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of
EuroMed Rights - EMR
Human Rights Association – İHD
Citizens' Assembly – (h)Yd
Human Rights Joint Platform – İHOP

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Country under Review:
Turkey

CSO Recommendations on

Judicial Reform Strategy and Judicial Independence
National Human Rights Institute
Access to Justice and Redress

Vestergade 14-16, 2nd floor
1456 Copenhagen K, Denmark
information@euromedrights.org
www.euromedrights.org

Necatibey Caddesi No: 82/11–12
Kızılay - Ankara
ihd@ihd.org.tr
www.ihd.org.tr

Ağa Çırağı Sokak No: 7/3
Beyoğlu - İstanbul
www.hyd.org.tr
iletisim@hyd.org.tr

Tunus Caddesi. 87/8
Kavaklıdere - Ankara
www.ihop.org.tr
ihop@ihop.org.tr

EuroMed Rights was founded in January 1997 in response to the Barcelona Declaration of November 1995 and the establishment of the Euro-Mediterranean Partnership (EMP). It is the coordinating body of about 80 human rights organisations and institutions as well as individuals from over 30 countries. EuroMed Rights' organisational structure is built on a General Assembly, an Executive Committee, Working Groups and a Secretariat. EuroMed Rights' head office is situated in Copenhagen. The organisation also has offices in Brussels and Tunis. For further information, visit our website at www.euromedrights.org

Human Rights Association (İnsan Hakları Derneği / İHD) was founded on 17 July 1986 by 98 human rights defenders, today has 26 branches, 10 representative offices, and around 8,000 members and activists. İHD is the oldest and largest human rights organization in Turkey and its sole and specific goal is to promote "human rights and freedoms." İHD works to protect the right to life, to find forcibly disappeared persons, and to prevent executions. İHD issues special reports on various human rights issues including annual reports on human rights violations in Turkey. These include but are not limited to freedom of speech, the legal system, impunity, enforced disappearances, murders by unknown assailants, extrajudicial executions, and torture & ill-treatment. İHD founded and is a member of the Human Rights Joint Platform (İHOP) in Turkey, while it also founded the Human Rights Foundation of Turkey (HRFT) with a group of physicians in 1990.

Citizens' Assembly - (h)Yd (formerly Helsinki Citizens' Assembly / hYd) is a civil society organization working on fundamental rights and freedoms, peace, democracy, and pluralism. The Helsinki Citizens' Assembly Turkey started its activities in 1990 in parallel with the initiative of the international Helsinki Citizens' Assembly and was established in Istanbul in 1993 as a non-governmental organization, recognized as an internationally operating organization by the Council of Ministers. Helsinki Citizens' Assembly was renamed as Citizens' Assembly with the decision of the General Assembly held in 2016.

İHOP is a network organisation formed by human rights organisations in Turkey in 2005. İHOP believes that the human rights movement in Turkey, consisting of individuals, groups and non-governmental organisations, plays an important role in the protection and promotion of human rights and fundamental freedoms and in the realisation of the rule of law in order for the state to fulfil its fundamental responsibility to protect and promote human rights and fundamental freedoms, to promote respect for human rights and fundamental freedoms and to promote these rights at national and international level, and to examine, research, determine, evaluate and form public opinion for the realisation of human rights and fundamental freedoms at legal and practical level. In this framework, IHOP has defined its mission as strengthening the capacity, co-operation and overall impact of the human rights movement in Turkey.

Contents

List of Abbreviations

ByLock	*Encrypted Messaging Application*
CHP	*Republican People's Party*
CoE	*Council of Europe*
CoM	*Committee of Ministers*
DEJ	*Department for the Execution of Judgments*
ECtHR	*European Court of Human Rights*
GANHRI	*Global Alliance of National Human Rights Institutions*
GRECO	*Council of Europe's Group of States Against Corruption*
HSK	*Council of Judges and Prosecutors*
MoJ	*Ministry of Justice*
SCA	*Accreditation Sub-Committee*
TBMM	*Grand National Assembly of Turkey*
TİHEK	*Turkish Human Rights and Equality Institution*
TPC	*Turkish Penal Code*

Scope of International Obligations and Cooperation with Human Rights Mechanisms

Situation since the 2020 Recommendations

1. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed by Turkey on 13 January 1999, was ratified on 26/4/2001, with the accompanying declarations and reservations. Although the declaration on Articles 76 and 77 of the Convention states that Turkey will recognise the competence of the "Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families" to be established to supervise the implementation of the Convention at a later date, no changes have been made regarding the declarations and reservations to the Convention.
2. Turkey signed the Optional Protocol to the Convention on the Rights of the Child on the Application Procedure on 24 September 2012. Law No. 6976 dated 9 March 2017 on ratification was published in the Official Gazette No. 30027 dated 3 April 2017. With the decision of the Council of Ministers dated 11 September 2017 and numbered 2017/10836, ratification of the Optional Protocol was approved, and the official Turkish translation of the Council of Ministers' decision and the Optional Protocol was published in the Official Gazette dated 7 December 2017 and numbered 30263. The instruments of ratification were deposited with the United Nations Secretary-General on 26 December 2017 and the Optional Protocol entered into force for Turkey on 26 March 2018. No application has been made so far to the Committee on the Rights of the Child since 2018.
3. Consideration of ratification of fundamental human rights treaties and conventions to which Turkey have not yet acceded. There have been no steps taken during 2020-2023 to sign and ratify the following treaties with following recommendations:

   - UN Convention for the Protection of Persons from Enforced Disappearance (45.3., 45.4. 45.9.)
   - Statute of the International Criminal Court (45.7., 45.8. 46.1.)
   - Optional Protocol to the Covenant on Economic, Social and Cultural Rights on the right to an individual application (45.5)
   - UNESCO Convention against Discrimination in Education (45.11.)
   - 1954 Convention relating to the Status of Stateless Persons
   - 1961 Convention on the Reduction of Statelessness (45. 12.)
   - CoE Framework Convention for the Protection of National Minorities
   - Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (45.13)
   - Additional Protocols to the Geneva Conventions (46.2.)

Negative developments

4. The decision to withdraw from Istanbul Convention with a decision taken by the President on 19 March 2021, without any public debate, was published in Official Gazette on 20 March 2021. Despite the protests of women's rights organisations, coalitions, women's rights commissions of bar associations, UN and CoE human rights mechanisms and demands to overturn the decision, the decision was not withdrawn. At the end of the three-month period following the notification to the CoE, Turkey officially withdrew from the Convention as of 1 July 2021.
5. Turkey, which is a party to the UN human rights treaties and many of their optional protocols, does not have a systematic policy of implementing the recommendations of their supervisory bodies. Although it

appears to prioritise the implementation of judgements of the ECtHR before the CoE, it persists in not implementing many critical judgements of violation.

6. Turkey does not share its reporting process to the UN and CoE human rights mechanisms with the public. It also does not translate or publish UPR recommendations, ECtHR action plans, or reports. This gap is not addressed by TİHEK or the Ombudsman, leaving human rights organisations like İHOP and some UN agencies to undertake unofficial translations and public sharing. TİHEK's annual reports lack information on UN treaty body recommendations or their implementation, except for participation in the 2020 UPR session. No related activities are mentioned in the 2021-2022 reports.
7. There are no references to the consideration of the recommendations of the treaty bodies in national action plans covering various aspects of human rights.

National Human Rights Framework

45.20 Continue to review legislation with regard to international human rights commitments (Bosnia and Herzegovina), 45.54 Review legislation and make necessary amendments to improve standards of rights and freedoms (Kuwait)

Constitutional and Legislative framework

8. The legislative work carried out in the 2020-2023 period has created a basis for enabling the violation of human rights rather than fulfilling human rights commitments. The Venice Commission of the CoE, which is authorised to issue opinions on legislative amendments, issued opinions on the following five legislative amendments in the period 2020-2023.[i] Similarly, the CoM of the CoE is calling for legislative adjustments in relation to several decisions currently under qualified monitoring.

Developments during the Period of 2020-2023

9. On 16 December 2020, the draft law on the Prevention of Financing the Proliferation of Weapons of Mass Destruction was submitted to the GNAT, approved on 27 December 2020 and entered into force on 31 December 2020. Restrictive regulations were made in two laws concerning associations (Law on Associations and Law on Aid Collection) within this Law, which has the characteristics of an omnibus law. These amendments, which were met with reactions by CSOs including statements and reports, were also criticised by international and regional human rights and rule of law mechanisms. Following the entry into force of the law, inspections of associations based on risk categorisation were initiated. 18747 associations were inspected in 2021 and 29,987 in 2022 with a specific focus on financial activities leading fines.

Amendments to the Law on Lawyers/ Attorneyship

10. Law on the Amendment of the Attorneyship Law was adopted by the GNAT and entered into force on 15 July 2020. The 2020 amendments to the 1969 Law on Lawyers brought two important changes to the governance system of the legal profession in Turkey. Firstly, it made it possible to establish more than one bar association in major provinces. Secondly, it changed the relative voting power of bar associations within the Union of Turkish Bar Associations (TBB), thereby reducing the influence of larger bar associations and increasing the influence of smaller bar associations. The Venice Commission of the CoE has also analysed the amendments and highlighted the following risks:

    There is a real risk that the establishment of more than one bar association based on voluntary membership in the same city, could lead to a further politicisation of the legal profession. This is

incompatible with the impartial role that lawyers should normally play. It would also jeopardise the independence of lawyers, which is implicitly required by international human rights treaties, soft law standards and is one of the requirements of the rule of law.[ii]

Moreover, the creation of alternative bar associations could lead to inconsistent practices in disciplinary matters and create administrative instability. It is unclear how it would improve the quality of training or other services provided by bar associations to their members. Finally, the possibility of joining alternative bar associations will not be open to all Turkish lawyers, but only to lawyers in major cities like Ankara and İstanbul[iii].

The main opposition party CHP took the amendments to the Constitutional Court for the cancellation of 25 articles of the law, but on 1 October 2020, the Constitutional Court rejected all the requests and ruled that the amendments were not unconstitutional. Some members of the Court, including the President of the Court, voted against 12 of the 25 articles.

Law Amending the Press Law and Certain Laws

11. The Law on Amendments to the Press Law and Certain Laws was adopted by the GNAT on 13 October 2022. Among other amendments, a new article was added to the TPC. The article (217/A), which has a high potential to create problems in terms of freedom of expression, imposes a prison sentence of one to three years for those found guilty of disseminating "false or misleading information", while the penalty is doubled for offenders who conceal their identity or act on behalf of an organisation. This applies to everyone from journalists to politicians, activists, experts and individual citizens. It also covers groups of individuals, organisations, media outlets, online platforms and other intermediaries. Prior to adoption, the Venice Commission of the CoE issued its opinion on the draft. [iv]

Freedom of Election and Suffrage

12. The Law on the Amendment of the Law on Parliamentary Elections and Certain Laws, which includes amendments to the electoral rules, was adopted by the GNAT on 31 March 2022 and entered into force on 6 April 2022. The Law includes amendments to various provisions of the Law on Parliamentary Elections, Law on General Principles of Elections and Voter Registers and Law on Political Parties. While the reduction of the electoral threshold from 10% to 7% and the provisions facilitating the participation of the visually impaired in elections are positive, the electoral threshold remains one of the highest in Europe.[v]

Freedom of Expression

13. Turkey continued to be one of the most restrictive countries among CoE member states regarding freedom of expression. 43 of the recommendations given to Turkey during 3rd UPR cycle relate to freedom of expression. Turkey has shown an inaction to change 20 of these recommendations, even though the ECtHR has found violations and subjected them to a qualified monitoring procedure before the CoM.

14. In the 2020-2023 period, the articles of the TPC, which should have been amended in the field of freedom of expression as underlined by the Venice Commission and the decisions of the CoM, have not been amended, on the contrary, a new penal article was added to the TPC.

15. While the pilot judgement of the Constitutional Court in the case of Hamit Yakut is welcomed, it is regretted that one and a half years after the Constitutional Court's judgement was transmitted to the Parliament for redress of the violation, it has not been implemented and article 220/6 of the TPC has not been amended. The Committee therefore once again urged the authorities to adopt without further delay the necessary legislative solutions to articles 220/6 and 7 of the TPC, in line with the findings of the Constitutional Court and the ECtHR.[vi]

16. According to statistics provided by the MoJ, the number of decisions to initiate criminal proceedings under Article 299, almost doubled between 2017 and 2021 (from 5,281 to 9,168). In 2021 alone, prosecuting authorities issued a total of 12,667 non-prosecution decisions (compared to 5,234 in 2017). The high number of decisions of non-prosecution, albeit without prosecution, raises concerns about the chilling effect created by the number of complaints filed in connection with this provision. Unfortunately, the number of prison sentences also increased during the reference period, from 564 to 1,239.
17. With regards Article 125 of the TPC, a similar trend can be seen in the number of decisions to issue indictments (increase from 266,937 to 438,200) and prison sentences (increase from 11,017 to 25,040) under this provision during the reference period. These statistics show that the application of these provisions has increased over the last five years. In view of the Court's findings in these judgements and the alarming number of prosecutions and convictions under Articles 125 and 299 of the TPC, the Committee may once again urge the authorities to consider amending Article 125 and repealing Article 299 in accordance with the Court's case-law.
18. Statistics provided by the authorities show an increase in the use of this provision over the last five years. The number of decisions to issue indictments under this provision increased from 834 in 2017 to 1,210 in 2021. Similarly, 111 people were sentenced to imprisonment under this provision in 2021 alone, up from 46 in 2017. There was also an increase in the number of acquittals, from 79 in 2017 to 127 in 2021. Overall, the statistical data shows that Article 301 continues to be regularly applied which has a chilling effect. Consequently, there appears to be an increasing need for legislative change in this regard. The CoM therefore once again urged the authorities to amend Article 301 of the TPC in the light of the Court's clear case-law.

Judicial Reform Strategy and Judicial Independence (partial progress)

45.110 (Libya), 45.111 (Somalia), 45.116 (Qatar), 45.128 (Albania), 45.129 (Italy), 45. 2019–2023 (Mauritania), 45.133 (Norway), 45.113 (Austria), 45.117 (Burundi), 45.120 (Costa Rica), 45.121 (Czechia), 45.124 (Finland)

Independence of the Judiciary (Council of Judges and Prosecutors)

19. The Judicial Reform Strategy, presented on 30 May 2019, aimed for "A Trustworthy and Accessible Justice." Its goals included protecting rights and freedoms, enhancing judicial independence, transparency, and efficiency, improving human resources, ensuring effective defence rights, facilitating access to justice, increasing service satisfaction, strengthening the criminal justice system, simplifying civil and administrative litigation, and expanding alternative dispute resolution methods.
20. The Judicial Reform Strategy Action Plan related to the implementation of the strategy was shared with the public on 5 October 2020. Under the name of the Turkish Judicial Reform Strategy, a series of legislative changes and administrative regulations were made. According to the information in the assessment report published in 2023 by MoJ, as of October 2023, 181 out of the 256 activities in the Judicial Reform Strategy Document (70%) have been implemented.[vii] However, it is not possible to say that these activities have generally had a similar impact in terms of contributing to strengthening the rule of law. The evaluations we have made regarding the other recommendations below reinforce this claim.
21. In 2017, during the State of Emergency, Article 159 of the Constitution, which was amended by referendum, restructured the composition of the High Council of Judges and Prosecutors, renaming it the

Council of Judges and Prosecutors (HSK), and revised both the number of members and the selection process for Council members. The new HSK consists of 13 members, six of whom are directly appointed by the President, including the Minister of Justice and the Deputy Minister of Justice. Of the remaining members, three are selected by the Court of Cassation, one by the Council of State, and three by the Grand National Assembly of Turkey (TBMM). The three members elected by the TBMM are chosen with the votes of the ruling party. Since the 2017 Constitutional amendment removed the limitation on the President's membership in a political party, the number of seats that the ruling party holds in the TBMM significantly influences the election of HSK members. Members of the Court of Cassation are appointed by the HSK, and members of the Council of State are appointed partly by the HSK and partly by the President. As a result, the Court of Cassation and the Council of State consist of judges appointed by the HSK, whose majority is determined by the President. According to Article 146 of the 2017 Constitution, 12 of the 15 members of the Constitutional Court are appointed by the President, and three by the TBMM.

22. No changes were made to this system between 2020 and 2024, and the administration of the judiciary and the judicial system remained entirely dependent on the executive branch, continuing to violate the principle of separation of powers. In fact, the CoE's Group of States Against Corruption (GRECO), which conducted Turkey's fourth evaluation, stated that the recommendation "to take decisive measures to strengthen the independence of the High Council of Judges and Prosecutors (HSK) in relation to potential threats from the executive branch and political influence" had not been implemented.
23. The structure of the HSK, in which no members are elected by judges, has further increased the control and influence of the executive organ over the processes of selecting, appointing, promoting, and transferring judges.
24. The new structure of the HSK also presents a problem, as the Council plays a role in decisions regarding the transfer of judges and prosecutors from one judicial district to another while also acting as the appeals body for these matters.
25. The Judicial Reform Strategy Document promised judges geographical guarantees, but this promise has not been fulfilled, which is a very serious issue.
26. Pressure on the judiciary is particularly evident in critical cases. For example, Judge Sercan Karagöz, who voted for the release of civil society and human rights activist Osman Kavala, was transferred from Istanbul to Ağrı. Another example is the disciplinary punishment and transfer of Ayşe Sarısu Pehlivan, President of the Judges Union, due to comments she made in an interview with *Evrensel* newspaper in 2017.

Recommendations:

27. The European Charter on the Statute for Judges, which stipulates that every decision "affecting the selection, recruitment, appointment, promotion, or dismissal of a judge" must be made by a body that is "independent of the executive and legislative branches," should be fully implemented.
28. The judicial appointment system should be reviewed to make both the examination and interview processes independent from the Ministry of Justice and other executive bodies, as well as from any improper influence from other quarters.
29. The possibility of transferring judges and prosecutors against their will should be reduced, significantly strengthening job security for judicial personnel, and these processes should be guided by objective criteria and subject to a review mechanism (appeal).
30. Clear and objective criteria should be adopted for the evaluation of judges and prosecutors, and a judicial guide should be created that includes clear objective definitions addressing standards of conduct and protecting against arbitrary evaluations.

Implementation of European Court of Human Rights Judgments

31. Several decisions awaiting necessary regulations and measures to be taken before the CoM, which is responsible for overseeing the execution of ECtHR judgments. Among these decisions, the Kavala/Turkey, Selahattin Demirtaş/Turkey, and Yalçınkaya/Turkey judgments are of particular significance. In all these cases, the Committee has called for general measures to improve the independence of the Turkish judiciary and has strongly urged the authorities to take all necessary steps, especially ensuring the structural independence of the Council of Judges and Prosecutors from the executive branch.

32. The Kavala v. Turkey case concerns the applicant's detention without reasonable suspicion and with the aim of silencing him and deterring other human rights defenders. In July 2022, the Court issued a second judgment, finding that Turkey had failed to comply with its obligation to implement the first judgment by releasing Kavala, under Article 46 § 4. This is the only case monitored by the Committee in which the Court has found a violation of Article 46 § 4 and where the necessary individual measures - primarily the release of the applicant- have not yet been taken. In 2023, the Committee continued to examine the Kavala case at each of its regular (weekly) meetings and during all four Human Rights meetings, and continued to strongly urge the Turkish authorities, including the judiciary, to ensure Kavala's immediate release. However, these calls and efforts to engage in high-level dialogue have not yielded results. On 28 September 2023, the Court of Cassation upheld Osman Kavala's conviction and aggravated life sentence for attempting to overthrow the government by force.

33. Another ECtHR judgment closely monitored by the CoM relates to the cases of Selahattin Demirtaş and Figen Yüksekdağ, who were arrested after their parliamentary immunities were lifted and are still imprisoned. Regarding general measures, at the September 2023 Human Rights meeting, the Committee called on the relevant authorities to take legal or other measures to ensure that procedural safeguards effectively protect parliamentary speeches in practice and that immunity protections are provided to those advocating political views. In line with the spirit of the Reykjavik Principles for Democracy, the Committee invited the authorities to consider working in cooperation with the CoE, especially the Venice Commission, to address the issues identified by the Court.

34. The Yalçınkaya and Others v. Turkey case involves structural problems under enhanced supervision. The case concerns the applicant's conviction for membership in an armed terrorist organisation based on his use of the encrypted messaging application ByLock - an unforeseeable judicial interpretation. The case also concerns the lack of procedural safeguards due to the failure to disclose raw data obtained from the server, leading to an unfair criminal trial, and the unforeseeable broadening of the scope of the offense based on the applicant's membership in a union and an association allegedly linked to a terrorist organization. Regarding general measures, the Court called for a swift and effective remedy to address the deficiencies identified in the national human rights protection system. The Court emphasised that Turkey must take appropriate general measures to address the systemic problem, particularly regarding the approach of domestic courts to ByLock usage.

Recommendations:

35. Turkey must comply with the ECtHR's decision to immediately release Osman Kavala.
36. Turkey should implement legal and structural reforms to prevent parliamentary immunities from being used as a tool to suppress political views. In particular, procedural safeguards for parliamentarians should be strengthened in legal proceedings. The criteria for lifting parliamentary immunity must be revised to prevent arbitrary actions, and the necessary reforms should be implemented to eliminate abuses.

37. Turkey should take the required steps to review the convictions based on the use of ByLock and strengthen legal safeguards. ECtHR found that the use of ByLock data as evidence, lacked sufficient procedural guarantees, violating the right to a fair trial. Accordingly, the trials and convictions of ByLock users must be legally reassessed.
38. Turkey must address the structural issues identified in these cases and ensure that the right to a fair trial is protected within its national judicial system. Turkey must undertake reforms to ensure the independence of the Council of Judges and Prosecutors (HSK) from the executive branch.
39. The Judges and Prosecutors Council must be restructured to operate independently of the executive body, and the processes of appointing and dismissing judges should be based on objective criteria.

National Human Rights Institute: Human Rights and Equality Institute

40. Following the 2020 UPR review, 20 recommendations were provided regarding National Human Rights Institutions (45.29-45.29, 45.31-45.33, 45.41-45.49, 45.72).
41. The structure established as the Turkish Human Rights Institution (TİHK) in 2012 was abolished and restructured in 2016 under the Law on the Turkish Human Rights and Equality Institution (TİHEK). Like TİHK law, TİHEK law was enacted without adhering to the principle of independence required by the Paris Principles. TİHEK, expected to fulfil the goals "protecting and promoting human rights based on human dignity," "ensuring the right to equal treatment and preventing discrimination in the enjoyment of legally recognised rights and freedoms," and "effectively combating torture and ill-treatment and fulfilling the role of the national preventive mechanism"- is entirely under the tutelage of the political power holding executive authority. A decree issued during the State of Emergency amended the founding law, stipulating that the Board, which is TİHEK's decision-making body, would consist of 11 members, including the president and vice president, all appointed by the President, who is the head of the executive.
42. Since its establishment, TİHEK has not initiated any investigations into human rights or discrimination violations on its own initiative, nor has it provided any opinion on legislative proposals, as mandated in Article 11 of its founding law, which allows for the examination of such matters ex officio.
43. TİHEK remained silent during the process of Turkey's withdrawal from the Istanbul Convention by Presidential Decree in 2021, and it also failed to take any action concerning the human rights violations that arose during the State of Emergency. Moreover, TİHEK did not take a stance against the rising racist and discriminatory rhetoric during election periods.
44. Of the 11 Board members of TİHEK, only two are women.
45. On 28 July 2021, TİHEK applied to the Global Alliance of National Human Rights Institutions (GANHRI), and in 2022 it was publicly announced that it had been accredited with B Status, which is given to institutions that are "partially compliant with the Paris Principles." When approving this status, GANHRI also expressed its concerns regarding TİHEK's compliance with the Paris Principles.

Recommendations:

46. Turkey should fully implement the recommendations which was given by the Accreditation Sub-Committee (SCA) of GANHRI to ensure the alignment with Paris Principles until the next cycle of UPR.

Access to Justice and Redress

45.138 Providing effective appeal mechanisms for individuals regarding measures taken during the state of emergency (France)

45.141 Ensuring the implementation of ECtHR decisions (France)

Decisions of the State of Emergency Procedures Review Commission

47. The system for applications, which was established in 2017 and opened on 17 July 2017, was closed as of 22 January 2023. Over a period of more than five years, a total of 127,292 applications were submitted to the Commission. Of this total, 125,678 were from public employees dismissed from their professions through decrees issued during the State of Emergency. As of 31 December 2022, over the five-year period, decisions were made on all applications, with 109,332 rejections (86%) and 17,960 positive decisions (14%), resulting in the lifting of certain measures.

48. The appeals of dismissed judges and prosecutors were handled by the 5th Chamber of the Council of State. As of February 2024, a total of 5,112 appeals were submitted to the Council of State[viii]. Of the 4,234 appeals resolved by the 5th Chamber, 3,799 were rejected, and 435 resulted in decisions to overturn the dismissal and the rest still pending.

49. Although some of the rejection decisions made by the Commission were annulled by the Ankara 20th Administrative Court, particularly in cases concerning dismissals from universities, university administrations appealed these court decisions. One of the examples is related with the peace petitioners who were dismissed during the State of Emergency. Despite the Constitutional Court ruling, in response to an individual application, that punishing signatories of the "Peace Declaration" constituted a violation of freedom of expression, the State of Emergency Inquiry Commission did not issue decisions recognising this ruling. 409 academics who signed the Peace Declaration were dismissed through State of Emergency Decrees. After the Commission rejected the applications of 385 academics, only 168 academics received reinstatement decisions from administrative courts, while 170 were rejected, and no outcome has been produced for 47 cases, even after 8 years (as of July 2024). Some of the reinstated academics have not been allowed to return to their positions, and others have been dismissed again due to rejection or stay of execution decisions issued by Regional Administrative Courts. Ultimately, the number of Peace Declaration signatories reinstated to their positions has decreased to 120. The applications that received rejection decisions from the Regional Administrative Courts are still pending before the Council of State.

50. This situation, involving the Peace Declaration academics, reflects several violations of access to justice and fair trial standards. The excessive delays, inconsistent decisions, non-enforcement of reinstatement orders, and arbitrary re-dismissals undermine the core principles of judicial independence, efficiency, and fairness. These issues highlight the urgent need for reforms to ensure that all individuals have timely access to effective remedies and that court decisions are applied consistently and enforced in practice.

Recommendations:

51. All reinstatement decisions issued by the administrative courts should be fully enforced, and the academics should be allowed to return to their positions without delay.

52. The government should take concrete steps to monitor and enforce compliance with these decisions, especially in cases where public institutions (such as universities) have resisted implementing court orders.

53. A mechanism should be established to monitor and report on the implementation of reinstatement decisions to ensure full accountability.

54. Academics who have been unjustly dismissed and have faced prolonged delays in the resolution of their cases should receive fair compensation including financial compensation for the period they were unable to work, including lost wages and benefits.

CoE's Committee of Ministers

55. According the 2023 Annual Report of CoM for supervision of the execution of judgments and decisions of the ECtHR, the CoM received 78 new cases against Turkey in 2023 from the ECtHR for supervision of their execution (compared to 77 in 2022 and 106 in 2021). As of 31 December 2023, Turkey had 446 pending cases awaiting execution (down from 480 in 2022 and 510 in 2021); of these, 35 were classified as leading cases under enhanced supervision (compared to 36 in 2022 and 37 in 2021), and 89 were classified as leading cases under standard supervision. Among the leading cases under enhanced supervision, 24 had been pending for five years or more, while 48 leading cases under standard supervision had also been pending for five years or more (compared to 53 in 2022 and 61 in 2021).

56. The backlog of cases mainly involves issues concerning freedom of expression and assembly, judicial independence, arbitrary detention without sufficient justification, ineffective investigations and impunity, and domestic violence. One of the violations identified by the Court in 2023 concerned the breach of the principle of "no punishment without law" due to convictions for membership in a terrorist organization without the individualization of the crime's elements. The Court noted the numerous similar complaints pending before it and referenced Article 46 concerning general measures.

Recommendations:

57. Turkey should prioritise the execution of long-standing cases, particularly those pending for five years or more. The government should work closely with the CoM to create a detailed action plan to reduce the backlog of leading cases, focusing on the most critical issues such as freedom of expression, arbitrary detention, and judicial independence.

58. Legislative reforms addressing freedom of expression, judicial independence, and impunity must be fast-tracked. The legal gaps highlighted by the ECtHR in relation to terrorism-related convictions, arbitrary detention, and other systemic issues must be closed through comprehensive legal reforms that bring domestic law in line with the Convention.

59. Authorities should enhance the transparency and efficiency of their monitoring and reporting mechanisms for the execution of judgments. Regular updates on pending action plans and progress reports should be submitted to the CoM, particularly for cases where feedback has been pending since early 2023.

60. To ensure effective follow-up on general measures, Turkey should engage more actively with the CoM and the DEJ. Regular dialogue and collaboration should be established to ensure that all recommendations and decisions by the Committee are fully implemented, particularly in areas requiring systemic changes like judicial independence and effective investigations.

61. Turkey must focus on implementing long-term structural reforms that address the root causes of recurring human rights violations. This includes ensuring judicial independence, strengthening accountability mechanisms for public officials, and addressing systemic failures related to the investigation and prosecution of domestic violence and freedom of assembly cases.

[i] Opinion on the replacement of elected candidates and mayors, Joint Opinion on the amendments made to the 1969 Law on Lawyers in July 2020, Opinion on the conformity of Law on the Prevention of Financing the Proliferation of Weapons of Mass Destruction, amending Law on Associations, with international human rights standards, Venice Commission and OSCE/ODIHR joint opinion on the amendments made to electoral legislation by Law No. 7393, Urgent joint opinion on the draft amendment to the TPC on the provision on "false or misleading information"

[ii] Joint Opinion of The Venice Commission and The Dırectorate General Of Human Rights And Rule Of Law (DGI) of The Council of Europe on the July 2020 Amendments To The Attorneyship Law of 1969 Adopted by the Venice Commission at its 124th Online Plenary Session (8 - 9 October 2020); para 72. Page.16. Venice Commission : Council of Europe (coe.int)

[iii] İbid, para 73, page 16

[iv] The Commission noted that Article 217/A contains a number of terms that are very broad, vague and open to different interpretations, in particular "misleading information" (if relevant), "false information with intent to mislead", "public dissemination" (or "open dissemination"), "disturbance of public peace", "public health" (or "public health" or "public health"), "in a favourable manner" (or "in a manner that would be favourable"), "within the framework of the activities of an organisation". It pointed out that the lack of specificity could also lead to a violation of the principle of legality (nullum Crimean sine lege) as recognised by Article 7 of the ECtHR, if the law criminally sanctions a certain behaviour.
Venice Commission said that the terms were unclear and lacked criteria to assess the authenticity of the information and that the terms should be clarified. Venice Commission recognises that disinformation is a serious problem and considers that the draft has a legitimate aim. Venice Commission states that criminal intervention is not necessary and that alternative, less intrusive measures are available. Venice Commission recommends protecting internet anonymity and regulating access to personal data. Venice Commission is concerned that such a provision could have a chilling effect and increase self-censorship, especially as elections approach. Venice Commission recommends the Turkish authorities not to approve the draft amendment to Article 217/A of the Turkish Penal Code.

[v] The Venice Commission and ODIHR make the following key recommendations: A. Clarify that the law does not introduce changes to the conditions of participation of political parties in elections that cannot be met in practice in the period between the adoption of the amendments and the next election, thus potentially rendering some parties ineligible; B. re-evaluate the changes in the system of composition of the district and provincial election boards, replacing the system of automatic appointment based on seniority with a lottery system, as the new system has no safeguards against pressure on judges who meet the new eligibility criteria; C. to refer to the President of the Republic in Articles 65, 66 or 155 of Law No. 298, which previously referred to the Prime Minister (the President of the Republic being subject to propaganda restrictions for public officials during the election period)D. to re-evaluate whether the 7 per cent electoral threshold strikes the right balance between the principles of fair representation and stability of government with the introduction of the presidential form of government.

[vi] MoJ doesn't publish article-based statistics since 2021. They combine the articles related to each other like "Article 299 to 301 - Offenses against the symbols of state sovereignty and reputation of its organs".

[vii] Üçüncü Yargı Reformu Stratejisi (2019-2023) Uygulama Raporu Mart 2024: yrsuygulama.pdf (adalet.gov.tr)

[viii] Danıştay Resmi Sitesi (danistay.gov.tr)