threat faced with.

229. As explained above in detail, due to the terrorist coup attempt, Turkey was exposed to a public emergency affecting the whole population and threatening the life of the nation. However, the measures taken under the emergency rule have not made any changes in daily life. No restrictions have been brought to the exercise of fundamental rights and freedoms that would affect the daily lives of the people. The measures have been kept limited to issues which necessitated the State of Emergency. The decision to declare a State of Emergency was not taken to restrict individual rights and freedoms but rather to allow the State to initiate, prompt and effective responses in its fight against terrorist organizations including the FETÖ/PDY. With a view to protecting democracy and the will of the people, it is a natural right of the State to use this legal power.

230. As mentioned above, over the years, FETÖ/PDY members have infiltrated into state institutions and spread to the sectors such as education, health, media and academy. Therefore, the declaration and the extension of the emergency rule has become an exigency. In line with international obligations, the rule of law is upheld with due respect for fundamental rights and freedoms.

231. In line with Article 4 of the ICCPR, the Decree-Laws are issued and measures are taken to the extent strictly required by the exigencies of the situation and proportionate to the crisis faced by the authorities. The measures are aimed to eliminate the influence of terrorist organizations within the State. For this purpose, the scope of the Decree-Laws were limited to eliminate terrorist threats, and any interference with the rights and freedoms of others have been avoided.

232. Since the measures are based on Decree-Laws which were subsequently enacted by the parliament as law, the principle of legality has been satisfied. Besides, legal remedies are available. Fair trial and defense rights have been respected.

233. In the light of the foregoing, it is evident that the measures taken are in conformity with international law and required by the exigencies of the situation.

4. Assessment of the Specific Conditions of Present Communications

234. In the present applications, legal period for custody have not been exceeded. In fact, even though the Decree-Laws adopted after the attempted coup designated a 30 days upper limit for custody, taking into account specific circumstances of the cases, all applicants were under custody for a shorter period. Nevertheless, the applicants did not file an objection against the custody, even though they had the chance to do so. The period of custody is considered proportional and in line with international conventions, taking into account the fact that investigations are being carried out against a large number of people suspected to be affiliated with FETÖ/PDY, and the fact that numerous people were taken under custody under the same investigation; also taking into account the scope of the investigation, the complexity and the seriousness of the crimes the applicants are charged with.

235. The applicants were notified of the charges against them. They gave their statements accompanied by an attorney, therefore their right to defence and legal assistance were abided by.

236. In this context, all decisions of custody and arrest were given by independent judges, and these decisions contained justifications on why these measures were taken, meaning that they were not arbitrary. The applicants also had the right to appeal against these decisions.

237. In the light of the explanations above, it is assessed that the Working Group should find the present communications inadmissible due to the fact that they fell under the scope of derogation, and the measures taken against them were clearly not arbitrary.

B. NON-EXHAUSTION OF DOMESTIC REMEDIES

238. As regards the complaints submitted under the present communications, the applicants did not exhaust domestic remedies. In other words, the complaints communicated to the Working Group were forwarded directly to the Working Group without being submitted at the national level.

239. International human rights protection mechanisms are generally the remedies that are of subsidiary nature. It will not be appropriate for an international organization or court to assess the claim of a breach of human rights which could be found out and eliminated within the contracting states' respective domestic law process.

240. In this context, the applicants did not submit an appeal before the Magistrate's Office alleging that their arrest and the ongoing proceedings against them were unlawful or arbitrary.

241. The applicants have not filed an action for compensation in accordance with the Article 141 of the CCP against the unlawfulness of their custody or arrest, or against the conditions of the custody.

242. The Working Group, on the communication *Yang Jianli against the People's Republic of China* in 2003, stated that it would evaluate events and evidence as part of an investigative role in a particular communication, but it will not determine any legal issues concerning the events of the communication, in other words, it will not replace the role of national judicial authorities.

243. In this context, the inadmissibility decision of the "Working Group on Communications", of the UN Human Rights Council, on the former judges, Ramazan Çaylı and Hakkı Dağlı who were members of FETÖ/PDY, on 19 February 2018, should be brought to the attention of the Working Group for Arbitrary Detention. In these communications, it was claimed that Çaylı and Dağlı's fundamental rights of "presumption of innocence" and "legal judicial process" regulated under Article 14 of the ICCPR have been violated. The Working Group on Communications, with reference to the ECHR's decision Çatal v. Turkey (March 7, 2017 no. 2873/17), found the application inadmissible for non-exhaustion of domestic remedies referring to the applicants' individual application mechanism in the Constitutional Court. The Government believes that there is no reason to diverge from this approach in the present

communications. Therefore, it is considered that the complaints that are not raised at the national level and put forward directly to the Working Group should be rejected, in light of the subsidiarity principle of the Convention, and non-exhaustion of domestic remedies according to Article 41/1.c of the ICCPR.

C. MERITS OF THE COMMUNICATIONS

1. The Allegation of Arbitrary Custody and Arrest

244. The applicants communicate to the Working Group that they were taken under custody and arrested unlawfully and arbitrarily.

245. The Republic of Turkey is a democratic, secular and social State governed by the rule of law, upholding the notions of peace, national solidarity and justice, and respect for human rights. The judicial power is held by independent and impartial courts on behalf of the Turkish Nation, and under Constitutional safeguards.

246. As it is stated above, on the night of 15 July 2016, “a group of terrorists in uniforms” within the Turkish Armed Forces attempted an armed terrorist coup against the Turkish democracy for the purpose of overthrowing the elected President, the Parliament and the Government together with the Constitutional order.

247.According to the information obtained through judicial proceedings regarding the coup attempt, and according to the statements of some soldiers and public officials who were members of FETÖ/PDY, it is concluded that the attempted coup was carried out upon the instruction of the founder and leader of the FETÖ/PDY, Fetullah Gülen, and in line with the plan approved by him, and this terrorist organization is responsible for the material and immaterial damages, including the murder of civilians and public officials. Moreover, as the investigations and prosecutions carry on, new evidence exposing the structure of the organization is being obtained everyday.

248. Besides, the prosecution of only those who directly took part in the attempted coup is not sufficient to combat FETÖ/PDY terrorist organization and to identify all those responsible for the attempted coup. Therefore, it is also very important to identify and prosecute other members, who infiltrated into bureaucracy in order to help orchestrate a violent takeover.

249. In this context, the findings in the indictments prepared against the applicants must also be mentioned. In all the indictments, it was determined that the applicants used the secret communication application called “Bylock”, which was used by the members of the organization to contact each other.

250. Within this scope, it will be appropriate to give some information on “Bylock” and its intense usage by the members of terrorist organization as a communication tool. Within this scope, the verdicts given by the national courts should be taken into account. As it is stated in these verdicts, it is a known fact that this application is a cryptographic communication program used by the members of FETÖ/PDY as an intercommunication tool for the organization. As it is stated in the verdicts given by the national courts; programs like Skype, Tango, Bylock, Line, Kakaotalk, Whatsapp etc., which allow communication via mobile data, are the frequently used communication methods and tools within the organization, due to the fact that they are low-cost and have an encrypting system that protects the messages.

251. Considerations with regard to the applicaton called Bylock are as follows in the national court decisions:

1. Bylock application was assessed through technical works such as reverse engineering, analysis of encryption, analysis of network behaviour and the codes of the servers connected.

2. It was observed that Bylock application had a design encrypting each message sent with a different encryption in order to ensure the communication with a strong encryption system via Internet connection.

3. The proof supporting the fact that Bylock application was made available for FETÖ/PDY members under the disguise of a global application are as follows;

    - There are some “Turkish” expressions in the source codes of the application.
    - User names, group names and most of the codes cracked comprise of Turkish expressions.
    - Almost all of the contents cracked are in Turkish.

- Although the administrator of the application server claimed that they blocked access to the application with the IP addresses from the Middle East, almost all blocks were aiming at IP addresses from Turkey.
- Those wishing to download the application were obliged to access to it via VPN in order to disguise identities of the users accessing from Turkey and the communication. In addition, almost all the searches about Bylock over "Google" were made by the users from Turkey.
- There has been an increase in "Google" searches about the application as of the date of blocking access to the application with IP addresses from Turkey. Moreover, posts were shared in favour of FETÖ/PDY, mostly through Bylock related online media (social media, web sites, etc.) via fake accounts.
- "Bylock", which had a user group more than two hundred thousand, was known by neither Turkish public nor international community before the 15th July terrorist coup attempt in Turkey.

4. It was established that signing up to the application was not sufficient to contact with the users in the system; user names/codes, provided mostly face-to-face or by an intermediary (courier, the existing Bylock user etc.) should be added by both sides in order to communicate with each other. It was designed in a way that it will allow to have communication only in accordance with the cell type communication because messaging could be started after both users added each other.

5. Voice call, instant messaging, e-mail delivery and file transfer can be carried out with the application. It was also assessed that organizational communication needs of the users were met by this without needing any other communication tool, and as all the communication was transmitted through the server, groups created and the contents of the communication could be monitored and controlled by the administrator of the application.

6. The correspondence is deleted automatically from the device in specific periods without requiring a manual process. This indicates that the system has been designed in a way that will take the necessary measures even if the users forget to delete the data for the communication security. Therefore it has been established that Bylock application was designed in a way that will prevent to access to the past data of the users and the correspondence if the device is seized as a result of a probable judicial proceeding. In

addition, server and communication data of the application is encrypted in the application database and this is regarded as an additional security measure in order to prevent identification of users and ensure the communication security.

7. In order to disguise themselves, the users set a unique and quite long password. For example, there are passwords consisting of about 38 digits among the data, analysis of which have been completed, and more than half of the passwords, analysis of which have been completed, consist of 9 digits and more. Instead of downloading the application from Android or Apple AppStore after a certain date, the application was uploaded into the devices of users manually. It was also observed that almost all of the messages, which were obtained and analysis of which were completed, included organizational contacts and activities, corresponded to the jargon of the organization.

8. It was understood from the statements of organization members being subject to judicial control proceedings (custody, arrest, apprehension, etc.) after the military coup attempt staged by FETÖ/PDY units on 15 July 2016 that, it was used as an organizational communication tool by the members of FETÖ/PDY organization.

252. It may be useful to look at the issue in terms of comparative law and in particular the ECHR case law. In this context, it is necessary, according to the ECHR judgements, for there to be a reasonable doubt or plausible reasons (raisons plausibles) that an offence has been committed in order for a person to be deprived of liberty. This is an essential requirement for arrest. This condition should be present at every stage of the period of arrest and the person should be released as soon as the reasonable doubt ceases to exist.

253. The reasonable doubt should be sufficient to persuade an entirely objective observer when the evidence obtained and specific conditions of the case are considered; meaning that there is a reasonable doubt if the observer considers that the suspect or the accused could have committed the crime the suspect is charged with when the collected evidence is submitted to him. In other words, reasonable doubt or plausible reason requires the presence of an event or information sufficient to convince an objective observer that the accused person may have committed an offence (see, Fox, Campbell and Hartley v. The United Kingdom, no. 12244/86 12245/86 12383/86, 30 August 1990, par. 32, O'Hara v. The United Kingdom, 37555/97, par.).

254. The ECHR states that the initial existence of reasonable doubt is enough to deprive

someone of his freedom under Article 5/1 of ECHR and the existence of reasonable doubt should be maintained so that his arrest could continue. However, with regard to the arrest exceeding a certain period, the existence of reasonable doubt alone is not sufficient for the continuation of the arrest. There should also be a requirement of public interest which can justify the deprivation of liberty.

255. A criminal case was lodged against the applicants. In other words, it has been accepted that there is a suspicion beyond the reasonable doubt that the applicants have committed the crimes they were charged with, justifying their arrest. Furthermore, the fact that the applicants used Bylock, as mentioned above in the considerations in the court decisions, also raises serious suspicion that the applicants are members of the FETÖ/PDY.

256. As detailed above, the accusations against the applicants are based on concrete evidence. Furthermore, considering the conditions of the state of emergency, the period in which the applicants were in custody or under arrest should be accepted as reasonable. Also explained above, some of the applicants have been released while the proceedings against them continue.

257. Decisions on arrest as well as on the objections raised by the applicants against these decisions were rendered by independent and impartial judges and courts.

258. Also considering the declaration of derogation, period in which the applicants were under arrest cannot be assessed as baseless or arbitrary.

259. Furthermore, the Constitutional Court also assessed applicants' allegations similar to the ones conveyed to the Working Group, and found them inadmissible as some allegations were manifestly ill-founded and the domestic remedies were not exhausted for others.

260. On the other hand, some of the applicants were convicted of the crimes they were charged with. Hence, their arrests have ended. Their deprivation of liberty is due to the imprisonment sentence they are faced with.

261. The investigation, prosecution, or the conviction of the applicants is based on concrete accusations and evidence. It is clear that the allegation communicated by applicants that they were taken under custody and arrested unlawfully and arbitrarily aims to mislead the Working

Group and constitutes the abuse of the rights in question. Accordingly, it is assessed that these communications are manifestly ill-founded.

2. Allegations regarding Legal Assistance and the Custody Procedure

262. Article 19 of the Turkish Constitution regulates personal freedom and security. First sentence of the said article underlines that all shall enjoy personal freedoms and security, and the cases and conditions to deprive a person's freedom are stipulated in the following articles thereof. This provision of our Constitution guarantees the right to personal liberty and security as a human right.

263. For information on procedures related to custody and arrest, and the applicants' right to object thereof, see paragraphs 3-10 above.

264. Turkey safeguards its democracy while remaining inside the realm of democracy, and is determined to overcome the challenges it is facing within the principles of a state of law. Turkey is a country where everyone has the freedom to seek their rights and where all persons and organizations can request administrative and judicial review of all procedures and actions with legal consequences concerning them. Measures taken against the threats of coup and terrorism within the scope of the state of emergency had been taken to make sure that Turkey maintains a country where the abovementioned rights are guaranteed.

265. Consequently, the measures taken are proportional with the current situation and the threats faced by Turkey; and there are effective remedies and review mechanisms to which persons claiming that their rights are violated can apply.

3. Other Allegations Mentioned in the Communications

266. Allegation regarding the conditions in penal institutions, access to medical assistance within these institutions, as well as other claims are adressed in this chapter.

Fatma Alan:

267. Fatma Alan is a prisoner in Gebze Women Closed Penal Institution for the crime of "being a member of an armed terrorist organization". She was prosecuted under the docket no 2017/224 at Yalova Assize Court and has been sentenced to imprisonment for 8 years and 9 months but her sentence is not yet finalized since she appealed. Proceedings regarding Fatma

Alan are still ongoing before the Court of Cassation. She is accommodated in a 6 person room and has access to a garden and a common area on the lower floor. She has a 5-year-old child. Her child stayed with her in certain weeks in the years 2016-2017, but never stayed with her in 2018. The penal institution has a physician and a dentist and there are 4 beds in the institution's infirmary. She does not have any chronic disease; however, she and her child received medical treatment upon her request on different dates. Her dental treatment continues at the Polyclinic for Prosthesis of the Dental Hospital of Faculty of Dentistry of Kocaeli University; she didn't apply for a treatment of psychological disorder for her child. She received visitors a total of 311 times of which 289 were from her family, 19 were from her attorney, 3 were from the notary between 23.09.2016 and 11.06.2018. She did not apply to the Office of the Public Prosecutor or the Office of the Judge of Execution. She did not make any applications for exposure to mistreatment.

Nesrin Çavuş:

268. Nesrin Çavuş is a prisoner in İzmir No. 1 Closed Penal Institution for the crime of "being a member of an armed terrorist organization". She was sentenced to imprisonment for 6 years and 3 months along with deprivation of the right to vote and to be elected, prohibiton of holding public office during the course of her sentence, and deprivation from her parental rights, by the decision of the İzmir 15th Assize Court dated 27.04.2018 (docket no: 2018/238). Her sentence is not yet finalized since she appealed. Proceedings regarding Nesrin Çavuş are still ongoing before the Court of Appeals. She does not have any chronic disease; however, she received medical treatment upon her request in different dates. She received visitors a total of 43 times of which 29 were from her family, 13 were from her attorney, 1 were from the notary between 28.04.2017 and 11/06/2018. She didn't apply to the Office of the Judge of Execution. She didn't make any applications for exposure to mistreatment.

Şavaş Demirel:

269. Savaş Demirel is under arrest in Sincan No.1 L Type Closed Penal Institution for the crime of "being a member of an armed terrorist organization". He is accommodated in a 28 person room in the aforementioned institution due to the fact that number of convicts and detainees exceeed the capacity of the penal institutions following the investigations in the aftermath of the 15 July Coup Attempt. The room is not unsanitary. There is access to 24-hour medical service by means of an emergency aid button which is available in all rooms. He received medical treatment upon his request in different dates. He has diabetes mellitus; that medicines

he regularly takes for his illness as well as medical treatment were offered in time and without delay. He didn't make any applications for not benefiting from medical services or delay in receiving the medical treatment that he needs. He received visitors a total of 152 times of which 147 were from his family, 3 were from his attorney, 2 was from notary between the dates 04.08.2017 and 11.06.2018. He didn't apply to the Office of the Public Prosecutor or the Office of the Judge of Execution. He didn't make any applications for exposure to mistreatment.

Suat Durgun:

270. Suat Durgun is under arrest in Silivri No.7 L Type Closed Penal Institution for the crime of "being a member of an armed terrorist organization". He was present in the court through SEGBİS (Sound and Video Information System) on 06.06.2018. Prosecution against Suat Durgun is still ongoing. He does not have any chronic disease; however, he received medical treatment upon her request in different dates. He received visitors a total of 23 times of which 1 was from his attorney, 1 was from notary, 21 were from his family between 19.06.2018 and 11.06.2018. He didn't apply to the Office of the Public Prosecutor or the Office of the Judge of Execution. He didn't make any applications for exposure to mistreatment.

Hasan and Gülnur Gemi:

271. Gülnur Gemi was released an 12.04.2018 in accordance with the decision of Manisa 4th Assize Court (Docket No. 2018/172) while she was under arrest in Manisa E Type Closed Penal Institution for the crime of "being a member of an armed terrorist organization".

272. Hasan Gemi is a prisoner in Manisa T Type Closed Penal Institution for the crime of "being a member of an armed terrorist organization". He was sentenced to imprisonment for 8 years and 9 months. His sentence is not yet finalized since he appealed to Manisa 3rd Assize Court. He is accommodated in a 16 person room. As explained above, this is a result of the high number of people convicted or detained, exceeding the capacity of the penal institutions, as the investigations unfolded against the members of FETÖ/PDY armed terrorist organization in the aftermath of the 15 July Coup Attempt. He does not have any chronic disease; however, he received medical treatment upon his request on different dates. He received visitors a total of 76 times of which 2 were from notary, 12 were from his attorney, 62 were from his family between 22.09.2016 and 11.06.2018. He did not make any applications for exposure to mistreatment. He applied 22 times (16 times to the Criminal Court of Peace and 6 times to the Office of the Public Prosecutor) claiming to be released, his claims were conveyed to the said

authorities.

Bekir Karayel:

273. Bekir Karayel is under arrest in İzmir No 3 T Type Closed Penal Institution for the crime of "being a member of an armed terrorist organization". Two hearings were held at İzmir 15th Assize Court, and the next hearing will be held on 18.08.2018. He stated during the first medical inspection carried out at the institution on 05.05.2017 that he has insulin dependent diabetes mellitus and he regularly takes [redacted] Between 05.05.2017 and 31.05.2018, he received medical examination and treatment at the institution infirmary and the state-run hospital because of diabetes mellitus, intestinal disorder, eye disease, skin disease, back aches, deficiencies of B and D vitamins and iron, heart disease, and common cold. He received visitors a total of 49 times of which 10 were from his attorney and 39 were from his family between 05.05.2017 and 11.06.2018. He didn't make any applications for exposure to mistreatment.

Bahtiyar Öztürk:

274. Bahtiyar Öztürk is a prisoner in Menemen T Type Closed Penal Institution for the crime of "being a member of an armed terrorist organization". He was sentenced to imprisonment for 7 years 10 months and 15 days on 04.04.2018 (Docket No. 2017/446 and 2018/197). His sentence is not yet finalized since he appealed. Proceedings regarding Bahtiyar Öztürk are still ongoing before the Court of Appeals 2. Criminal Chamber of İzmir Regional Court of Justice. He received visitors a total of 100 times of which 84 were from his family, 12 were from his attorney, 4 were from notary. He stated during the first medical inspection carried out at the institution on 09.09.2016 that he had pain in the left arm and had undergone an operation on his right ankle, and his left arm after having an accident. He does not have any chronic disease. He received 24 medical examinations and treatments from the physician of the institution because of [redacted] He was also referred to the orthopaedics, physical therapy, neurosurgery, and neurology polyclinics of Menemen State Hospital 8 times, to the rheumatology polyclinics of Çiğli Training and Research Hospital 2 times, to the orthopaedics, neurology, and rheumatology polyclinics (and for EMG (electromyography)) of Atatürk Training and Research Hospital of İzmir Katip Çelebi University 10 times, to Bornova

Dental Hospital 1 time. He received 21 medical examinations and treatments in total in these hospitals.

275. [redacted] the spouse of Bahtiyar Öztürk, claimed in her petition dated 25.12.2017 that the above-mentioned to be referred to a hospital in order for him to undergo EMG with respect to his health problems. Administration and Monitoring Board of Menemen T Type Closed Penal Institution decided with its decision No. 2018/4 dated 01.01.2018 that there is no need to render a judgement. [redacted] lodged a complaint against this decision. Karşıyaka Office of the Jugde of Execution refused the complaint in its decision dated 13.01.2018 (docket No. 2017/6113 and 2018/57). [redacted] appealed against this decision and Karşıyaka 1st Assize Court decided with its decision No. 2018/767 dated 20.02.2018 to refuse the appeal. Bahtiyar Öztürk lodged another complaint against this decision and Karşıkaya Office of Judge of Execution decided with its decision docket No. 2018/301 and 2018/430 dated 02.02.2018 to refuse the complaint of the prisoner. Bahtiyar Öztürk appealed against this decision and thereupon Karşıyaka 1st Assize Court decided in its Decision No. 2018/988 dated 07.03.2018 to refuse the appeal of the prisoner.

Muhittin Akman:

276. Muhittin Akman was transferred to Şanlıurfa No 1 T Type Closed Penal Institution on 17.08.2016. It was stated by the doctor in Kayapınar No 15 Family Health Center who carried out his first medical examination on 20.07.2016 that he was allergic to pollen and that he did not have any other disease that need to be regularly monitored. The applicant did not apply to the medical unit of the penal institution through a petition or verbal statement between 20.07.2016 and 17.08.2016 during which he stayed in the institution. He was accommodated in a 3 person room as the fourth person (because of lack of capacity of the institution).

277. It is stated in Article 2 of Law No. 5275 on the Execution of Penalties and Security Measures that "The rules concerning the execution of penalties and security measures shall be implemented without discrimination between convicts on the grounds of race, language, religion or sect, nationality, colour, gender, birth, ethnic or social origin, philosophical, political or other opinion, wealth or other social status, and without granting any privilege to anyone".

278. It was further stated in Article 3 of the above-mentioned law that "The main goal that is sought by the execution of penalties and security measures is primarily to achieve prevention, with this aim, to strengthen factors which prevent the convict from committing an offence again,

to protect the society against crime, to promote the resocialisation of the convict and to facilitate his adaptation to a productive and responsible life, respecting the laws, regulations and rules of conduct."

279. Judicial investigation can be carried out directly (an investigation permit is not required as it is with other civil servants) against the personnel working at penal institutions. Actions of the said personnel constituting crimes are not tolerated, those proven guilty of the offence are punished by independent courts as well as by the administration in terms of disciplinary tribunals.

280. Furthermore, all legal amendments in Turkey are introduced in order to prevent torture within the framework of the "zero tolerance for torture" policy. According to this policy, penal institutions are supervised by non-governmental organizations, the Parliament and other national/international inspection mechanisms periodically and when needed.

281. Within the context of administrative supervision, penal institutions are supervised by the inspectors of the Ministry of Justice, and of Directorate General of Prisons and Detention Houses, Chief Public Prosecutor and public prosecutors in charge of penal institutions. Efforts on overcoming impediments detected during these supervision visits are coordinated by the Directorate General of Prisons and Detention Houses.

282. Within the context of judicial supervision, the decisions of the institution administration is supervised by judges of execution (infaz hakimi), introduced with the "Law on Prison Enforcement Judges" No. 4675 dated 16.05.2001. The convicts and detainees are able to submit petitions regarding the execution of punishment and living conditions in the institution to the judge of execution, and they can appeal against the decision of the judge of execution before the assize court. Therefore, all proceedings and actions within institutions are subject to judicial oversight.

283. In Turkey, within the context of the supervision of penal institutions by independent foundations, Law No: 4681 on Monitoring Boards for Penal Institutions and Detention Houses and Regulation No: 24486 on Monitoring Boards for Penal Institutions and Detention Houses of 07.08.2001 were enacted. 730 members are currently working in 146 monitoring boards within the context of the aforementioned law and regulation.

284. According to the aforementioned law and regulation, monitoring boards can visit the relevant penal institution (as long as it is at least every two months) whenever they deem it necessary. They prepare a report at least every four months based on their observations and information they obtained during these visits and forward a copy of the report to the Ministry of Justice, Human Rights Investigation Commission of the Grand National Assembly of Turkey (GNAT), Chief Public Prosecutor's Office of the district where the monitoring board carries out its duties, and to the judge of execution (in the event that there is a petition within his scope of duty.)

285. Provided that issues with regard to the security of the penitentiary is exempted, Ministry of Justice publishes a report on the observations made by the previous year's monitoring boards, explaining the measures taken to address the issues they had pointed out, proposals that had not been put to practice and their justifications.

286. Furthermore, human rights councils of the provinces and districts composed of representatives from non-governmental organizations can also carry out visits to penal institutions.

287. The Ombudsman Institution and Human Rights and Equality Institution of Turkey (having independent audit authority within the context of OPCAT) can also make ad hoc visits (without any permission) upon the complaints raised about the penal institutions.

288. The chairmen and members of the Human Rights Investigation Commission of the GNAT or Committee of Parliamentary Investigation can visit, investigate and supervise the penal institution within the scope of parliamentary inspection.

289. Security measures are taken by the institution during those visits. Meetings with the convicts and detainees are held in the presence of the officials of the institution. However, members of the Committee on Human Rights, Monitoring Boards, judge of execution, probation personnel and delegations and persons authorized by law can hold private meetings with convicts and detainees.

290. Collective meetings cannot be held with the convicts and detainees who are not allowed

to see each other due to security reasons. Visits and meetings can be postponed upon extraordinary incidents such as natural disasters, fire, and revolts even if permitted beforehand.

291. As soon as they start working, inspectors who are in charge in penal institutions receive an applied training of three years on preventing violations of human rights of the convicts and detainees, and on the compliance of the living conditions in the institutions with the minimum standards along with their training on the relevant legislation. Moreover, these issues are also discussed in detail during the meetings with the inspectors and the personnel of the penal institutions each year.

292. Besides, Turkish penal institutions can be inspected by the international mechanisms such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Commissioner for Human Rights of the Council of Europe, and the UN Working Group for Arbitrary Detention (WGAD) under UN Optional Protocol to the Convention against Torture (OPCAT).

293. Conditions of the penal institutions in Turkey are in line with international standards. Temporary overcrowdedness in some of the institutions is a result of the high number of people convicted or detained after the 15 July Coup Attempt. It was only revealed as the investigations unfolded, how extensively FETÖ/PDY armed terrorist organization have infiltrated the bureaucracy, the judiciary, and the academy. This led to an unforeseeable amount of people being arrested or convicted. As the SoE has ended as from 19 July 2018, it is expected that there will be improvements regarding the conditions as well as the measures taken.

294. Convicts and detainees enjoy the right to medical assistance. Within this scope, they are referred to hospitals in the province; if there is no treatment opportunity in the province then they are referred to relevant departments of hospitals and university hospitals in other provinces. Furthermore, institution's physician or the doctor working in the clinic or hospital decides in which field of specialization the convict or detainee should be examined and treated, the administration of the institution does not have any authority in this regard.

295. All necessary medical examinations and treatments of all convicts and detainees are carefully carried out.

V. CONCLUSION

296. In light of the explanations provided above, it is believed that the present complaints should be dismissed for procedural reasons.

297. Regarding the substance of the communications, it is believed that the International Covenant on Civil and Political Rights has not been violated.