



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

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The Permanent Mission of the Republic of Türkiye to the United Nations Office in 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 Communication from Special Procedures dated 21 June 2024 (AL TUR 3/2024), has the honour to enclose herewith the information note provided by relevant Turkish authorities.

The Permanent Mission of the Republic of Türkiye 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 May 2025



Encl: As stated.

Office of the High Commissioner for Human Rights
Palais Wilson
Rue des Pâquis 52
1201 Geneva

**INFORMATION NOTE IN REPLY TO THE COMMUNICATION FROM THE
SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS
DATED 21 JUNE 2024 (AL TUR 3/2024)**

1. With reference to the letter of the Special Rapporteur on the Independence of Judges and Lawyers dated 21 June 2024, the Government would like to submit its observations hereinbelow.

I. OVERVIEW

2. At the outset, the Government would like to recall that in its several responses submitted to the Special Rapporteur (See, information notes in reply to AL/TUR/5/2017, AL/TUR/7/2018, AL TUR 10/2019 and OL TUR 15/2020), detailed information was provided regarding the terrorist threats faced by Türkiye, in particular the grave nature of the threat posed by the Fethullah Terrorist Organization (FETÖ), measures taken against FETÖ and other terrorist organizations in Türkiye, safeguards implemented towards ensuring independence and impartiality of judges.

3. The Government would also like to share its observations that the claims put forward regarding issues such as fair trial and independence of judges in the recent communications concerning FETÖ members, are often systematically repeated without legal basis and substance despite Türkiye's absolute fulfilment of its obligations under international human rights law and its respect to fundamental principles of law.

On the other hand, similar complaints raised before the European Court of Human Rights (ECtHR) have been dismissed by the ECtHR. For instance, in the judgment of *Hakan Baş v. Türkiye* (no. 66448/17, 3 March 2020), the ECtHR found the applicant's allegation that magistrate's judges lacked independence and impartiality to be manifestly ill-founded and therefore declared the complaint inadmissible. Similarly, in the judgment of *Bahaettin Uzan v. Türkiye* (no. 30836/07, 24 November 2020), the ECtHR examined the applicant's claims concerning the lack of independence and impartiality of the judiciary. It emphasized that the judges who examined the applicant's case had been appointed through the same procedures as all other judges in our country at the time by the High Council of Judges and Prosecutors (as it

was then known). The ECtHR noted that these judges held the same status as other judges serving in criminal courts of first instance and were subject to the same constitutional safeguards and procedural rights regarding appointment, promotion, and dismissal. Consequently, the ECtHR concluded that there had been no violation of the applicant's right to a fair trial.

4. Finally, the Government would like to raise its concerns about the politically motivated nature of the alleged claims put forward in the recent communications concerning FETÖ members, suggesting that the sources of these communications are pursuing political purposes rather than defending human rights.

5. Even before the attempted coup, FETÖ was known to employ complex strategies to advance its agenda. These included blackmailing politicians and bureaucrats, cheating on a mass-scale in public exams in order to place its members in key government posts, practicing social engineering, manipulation and indoctrination, presenting fabricated stories to spark off judicial proceedings against its opponents through its extensive network of media outlets, businesses, schools and NGOs.

6. FETÖ is now employing the strategy of presenting itself as the victim of human rights violations to hide its own crimes. Its members deliberately try to deceive and manipulate international public opinion by spreading false allegations against Türkiye. These include unfounded claims of arbitrary arrest and detention, torture and even enforced disappearances while its members go in hiding at the orders of their leader. In fact, it is FETÖ itself that perpetrated grave human rights violations in Türkiye, including cold bloodedly killing innocent civilians thus violating the very fundamental right to life of hundreds of Turkish citizens.

7. Türkiye will continue to expand human rights and freedoms and maintain its long-standing cooperation with international organizations.

8. According to the explanations provided above, Türkiye requests the Special Procedures not to allow FETÖ and its members to abuse these mechanisms and to dismiss their allegations. Nevertheless, in line with spirit of cooperation with UN Special Procedures, the Government provides the following information in reply to the communication sent by the Special Rapporteur.

i) Context in the Turkish Judiciary after 2016

9. The Republic of Türkiye, which is a founding member of the UN and also of the Council of Europe since 1950, is a democratic state governed by the rule of law that respects human rights, especially in line with its obligations arising from international conventions to which it is a party.

10. Pursuant to Article 90 of the Constitution of Türkiye, in the event that international agreements in relation to the fundamental rights and freedoms contradict with national legislation, international conventions shall prevail. Being aware of its international obligations, the Republic of Türkiye fulfils all its responsibilities concerning the protection of fundamental rights and freedom by taking measures provided by the law and democracy.

11. Article 9 of the Constitution explicitly stipulates that judicial power shall be exercised by independent and impartial courts, and Article 146 of Part II of Chapter 3 entitled “Judicial Power” includes the Constitutional Court among the supreme courts.

12. According to Article 138 of the Constitution,

“Judges shall be independent in the discharge of their duties; they shall render judgments in line with their conscientious conclusion in accordance with the Constitution, laws, and legal system. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. No questions shall be asked, debates held, or statements made in the Legislative Assembly with respect to the exercise of judicial power concerning a case under trial. Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.”

As a continuation of the relevant constitutional provision, the independence and impartiality of judges is further guaranteed by Article 4 of Law No. 2802 on Judges and Prosecutors at the statutory level, which states the following:

“Judges shall perform their duties in accordance with the principles of the independence of the courts and the security of tenure of judges. No organ, authority, office, or individual may give orders or instructions to courts or judges in the exercise of judicial power, nor send circulars, nor make recommendations or suggestions.”

“Judges shall be independent in the discharge of their duties; they shall deliver judgments in accordance with the Constitution, laws, and their conscientious convictions based on the law.”

13. Article 139 of the Constitution states that

“Judges and public prosecutors shall not be removed from office or compelled to retire without their consent before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or post. Exceptions indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties because of ill health, or those determined as unsuitable to remain in the profession, are reserved.”

14. As a continuation of the legal guarantees, *“Attempting to influence a judicial officer, expert or witness”* is regulated as a separate offence in the Turkish Criminal Code (Law no. 5237):

“Article 277 - (1) Any person who unlawfully attempts to influence judicial officer, an expert or a witness to make a decision or to take an action or to make a statement that will result in favour of or against one of the parties to the case, or the offenders, or those participating in the action, or the victim, shall be sentenced to imprisonment from two years to four years and the punishment to be imposed shall be from six months to two years if the attempt is no more than favouritism. (2) In the event that the act constituting the offence in the first paragraph also constitutes another offence, the sentence to be imposed according to the provisions of the conceptual aggregation shall be increased up to half.”

15. Council of Judges and Prosecutors (CJP) has issued a “Declaration of Ethics for Turkish Judiciary” in 6 March 2019, determining the fundamental principles by which judges and prosecutors must carry out their duty. The Declaration defines the code of conduct for judges and prosecutors and draws attention both to the importance of independence and impartiality as well as to the importance of being regarded as such. CJP monitors and ensures that the code of conduct is respected by judges and prosecutors. The Council is also the guarantor that judges and prosecutors deliver judgments impartially and independently according to their conscience.

16. Türkiye aims to further strengthen the independence, impartiality and transparency of the judiciary. In this respect, the Judicial Reform Strategy which was made public on 30 May 2019, has set out an objective regarding geographical guarantee for judges and prosecutors that prohibits their transfer without their will in certain conditions. This strategy also includes new remedies that extend the rights of judges and prosecutors regarding discipline procedures. This matter was later included and further strengthened in the 2024–2028 Strategic Plan of the Council of Judges and Prosecutors.

17. In the aftermath of the attempted coup, in the interest of public welfare and in order to restore trust, it has been deemed necessary to remove from the judicial system those individuals, who had infiltrated the state structure, had lost their impartiality and, consequently, were no

longer capable of fulfilling their professional duties in an appropriate manner due to their affiliation with FETÖ.

The assertion that the measures that have been taken have created a so-called “climate of fear” does not reflect reality. Judges and prosecutors who performed their duties in accordance with constitutional principles have not experienced such fear.

18. It should be noted that, the recruitment of young judges and prosecutors has been and continues to be a part of our traditional practice. In the framework of our current legislation for admission to the profession, while an upper age limit is prescribed, there exists no lower age threshold, however there is a maximum age limit. According to the said regulation, a person must not have reached the age of 35 at the time of application to enter the profession.

In our longstanding practice, young, recently graduated, and dynamic law graduates are incorporated into to the profession following a rigorous three-year training period. In this manner, the professional competence of the young members of the judiciary is continuously developed through structured in-service training programs and institutional support. Hence, the recruitment of younger professionals is not a novel approach and should be interpreted within this established context.

19. In terms of ensuring judicial independence, the Constitution and related legislation incorporate provisions that align with international standards, including the following:

- Judicial independence and the guarantee of judgeship and prosecutorship is safeguarded at both constitutional and statutory levels.
- The fundamental principles concerning the profession of judgeship and prosecutorship are regulated under the Constitution which explicitly stipulates that all matters related to appointment, discipline and promotion shall be regulated by law in accordance with the principles of the independence of courts and the guarantee of judgeship.
- The principle of open court hearings and the requirement for reasoned judgments are constitutionally mandated.
- The establishment, jurisdiction, powers, functioning and procedural rules of the courts are prescribed by law.
- Certain actions that may interfere with the judicial independence are defined as criminal offenses under Article 277 of the Turkish Penal Code.

- In the judicial institutions, case assignment is carried out through an automatic system (UYAP), thereby no human intervention is included.

When the aforementioned considerations are evaluated collectively, it is concluded that the existing legal framework provides adequate guarantees for safeguarding judicial independence and impartiality, and that no significant deficiencies have been observed in the practical implementation thereof.

20. In light of the explanations provided above, it is clear that CJP continues to be the primary guarantor of the independence and impartiality of all judges and prosecutors in Türkiye. Therefore, the Government argues that the allegations asserted in the communication sent by the Special Rapporteur regarding the lack of independence and impartiality of the Turkish judiciary are unsubstantiated.

ii) The situation of the Council of Judges and Prosecutors (CJP)

21. With the Constitutional amendment regarding the organization and the structure of the High Council of Judges and Prosecutors (HCJP) made in 2010, the system was revised in such a way that the vast majority of its members were to be elected by judges and prosecutors serving in first instance courts. This situation led to the emergence of competition and, thus, political, religious and ethnic sub-identities became visible which in turn resulted in the erosion of trust in the judiciary and damaged the working culture of the judiciary. The members of the Fethullahist Terrorist Organization (FETÖ) secretly seized the majority of the members of the HCJP by exploiting this system and FETÖ used the judiciary as a tool to seize all state organs. FETÖ, later on, perpetrated the bloody coup attempt on the night of 15 July 2016 that cost the lives of 251 Turkish citizens and left 2.194 persons injured.

22. The new structure of CJP was introduced with amendments to the Constitution after the Constitutional referendum held on 16 April 2017. The changes introduced by Law No. 6771 are related to the number of members as well as the methods of work and election of the CJP. The Council is composed of the Minister of Justice, the Deputy Minister of Justice, four members appointed by the President of the Republic, and seven members elected by the Grand National Assembly of Türkiye.

23. The aim of these amendments was to prevent the judiciary from being politicized, to prevent its re-seizure by unlawful/terrorist organizations with ulterior motives and to increase

the effectiveness of the Parliament in the selection of members of CJP in line with the recommendation of the Venice Commission in 2010.

24. The said constitutional amendment maintained the provision of the Constitution which ensures that CJP exercises its functions in accordance with the principles of independence of the courts and security of the tenure of judges.

25. Similarly, the Council's inspectors continue to be in charge of supervising whether the judges and public prosecutors perform their duties in accordance with law, investigating whether they have committed offences in connection with, or in the course of their duties, whether their behaviour and conduct are in conformity with the requirement of their status and duties.

26. These changes did not cause any amendments that may undermine CJP's independence from the legislative or executive branches of the Government. No changes were made regarding the duties and powers of the institution or to its organizational structure apart from the decrease (from three to two) in the number of its chambers.

27. As a result of the said amendment, the number of members of CJP decreased from 22 to 13. According to Article 159 of the Constitution, 7 out of 13 members of CJP are elected by the Parliament, as well as the Minister of Justice and the Deputy Minister.

28. Accordingly, the Parliament is entitled to select 3 members from the Court of Cassation, 1 member from the Council of State and 3 members among academics and lawyers. It should be stressed that members of the Court of Cassation and the Council of State apply on their initiative to the Parliament in order to stand for election as members of CJP. Thus, the Parliament elects the members of CJP among these candidates.

29. Regarding the remaining 4 members of CJP, 3 of them are selected among judges and prosecutors in civil and criminal jurisdictions and 1 member is selected among administrative judges and prosecutors by the President of the Republic. The fact that the President of the Republic can select a limited number of members of CJP does not affect the independence of the judiciary. Similar practices exist also in other democratic countries.

30. Consequently, 9 out of 13 members (i.e. more than 2/3) of CJP are judges and prosecutors by profession, a ratio higher than of many European Union and Council of Europe member states.

31. The increase of the role of the Parliament regarding the selection process is in line with European standards and, especially, with the recommendation of the Venice Commission in 2010.

32. The President of CJP is the Minister of Justice. However, this duty is, to a large extent, a symbolic duty. Both the Constitution and Law No. 6087 on the Council of Judges and Prosecutors maintained the provisions which state that the Minister of Justice, in his capacity of the President of the Council, cannot participate Chamber Meetings and meetings of the Plenary Session related to disciplinary proceedings.

33. It is also important to stress that the ministers of justice serve as the president of equivalent institutions in a number of European Union and Council of Europe member states.

34. Regarding the dismissals of judges and prosecutors, it should be noted that The European Court of Human Rights declared Çatal v. Türkiye application (Application no: 2873/17, Judgement date: 07.03.2017) inadmissible on the grounds that the applicant did not exhaust the domestic remedies envisaged by law.

35. An analyse of the structures of the high judicial councils in the member states of the Council of Europe reveals different formations shaped by each country's unique legal framework, judicial traditions and institutional needs.

In our country, based on previous experiences with judicial councils and emerging necessities, the structure of the CJP was re-determined through a constitutional amendment adopted by a national referendum. Several points regarding the structure of the Council merit particular attention:

- The principles of judicial independence and impartiality are embedded in both constitutional and statutory provisions.
- The structure of the CJP has been shaped based on the legal experiences and national requirements.

- Members of the Council from judicial backgrounds are selected from among candidates with successful professional competence.
- Council members serve under the guarantees attributed to high judicial members throughout their term of office.
- Members elected by the Parliament are chosen through the consensus of all political parties.
- The structure of the Council aligns with international standards.
- The Council's composition was established through a public referendum.
- The powers of the Minister of Justice and the Deputy Minister are explicitly limited by legislation.
- The operational procedures of the Council are set out in detail in both primary and secondary legislation.

36. When the above-mentioned aspects of the CJP's composition and functioning are considered collectively, it must be acknowledged that the CJP has been structured within the framework of the principles of independence and impartiality as enshrined in the Constitution and relevant laws. Therefore, the allegations suggesting that the CJP operates under the control of the executive power do not reflect the reality.

iii) Constitutional Court / Alleged reprisals and limits to the work of the Constitutional Court in individual complaints

37. The Constitutional Court was established by the 1961 Constitution.

38. According to Article 146 of the Constitution concerning the Constitutional Court:

“The Constitutional Court shall be composed of fifteen members. The Grand National Assembly of Türkiye shall elect, by secret ballot, two members from among three candidates to be nominated by and from among the president and members of the Court of Accounts, for each vacant position, and one member from among three candidates nominated by the heads of the bar associations from among self-employed lawyers. In this election to be held in the Grand National Assembly of Türkiye, for each vacant position, two thirds majority of the total number of members shall be required for the first ballot, and absolute majority of total number of members shall be required for the second ballot. If an absolute majority cannot be obtained in the second ballot, a third ballot

shall be held between the two candidates who have received the greatest number of votes in the second ballot; the member who receives the greatest number of votes in the third ballot shall be elected.

The President of the Republic shall appoint three members from High Court of Appeals, two members from Council of State from among three candidates to be nominated, for each vacant 111 position, by their respective general assemblies, from among their presidents and members; three members, at least two of whom being law graduates, from among three candidates to be nominated for each vacant position by the Council of Higher Education from among members of the teaching staff who are not members of the Council, in the fields of law, economics and political sciences; four members from among high level executives, self-employed lawyers, first category judges and public prosecutors or rapporteurs of the Constitutional Court having served as rapporteur at least five years.

In the elections to be held in the respective general assemblies of the High Court of Appeals, Council of State, the Court of Accounts and the Council of Higher Education for nominating candidates for membership of the Constitutional Court, three persons obtaining the greatest number of votes shall be considered to be nominated for each vacant position. In the elections to be held for the three candidates nominated by the heads of bar associations from among self-employed lawyers, three persons obtaining the greatest number of votes shall be considered to be nominated. The phrase "... one member shall vote for only one candidate; ..." following the phrase "for each vacant position" in the first sentence of this paragraph before the amendments made by sixteenth Article of Act No. 6771, and the phrase "each head of bar shall vote for only one candidate, and ..." following the phrase "in the election to be held" in the second sentence of the same paragraph were annulled by the decision of the Constitutional Court dated July 7, 2010 numbered E. 2010/49, K. 2010/87 (Official Gazette numbered 27659 of August 1, 2010.)

To qualify for appointments as members of the Constitutional Court, members of the teaching staff shall be required to possess the title of professor or associate professor; lawyers shall be required to have practiced as a lawyer for at least twenty years; high level executives shall be required to have completed higher education and to have worked for at least twenty years in public service, and first category judges and public prosecutors with at least twenty years of work experience including their period of candidacy, provided that they all shall be over the age of forty five.

The Constitutional Court shall elect a president and two deputy presidents from among its members for a term of four years by secret ballot and by an absolute majority of the total number of its members. Those whose term of office ends may be re-elected.

The members of the Constitutional Court shall not assume other official and private duties, apart from their fundamental duties."

39. According to Article 147, titled "Term of office of the members and termination of membership", of the Constitution,

“The members of the Constitutional Court shall be elected for a term of twelve years. A member shall not be re-elected. The members of the Constitutional Court shall retire when they are over the age of sixty-five. The appointment of the members to another office, whose term of office expires prior to their mandatory age of retirement, and matters regarding their personnel status shall be laid down in law.

Membership in the Constitutional Court shall terminate automatically if a member is convicted of an offence requiring his/her dismissal from the judicial profession, and by a decision of an absolute majority of the total number of members of the Constitutional Court if it is definitely established that he/she is unable to perform his/her duties on account of ill-health.”

40. Pursuant to Article 148 of the Constitution and the Law no. 6216 on Establishment and Rules of Procedures of the Constitutional Court, the Constitutional Court has three main duties; review of constitutionality, examining individual applications and conducting proceedings in its capacity as the Supreme Criminal Tribunal.

41. Within the scope of review of constitutionality, the Constitutional Court examines the constitutionality, in respect of both form and content, of laws, presidential decrees and the Rules of Procedure of the Grand National Assembly of Türkiye and also the constitutional amendments in terms of form.

42. Moreover, the Constitutional Court decides on individual applications which have been lodged with the allegation that one of the constitutional rights and freedoms within the scope of the European Convention on Human Rights has been violated by public authorities, provided that relevant domestic remedies are exhausted.

43. Examination of the individual applications falls within the scope of duties of the Sections and Commissions and yet the General Assembly eliminates the discrepancies between the decisions rendered by the Sections with respect to individual applications and decides on the matters referred by the Sections to the General Assembly.

44. The last paragraph of Article 153 of the Constitution envisages that the decisions of the Constitutional Court shall be immediately published on the Official Gazette, and executive, legislative and judicial organs, administrative authorities and legal persons shall be bound by them, and the decisions shall be implemented effectively.

45. Within the scope of the principle of subsidiarity as one of the fundamental principles of international human rights law, our country introduced the remedy of individual application

with the Constitutional Court, which is an innovation that could be regarded as the turning point in protecting and improving human rights.

46. With the constitutional amendment and entry into force of the Law no. 6216 on the Establishment and Rules of Procedures of the Constitutional Court, the remedy of individual application became available as of 24 September 2012.

47. According to Article 148 of the Constitution, “Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights which are guaranteed by the Constitution has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted. In the individual application, judicial review shall not be made on matters requires to be taken into account during the process of legal remedies. Procedures and principles concerning the individual application shall be regulated by law.”

48. Pursuant to Article 46 of the Law no. 6216, anyone may apply to the Constitutional Court if they consider that their fundamental rights and freedoms as guaranteed by the Constitution, the European Convention on Human Rights and its Protocols, to which Türkiye is a party, have been violated by public authorities.

49. When an individual application meets the criteria for admissibility and the Constitutional Court finds a violation of a fundamental right or freedom after the examination into the individual application, it decides on the steps to be taken to eliminate the violation and its consequences.

50. In this scope, if it is determined that the violation has stemmed from a court decision; i) it shall send the file to the relevant court for retrial in order to eliminate the violation and its consequences. The relevant court shall conduct a retrial in such a way as to eliminate the violation and its consequences as explained in the decision finding violation and it shall urgently deliver a decision on the basis of the file, if possible. ii) Where it is decided at the end of the examination carried out that a right of the applicant has been violated, an adequate compensation may be awarded to the applicant if there is no legal interest in holding a retrial. iii) In the event that the determination of the compensation amount requires a more detailed examination, it may offer the remedy of filing a case before the general courts without concluding the matter itself.

51. Between 31 December 2024 and 23 September 2012, when the remedy of individual application with the Constitutional Court become available, 650.453 individual applications have been lodged and 551.913 of them have been concluded.

52. 456.476 of the finalized files were inadmissible (non-exhaustion of ordinary legal remedies, lack of victim status etc.); 13.750 files were rejected on administrative grounds (failure to comply with the procedural conditions for the application or failure to file the application on time); violations were found in 78.003 files; 2.180 files were dismissed on grounds such as being struck out of list, being closed, being repetitive, failure to correct in time the deficiencies identified with regard to application, etc; no violation of rights was found regarding 1.504 files.

53. Within the scope of statistical data given above, it is observed that in 78.003 of the 79.507 (% 98.1) applications, that the Constitutional Court decide to examine on the merits, it found violations and it is understood that the remedy of individual application lodged with the Constitutional Court is an effective remedy.

54. On the other hand, after the coup attempt of July 15, the Constitutional Court found violations of rights in cases of [REDACTED] and similar cases and decided that violations shall be terminated by the national authorities.

55. Again, in another application, the Constitutional Court decided that the right to liberty and security of the applicant, who was detained for the offence of aiding FETÖ/PDY armed terrorist organisation, was violated (see, [REDACTED], 21 January 2021).

56. Moreover, it is known that the Constitutional Court has rendered judgments where it has found violations as to the right to liberty and security in the context of terrorism related offences [REDACTED]
[REDACTED]
[REDACTED]

57. Accordingly, it is clearly understood from the above-mentioned statistics and sample decisions that the Constitutional Court fulfils the duty of examining individual applications as an effective domestic remedy.

58. Within the scope of the explanations given above; it is considered that the Constitutional Court operates independently and impartially, that the remedy of individual application is effective and that the decisions of the Constitutional Court are implemented duly by the instance courts. In addition, the compensation awarded by the Constitutional Court is executed accordingly.

59. Indeed, there exists no institutional or systemic crisis as regards to the compliance with the judgments of the Constitutional Court. The Office of Secretary General of the Court is in charge of following-up on the implementation of its judgments. Out of 75.089 violation judgments as of 30.9.2024, only 56 judgments of the Court were not implemented. This includes prolonging procedures due to technical grounds and the Court closely oversees such cases. Accordingly, 99.9% of the judgments were properly implemented and the rest is subject to follow-up. Within the scope of the principle of subsidiarity, the ssssECtHR, whose judicial jurisdiction is acknowledged by 46 European Countries, clearly declared the Constitutional Court as an independent and impartial supreme court, and as an effective domestic remedy, that should be exhausted for the applications concerning the allegations of violations of various articles of the European Convention on Human Rights, in many cases, [REDACTED]

[REDACTED]

60. The ECtHR made the following findings in the above-mentioned [REDACTED] decision, where it declared the application inadmissible due to failure to exhaust domestic remedies -because the applicant did not initiate proceedings before the administrative courts and did not lodge an individual application before the Constitutional Court: *“The Court reiterates that those seeking to bring their case against the State before the Court should exhaust first the remedies provided by the national legal system*

[REDACTED]

[REDACTED]
[REDACTED]”.

61. The ECtHR stresses in this regard that a remedy must offer reasonable prospects of success in order to be considered effective and that there is no obligation to have recourse to remedies which are inadequate or ineffective ([REDACTED]).

However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress. In so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be exhausted ([REDACTED]).

62. The ECtHR further notes that as of 23 September 2012, the individual application remedy before the Turkish Constitutional Court was introduced. Examining the main aspects of the new remedy before the Constitutional Court, the Court held that the Grand National Assembly of Türkiye granted the Constitutional Court the powers to enable the said court to provide, in principle, direct and prompt compensation for violations of the rights and freedoms protected by the Convention in respect of all decisions that became final after 23 September 2012, and it emphasized that the remedy in question is a remedy that should be exhausted (*See*, [REDACTED]).

63. On the other hand, the UN Human Rights Committee emphasized in its decisions that applicants must exercise due diligence in the pursuit of available remedies and that mere doubts or assumptions about their effectiveness do not absolve the applicants from exhausting them ([REDACTED]).

iv) Alleged lack of fair trial guarantees in the Bylock prosecutions – terrorism related crimes / Alleged concerns about the use of electronic evidence

64. ByLock application, an encrypted system was created for exclusive use by members of the FETÖ armed terrorist organization under the guise of a regular mobile phone application.

65. It is beyond question that, from the outset, members of the FETÖ armed terrorist organization utilized the application in order to disguise themselves and to ensure communication within the terrorist organization. The National Intelligence Organization obtained the data of ByLock through a server which does not belong to any user. In light of this data, the users of the application were revealed. ByLock data was not obtained from the persons concerned or their computer and computer programs belong to them. ByLock data does not contain any personal information of the users, but it contains the information regarding the usernames and IDs which the persons use the application and IP with that the user connects to the ByLock server.

66. In this regard, the Government would like to underline that the investigations and prosecutions concerning FETÖ members were not initiated simply due to an act of communication. It was rather on account of the utilization of an application that was clearly and unquestionably used for the sole purposes of the FETÖ armed terrorist organization.

67. Within the context of usage of ByLock application as an evidence in criminal proceedings, the decision of 16th Criminal Chamber of the Court of Cassation dated 04/07/2018 and Case No: 2018/1489, Decision No: 2018/2254 reads as follows:

“At the end of the trial; considering the fact that the defendant downloaded and used the ByLock program with the line number 0505...95, Bank Asya account movements, SSI record and association membership, it was decided to sentence the defendant for the crime of membership of the FETÖ/PDY armed terrorist organization (...)”

68. Furthermore, the decision of the Criminal General Assembly of the Court of Cassation as the first instance court, dated 24.04.2017, Case No: 2015/3, Decision No: 2017/3 as follows:

“(...) Since the ByLock communication system is a network created for the use of members of the FETÖ armed terrorist organization and used exclusively by some members of this criminal organization; considering that it is accepted that if it is determined with technical data that will lead to a definite conclusion, free from any doubt, that the person is included in this network with the instruction of the organization and that it is used for communication purposes to ensure confidentiality, it will be evidence showing the person's connection with the organization (...)”

69. The Government would like to emphasize that each case is evaluated by independent and impartial Turkish Courts in the light of its unique characteristics and evidences.

70. In the judgment of [REDACTED], the ECtHR examined the conviction of the applicant, who was accused of membership of the FETÖ armed terrorist organisation, under Article 314/2 of the Turkish Penal Code within the principle of *nullum crimen sine lege*.

The ECtHR acknowledged that the offence of which the applicant had been convicted had a basis at the time it had been committed under the relevant national law; and that the said offence was defined with sufficient clarity to satisfy the requirement of foreseeability which would enable the applicant to regulate his conduct within the meaning of Article 7 of the European Convention on Human Rights. The ECtHR further considered that the interpretation of the provision of Article 314/2 of the Turkish Penal Code adopted by the domestic courts was not extensive and that it led in the instant case to a result which was consistent with the substance of the offence and could be regarded as reasonably foreseeable. It therefore held that there had been no violation of the principle of *nullum crimen, nulla poena sine lege* guaranteed under Article 7 of the European Convention on Human Rights.

The ECtHR also established that the national courts had conducted a fair trial in respect of the applicant in accordance with the right to a fair trial and had respected the applicant's right to defence, that it was for the domestic courts to interpret criminal law; and therefore, it was for the domestic courts to decide on the applicant's individual criminal responsibility.

v) *Alleged attacks against lawyers and Bar associations*

71. According to Article 90 of the Turkish Criminal Procedure Code, the officers of the law enforcement officers shall inform the individual apprehended promptly about her/his legal rights, after taking measures to prevent from escaping, and harming herself /himself and others.

72. Pursuant to Article 130 of the Turkish Criminal Procedure Code and Article 58 of Attorneys' Law:

“Article 130 - (1) Lawyers' offices may be searched only with a court order and under the supervision of the public prosecutor in relation to the incident specified in the order. The president of the Bar Association or a lawyer representing him shall be present during the search”

“Article 58- Investigations against lawyers for offenses arising out of or committed in the course of their duties as lawyers or as members of the bodies of the Union of Turkish Bar Associations or bar associations shall be

conducted by the public prosecutor in the place where the offense was committed upon the permission of the Ministry of Justice. Lawyers' offices and residences may be searched only with a court order and in relation to the incident specified in the order, under the supervision of the public prosecutor and with the participation of the representative of the registered bar association. A lawyer may not be searched except in the case of an offense falling within the jurisdiction of a heavy criminal court.”

73. However, Article 58 of the Attorneys' Law regulates the search of lawyer residences, and the exceptional rules regarding the search are limited to crimes allegedly committed by lawyers arising out of or in the course of their duties. In other words, if the offense under investigation is not related to the suspect's profession as a lawyer, the search is conducted in accordance with the general search procedures envisaged in the Criminal Procedure Code.

74. During the investigation phase, the defense counsel may examine the contents of the file and obtain a copy of the documents he/she requests free of charge. According to Article 153 of Turkish Criminal Procedure Code:

“Article 153 - (...) (2) Authorization of counsel to examine the contents of the file or to take samples from documents, upon the request of the public prosecutor if it may jeopardize the purpose of the investigation may be restricted by a judge's decision. This decision may only be taken in connection with the following offenses can be given in investigations:

a) In the Turkish Criminal Code dated 26/9/2004 and numbered 5237;

1. Intentional killing (articles 81, 82, 83),
2. Sexual assault (except first paragraph, Article 102),
3. Sexual abuse of children (Article 103),
4. Manufacture and trafficking in narcotic drugs or stimulants (Article 188),
5. Establishing an organization with the intent to commit a crime (Article 220),
6. Crimes against the Security of the State (Articles 302, 303, 304, 307, 308),
7. Crimes against the Constitutional Order and its Functioning (Articles 309, 310, 311, 312, 313, 314, 315, 316),
8. Crimes against State Secrets and Espionage (Articles 326, 327, 328, 329, 330, 331, 333, 334, 335, 336, 337).

b) Firearms, Knives and Other Instruments dated 10/7/1953 and numbered 6136 arms smuggling (Article 12) offenses defined in the Law on Arms Smuggling.

c) Article 160 of the Banking Law dated 19/10/2005 and numbered 5411 defined embezzlement offense.

d) Offenses defined in the Anti-Smuggling Law dated 21/3/2007 and numbered 5607.

(3) The minutes containing the statement of the captured person or suspect and expert reports and minutes of other judicial proceedings in which the named persons are authorized to be present the provision of the second paragraph shall not apply.

(4) The counsel shall be entitled to file the case file as of the date the indictment is accepted by the court contents and preserved evidence; may examine all minutes and documents copies thereof free of charge.”

75. Turkish Criminal Procedure Code regulates prohibited procedures in interrogation:

“Article 148 - (1) The statement of the suspect and the accused shall be based on his free will. No physical or mental interventions such as ill-treatment, torture, medication, fatigue, deception, force or threats, or the use of certain means may be used to prevent this.

(2) No illegal benefit may be promised.

(3) Statements obtained through prohibited procedures cannot be considered as evidence even if they are given with consent.”

76. Per Turkish legislation, arrest is subject to the principle of *nulla poena sine lege*. Therefore, no person can be arrested unless the conditions envisaged in law are complied. Article 100 of Turkish Criminal Procedure Code which stipulates reasons for arrest is as follows:

“Article 100 - (1) An arrest warrant may be issued for a suspect or accused if there are grounds for concrete evidence indicating the existence of a strong suspicion of a crime and a reason for arrest. In case of the importance of the case is not proportionate to the punishment or security measure expected to be imposed, an arrest warrant cannot be issued.

(2) A reason for arrest may be deemed to exist in the following cases

a) If there are concrete facts that raise the suspicion of the suspect or accused is fleeing, hiding or will flee.

b) If the behaviour of the suspect or accused constitutes strong suspicion on;

1. Destruction, concealment or alteration of the evidence,

2. Attempting to exert pressure on witnesses, victims or others,

(3) Reasons for arrest may be deemed to exist if strong suspicion that the following offenses have been committed based on concrete evidence:

(...)

h) The offenses specified in the third paragraph of Article 7 of the Anti-Terrorism Law No. 3713 dated 12/4/1991 (...)”

vi) Pending investigations and alleged lawsuits against lawyers and human rights defenders

77. Per decision, 16th Criminal Chamber of the Court of Cassation dated 26.10.2017, Case No: 2017/1809, Decision No: 2017/5155:

“In order for the crime of membership in an armed organization to occur, it is required to establish an organic bond with the organization and, as a rule, to have actions and activities

that require continuity, diversity and intensity. However, perpetrators of crimes that can only be committed by members of the organization, even if they do not have the characteristics of continuity, diversity and intensity due to their nature, the way they are committed, the severity of the damage and danger caused, and their contribution to the purpose and interests of the organization, should also be accepted as members of the organization.”

78. It is evident in the above jurisprudence that the Turkish judicial system examines the components of terrorism related crimes with due-diligence required in each specific case.

vii) Alleged concerns about due process guarantees

79. The fundamental principle of the right to defence is that the defendant has the right to freely choose her/his defence counsel and the defendant can efficiently exercise the powers granted to the right to defend the client.

80. In this respect, the right to defence is protected by Article 128 of the Turkish Penal Code, which is provided below:

“Immunity of claim and defense - Article 128- (1) No penalty shall be imposed if concrete allegations or negative evaluations are made against persons within the scope of written or oral applications, claims and defences made before judicial or administrative authorities. However, the allegations and evaluations must be based on real and concrete facts and must be related to the dispute.”

81. Furthermore, the authorities pay due attention and respect to the international instruments that originate the law of advocacy and also comply with them.