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NGO Communication under Rule 9(2) of the Rules of the Committee of Ministers concerning the execution of the judgment of the European Court of Human Rights in the case of Yüksel Yalçınkaya v. Türkiye (Application no. 15669/20)

EXECUTIVE SUMMARY

The action plan submitted by the Turkish Government on 5 August 2024, **with a 5-month delay,** appears to lack substantial and concrete information on the general measures taken or planned to prevent similar violations from occurring. Upon review, including its annexes, it appears that the Action Plan may reflect a misunderstanding of the Grand Chamber's findings on the part of the Government, particularly concerning Articles 6 and 7 of the Convention.

As evident from the action plan, the Turkish Government has not taken any legislative steps to align judicial practices with the Yüksel Yalçınkaya judgment. Contrary to the Government's assertions, there has been no change in the jurisprudence or judicial practice to meet the requirements of the Yüksel Yalçınkaya judgment. Worrying public statements made by high-

level political figures following the announcement of the Yüksel Yalçınkaya judgment, which publicly questioned the authority of the judgment, reinforce the perception that the Government is reluctant to ensure its proper, effective, and prompt implementation. On the contrary, these statements encourage the judiciary to disregard the judgment, resulting in its non-implementation by the courts. Since the announcement of the Yüksel Yalçınkaya judgment, criminal investigations and prosecutions have continued for the same acts and under circumstances similar to those addressed in the judgment. Neither the Court of Cassation nor the Constitutional Court has yet to evaluate the binding or guiding nature of the Yalçınkaya judgment. Courts at all levels have concluded cases using the same approach and procedures as if the European Court had not rendered the Yüksel Yalçınkaya judgment. Furthermore, the Government has not developed any solution for final cases in which defendants were convicted for their lawful acts in violation of Yalçınkaya judgment.

These facts—the lack of meaningful steps and political will to properly implement the judgment, ample evidence of the judiciary's ongoing non-compliant practices, as shown in the communication and the annexed court decisions, and the persistent systemic problems identified by the Court—combined with the statements of highest political figures questioning the authority of the Yüksel Yalçınkaya judgment and the Court itself, the Committee of Ministers must take urgent action to ensure the implementation of the Grand Chamber's Yüksel Yalçınkaya judgment. This is particularly crucial in respect of, but not limited to, the cases currently pending before the domestic courts, in accordance with the Court's findings.

This communication respectfully invites the Committee of Ministers to:

- Include the Yüksel Yalçınkaya v. Turkey (no. 15669/20) case on the agenda of its December 2024 DH meeting under the debated meeting category, as the case requires urgent attention;
- Adopt an interim resolution with concrete suggestions to Türkiye for the execution of the judgment;
- Keep the case on the agenda of the quarterly CM Human Rights meetings;
- Invite the Turkish Government to regularly and adequately inform the Committee about domestic practices by providing samples of reasoned conviction decisions at all levels;
- Urge Turkey to take meaningful and effective steps, including any necessary legislative measures, to address the systemic problem and resolve persistent issues related to ongoing criminal proceedings and closed cases with final convictions.

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I. INTRODUCTION

1. The undersigned organisations hereby respectfully submit their observations and recommendations under Rule 9(2) of the *"Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements"* regarding the execution of the judgment of the Grand Chamber of the European Court of Human Rights in **Yüksel Yalçınkaya v. Türkiye** (Application no. 15669/20) Judgment of 26 September 2023), in advance of the **1507th meeting (September 2024)** of the Ministers' Deputies (DH) on the execution of judgments.

2. The undersigned non-governmental organizations, operating across various European countries, are non-profit human rights associations dedicated to promoting respect for and the protection and strengthening of human rights worldwide, as well as advancing the rule of law and democratic values. We have been closely monitoring the implementation of the judgments of the European Court of Human Rights, including the Yüksel Yalçınkaya judgment, and regularly inform the Committee of Ministers about the steps taken by the Government of Türkiye.

3. This communication aims to provide the Committee of Ministers with an update on the status of the execution of the Yüksel Yalçınkaya judgment, particularly in terms of the general measures. Additionally, it seeks to inform the Committee about the irrelevance and unreliability of the information submitted by the Turkish Government in their action plan. This communication further recommends to the Committee some actions to strengthen the supervision process of the judgment. The Yüksel Yalçınkaya judgment carries profound implications for domestic law, affecting not only the applicant in this case but also tens of thousands of others who have suffered the same or similar violations. Therefore, it is no exaggeration to consider the Yalçınkaya judgment as one of the most significant leading cases, both in terms of its scope and impact.

4. As the Government interprets the judgment in the most restrictive manner, as if the systemic problems identified by the Grand Chamber in the Yüksel Yalçınkaya judgment never existed or have been entirely resolved, this communication begins by highlighting the Court's main findings in the entire reasoning *(obiter dictum*) of the Yüksel Yalçınkaya judgment, which requires that the Committee of Ministers carefully examines the judgment to determine the general measures stemming from the judgment. It then reports on the unchanged judicial practices on the ground, providing sample court decisions collected by our associations through open calls made on social media, which demonstrate a reality contrary to what the Government reported in its action plan. **Please note that the sample judgments of domestic courts are sent only- <u>for the Secretariat's use and analysis</u>, not for publication as they include personal data.**

II. CASE DESCRIPTION

5. The applicant, Yüksel Yalçınkaya, was a teacher at a public school in Kayseri. He was sentenced on 21 March 2017 by the Kayseri Assize Court to six years and three months' imprisonment for membership in an armed terrorist organisation. The conviction was based on the applicant's use of an encrypted messaging application called "ByLock", having an account with Bank Asya and being a member of a trade union (Aktif Eğitimciler Sendikası) and an association (Kayseri Gönüllü Eğitimciler Derneği). The applicant applied to the ECtHR on 17 March 2020, alleging that his trial and conviction had violated Articles 6, 7, 8, and 11 of the Convention.

6. The Grand Chamber of the ECtHR's judgment in the Yüksel Yalçınkaya case, dated September 26, 2023, stands as a landmark decision concerning prosecutions for membership in an organization following the July 15 coup attempt, particularly regarding the use of ByLock as evidence. In this judgment, the Court identified violations of Articles 6, 7, and 11 of the Convention. Furthermore, the Court recognized that these violations were indicative of a systemic problem and issued specific findings under Article 46 of the Convention.

7. To fully comprehend the general measures required by the judgment, we would like to invite the Committee of Ministers to carefully examine not only the operative part of the decision but also the reasoning section where the grounds for the violations are detailed.

III. MAIN FINDINGS OF THE COURT

1. The findings under Article 7 of the Convention

8. The applicant claimed that his right under Article 7 was violated because the acts relied on for his conviction were lawful at the time the acts were committed. The Government argued that the applicant’s conviction was primarily based on his downloading of the ByLock application, which was exclusively used by members of FETÖ/PDY, asserting that the use of ByLock served as conclusive evidence of membership in the organization, with additional evidence supporting the conviction.

9. The ECtHR assessed whether the applicant’s punishment for membership in a terrorist organization was foreseeable under the standards established by Turkish law, in line with the requirements of Article 7, examining the specific interpretation of Article 314 of the Turkish Criminal Code, as shaped by the Court of Cassation's case law. The Court also considered whether this rule had been applied predictably in the applicant’s case.

10. The Court noted that according to the case law of the Court of Cassation, individuals who knowingly and willingly submit to the hierarchy of an organization formed with the intent of achieving political objectives through force, violence, and threats, and who surrender their will to the organization, shall be punished for membership in that organization. This is contingent upon their **acts contributing to the organization’s goals and interests with continuity,**

diversity, and intensity. The Court of Cassation moreover specified the mental element of the offence as being "direct intent and the aim or objective of committing a crime". It, therefore, follows that a person taking part in an organisation has to know that **it is one that commits, or aims to commit, crimes, and has to possess a specific intent for the realisation of that purpose.** Although the commission of an actual crime in connection with the organisation's activities and for the achievement of its aims is not required to establish the offence of membership in an armed terrorist organisation, the individual must nevertheless have made a concrete material or mental contribution to the organisation's actual existence or reinforcement (§ 248).

11. The Court determined that treating the mere downloading of the ByLock application as definitive evidence of guilt, regardless of the content of the messages exchanged or the identities of the individuals involved, effectively made the ByLock application a material and mental element of the crime of membership in a terrorist organization. This approach created a presumption of guilt that hinders individuals from defending themselves against the accusations. The ECtHR concluded that such judicial practice fails to meet the foreseeability required by Article 7 of the Convention and leads to the arbitrary punishment of individuals, thereby finding a violation of Article 7. In establishing this violation, the ECtHR particularly highlighted the importance of the mental element of the crime. The Court emphasized that if it cannot be clearly demonstrated through ByLock communications that an individual was aware of the organization's methods and objectives, adopted these methods and objectives, and submitted their will to the organization by joining its hierarchy, then punishing someone solely for downloading or using the ByLock application will violate the principle of no punishment without law.

2. The findings under Article 6 of the Convention

12. The applicant claimed that his right under Article 6 of the Convention was violated because unlawfully obtained evidence was used as the basis for his conviction during the trial. He also argued that the raw ByLock data was not made available to him or his lawyer, preventing them from assessing the reliability of the data, which impeded his ability to adequately defend himself.

13. The Court concluded that there were insufficient safeguards to ensure the applicant had a genuine opportunity to challenge the evidence against him and to conduct his defense effectively and on an equal footing with the prosecution. As a result, the Court found a violation of Article 6 of the Convention due to the following reasons:

- *The Government failed to provide any justification for withholding the ByLock data from the applicant, and the national courts did not inform the applicant of the reasons or the authority responsible for the decision to withhold the raw data, especially data directly related to him. This lack of transparency deprived the*

applicant of the opportunity to present counter-arguments, challenge the validity of the reasons, or dispute whether all efforts had been made to strike a fair balance between the competing interests and to protect his defense rights (§ 331).

- *The applicant's request for the raw data to be submitted for independent examination to verify its content and integrity was also not considered by the domestic courts (§ 332).*
- *Several other concerns raised by the applicant regarding the reliability of the ByLock evidence—such as the inconsistencies between different ByLock user lists issued by the MİT [National Intelligence Organization], as well as the discrepancy between the number of identified users and those ultimately prosecuted, and the number of downloads—were likewise not addressed by the domestic courts (§ 334).*
- *The domestic courts failed to consider that the ByLock data had already been processed and used not only for intelligence purposes but also as criminal evidence to initiate investigations and arrests, including that of the applicant, before the magistrate's court's order for their examination. Additionally, the applicant's arguments concerning the MİT's lack of authority to collect data for use as evidence in criminal proceedings, and the claim that the criminal peace judgeship's decision dated December 9, 2016, could not retroactively render such collected evidence "lawful" and reliable, were not addressed by either the Ankara Regional Court of Appeal or the Court of Cassation (§ 334).*
- *While sharing the raw data with the applicant may not have been feasible, the principle of "fair balance" between the parties would have at minimum required that the proceedings be conducted in a way that allowed the applicant to fully comment on the decrypted material related to him, especially regarding the nature and content of his activity on the application (§ 335)*
- *The applicant was unable to directly challenge the ByLock data held by the prosecution, and the national courts failed to address the applicant's objections to the accuracy of this data with relevant and sufficient reasoning, despite its critical importance (§ 337).*

3. The Findings under Article 11 of the Convention

14. The applicant also claimed a violation of his right to freedom of association under Article 11 of the Convention, arguing that his conviction was partially based on his membership in a legally established trade union (Aktif Eğitim-Sen) and an association (Kayseri Voluntary Educators Association).

15. The Court observed that the domestic courts, aside from noting that the relevant association and union were closed down by Emergency Decree Law No. 667, did not make

any specific findings regarding the activities of these institutions or the applicant's involvement in them. Nevertheless, this was still used as evidence for the applicant's conviction.

16. The interpretation of Article 314 § 2 of the Criminal Code concerning the applicant's membership in Aktif Eğitim-Sen and the Kayseri Voluntary Educators Association expanded the scope of this provision in an unforeseeable manner, failed to provide the minimum protection against arbitrary interference, and therefore could not be considered as *"prescribed by law"* as required by Article 11 § 2 of the Convention. As a result, the Court found that there had been a violation of the right to freedom of association as enshrined in Article 11 of the Convention.

4. The Findings under Article 46 of the Convention

17. Under Article 46 of the Convention, the Grand Chamber addressed the systemic issue arising from the unpredictable interpretation of anti-terrorism legislation by the judiciary in cases involving sympathizers of the Gulen/Hizmet Movement. The Court emphasized that the violations of Articles 7 and 6 of the Convention in the present case were not the result of an isolated incident or a specific sequence of events but rather reflected a broader systemic problem. The Court also highlighted that over 8,000 similar cases were pending before it, with the expectation that this number would rise significantly in the future.

18. Paragraph 418 of the judgment refers to general measures that need to be taken by Turkiye for the implementation of the judgment, which reads; "*The Court is therefore of the opinion that in order to avoid it having to establish similar violations in numerous cases in the future, the defects identified in the present judgment need, to the extent relevant and possible, to be addressed by the Turkish authorities on a larger scale – that is, beyond the specific case of the present applicant. It accordingly falls to the competent authorities, in accordance with the respondent State's obligations under Article 46 of the Convention, to draw the necessary conclusions from the present judgment,* ***particularly in respect of, but not limited to, the cases currently pending before the domestic courts****, and* ***to take any other general measures as appropriate in order to resolve the problem identified above that has led to the findings of violation here*** *(see paragraph 414 above; see also, mutatis mutandis, Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, § 314, 1 December 2020). More specifically, the domestic courts are required to take due account of the relevant Convention standards as interpreted and applied in the present judgment. The Court underlines in this respect that Article 46 of the Convention has the force of a constitutional rule in Türkiye in accordance with Article 90 § 5 of the Turkish Constitution, according to which international agreements duly put into effect have the force of law and no appeal lies to the Constitutional Court to challenge their constitutionality*."

19. It is evident from this paragraph that, to prevent the recurrence of similar violations in numerous future cases, Turkish authorities must address the defects identified in the

Yalçınkaya judgment on a broader scale, extending beyond the specific case of the present applicant. Consequently, the responsibility falls on the competent authorities, in line with the respondent State's obligations under Article 46 of the Convention, to draw the necessary conclusions from this judgment. This includes but is not limited to addressing the cases currently pending before domestic courts and implementing any other general measures necessary to resolve the systemic issues that led to the findings of violations. The Court specifically emphasized that domestic courts must consider the relevant Convention standards as interpreted and applied in the Yalçınkaya judgment.

IV. HIGHLIGHTING KEY INTERPRETATION ERRORS BY THE GOVERNMENT

20. We would like to bring to the attention of the Committee of Ministers some important arguments presented by the Government in various parts of the Action Plan. Some of the statements of the Government in the Action Plan need to be verified by the Committee of Ministers, as they are crucial to the entire monitoring process of this judgment particularly that of Article 7. If the Government's phrasing is not simply a misinterpretation of the case, it could be interpreted as an intentional attempt to mislead the Committee.

Nowhere in the judgment does the Court find that the designation of the Gulen movement as a terrorist organization is compatible with the Convention.

21. The Government states in paragraph 20 of its Action plan: "Dismissing the applicant's arguments, the Court found that the assessment and designation of FETÖ/PDY as a terrorist organisation by the domestic courts was not incompatible with the Convention and the law (see, ibid, 251-254)."

22. The Committee must carefully review paragraphs 251-254 of the judgment to accurately understand the Court's findings. Given the importance of this issue, we urge the Committee to closely examine these paragraphs to ensure a correct and thorough assessment of the Government's compliance with the judgment. Nowhere in these paragraphs does the Court conclude that any assessment or designation of the Gulen movement as a terrorist organization by domestic authorities was compatible with the Convention. Rather, in these paragraphs, the Court responds to the applicant's argument regarding the fact that this organization was not designated as a terrorist organization at the time when the impugned acts were allegedly committed by him. The Court merely summarizes the legal basis and procedure for the designation of an organization as a terrorist organization and outlines the relevant court decisions without making any decision or taking any position on that matter. In paragraph 254, the Court clearly states: "[T]he relevant question for the purposes of the present case is not whether the FETÖ/PDY had been proscribed as a terrorist organisation at the time of the acts attributed to the applicant. It is whether his conviction for membership of an armed terrorist organisation was sufficiently foreseeable given the requirements of the domestic law, in

particular as regards the cumulative constituent material and mental elements of the offense such as they appear in Article 314 § 2 of the Criminal Code, the Prevention of Terrorism Act and in the relevant case-law of the Court of Cassation."

23. This clarification is essential for the Committee to accurately evaluate the Government's position and ensure that the monitoring process adheres to the Court's actual findings.

The Court does not state that the use of Bylock could prima facie suggest some kind of connection with the FETÖ/PDY (see, ibid, § 259).

24. The Court never accepts the abusive language used by the Government in describing the Gulen movement anywhere in the judgment and clearly distinguishes this in the way it formulates, for example, paragraphs 259 and 260. In paragraph 259, the Court states that *"… ByLock was not just any ordinary commercial messaging application, and that its use could prima facie suggest some kind of connection with the Gülen movement."* The Court, in the following paragraph, goes on to say that *"…Article 314 § 2 of the Criminal Code concerns not mere connection with an allegedly criminal network, but membership in an armed terrorist organization, to the extent that such membership is established based on the constituent – objective and subjective – elements set out in the law, as noted in detail in paragraphs 245-248 above, and …"*

25. The Court, in other words, states that even if the use of the ByLock application could *prima facie* suggest some kind of connection with the Gulen movement, it is still necessary to demonstrate the constituent material and mental elements of the offense of membership in "an armed terrorist organization". Therefore, the Court does not accept the argument of the Turkish judiciary, which equates the use of ByLock, or being connected with or a member of the Gulen movement, with being a member of an armed terrorist organization.

26. Due to this persistent wrongful practice by the judiciary, the Grand Chamber rendered a violation judgment. As can be understood from both the sample decisions reported by the Government in their Action Plan and the examples provided in our present communication, the Turkish judiciary continues to equate the use of ByLock or association with the Gulen movement with membership in an armed terrorist organization, without giving due consideration to or demonstrating the presence of the constituent elements of such an offense.

27. The Court does not state that the use of ByLock could *prima facie* suggest some kind of connection with FETÖ/PDY, which is the abusive language used by the Government to refer to the Gulen movement. A correct understanding of the differentiation made in paragraphs 259 and 260 is crucial for ensuring that the monitoring process of the execution of this judgment adheres to the Court's findings.

The Court rejected the judicial and governmental arguments that the ByLock application was used exclusively by members of Gulen movement

28. Contrary to the Government's interpretation in its Action Plan, the Court rejected the judicial and governmental arguments that the ByLock application was used exclusively by members of FETÖ/PDY, concluding that the technical data did not support this claim (§ 339). The Court emphasized that it had not been technically proven how an application downloaded hundreds of thousands of times from the Google Play Store and Apple Store could have been used exclusively by members of the organization and highlighted the deficiencies and inconsistencies in the MİT *(National Intelligence Organisation)* Report on this matter. The Court also noted that the national courts, including the Court of Cassation in its landmark decisions, accepted the findings made primarily by MİT in an extrajudicial context regarding the alleged exclusivity and organizational nature of ByLock, without thoroughly scrutinizing those findings (§ 340).

The court rejected or seriously questioned all arguments of the Government as to the so-called reliability of Bylock data and evidence

29. In proceedings against individuals alleged to have used the ByLock application, neither the parties involved nor the courts that issued convictions were granted access to the raw data or were allowed to have it examined by an expert. This practice is still in place. The Action Plan states that the ECtHR did not criticize the failure to hand over the raw data to the applicant, but rather the inaction of the domestic courts in justifying the applicant's request (Action Plan § 73). This statement is not accurate. According to the Grand Chamber:

> *"...the applicant's request that the raw data be submitted to an independent examination for the verification of their content and integrity was also not entertained by the domestic courts"* (see Yalçınkaya v. Turkey, no. 15669/20, § 332).
>
> *"...the Court considers that the applicant had a legitimate interest in seeking their examination by independent experts and that the courts had the duty of properly responding to him" (see Yalçınkaya v. Turkey, no. 15669/20, § 333).*

30. The Government also stated that the problem was addressed by domestic courts obtaining all ByLock reports and verifying the accuracy of ByLock data by relying on data from other sources (Action Plan § 67). This statement in the Action Plan is incorrect. According to the Grand Chamber:

> *"While the Court does not ignore the significance of these factors, it considers that they are not determinative of the question whether the applicant's defence rights vis-à-vis the ByLock evidence were duly respected in the present case"* (see *Yalçınkaya v. Turkey*, no. 15669/20, § 326).
>
> *Accordingly, "all material evidence" for or against the accused, which is an element of the right to an adversarial trial, must be disclosed to the defense. This right cannot be limited to evidence deemed relevant by the prosecution and cannot be narrowly construed. As*

emphasized by the Grand Chamber, the fact that the applicant had access to all ByLock reports in the case file does not mean that he had no right or interest in requesting access to the data from which these reports were generated (see *Yalçınkaya v. Turkey*, no. 15669/20, § 327).

31. The Action Plan also states that the Grand Chamber did not accept the applicant's challenges to the legality of the CGNAT data and HTS records (Action Plan § 67). This statement does not reflect the reality. There is no mention in the Grand Chamber's judgment as to whether it accepted or rejected the applicant's challenges to the legality of the data in question. The Grand Chamber stated that it did not consider it sufficient to question the assessment made by the national courts in relation to the data in question (see *Yalçınkaya v. Turkey*, no. 15669/20, § 320), recognizing that the *"Mor Beyin"* incident, which demonstrated that CGNAT data could be misleading, raised justifiable doubts about the possibility of an accidental connection to the Bylock server (see *Yalçınkaya v. Turkey*, no. 15669/20, § 322).

V. WORRYING PUBLIC STATEMENTS FOLLOWING THE ANNOUNCEMENT OF THE RULING

32. Following the announcement of the Yüksel Yalçınkaya ruling, worrying public statements were made by high-level political figures, such as the President, the Minister of Justice, and the President of the Constitutional Court, which have negatively impacted the proper, effective, and prompt implementation of the said judgment by the judiciary.

33. Specifically, following the announcement of the judgment on 26 September, President Erdogan made the following statement at the Parliament: *"… Even the UK, a founding member of the system, could not endure the European Court of Human Rights, which overstepped its authority under the influence of some countries and disregarded Turkey's sovereign rights**. It is impossible for us to either respect the decisions of institutions aligned with terrorist organisations or to heed what they say**. Moreover, this is not the only issue. Those who lecture us on democracy are playing three monkeys in the face of the Islamophobia that has enveloped them like a venom.*"

34. In a statement made on October 1, 2023, President Recep Tayyip Erdoğan said: *"**The recent decisions of the European Court of Human Rights (ECtHR), a body of the Council of Europe, have been the final straw. Let the members and supporters of the terrorist organization, who have taken courage from this decision, not get their hopes up in vain; there will be no gain for the vile FETÖ members, who have already been condemned in the collective conscience, from this decision.** Remember, once a traitor, always a traitor. Our nation has the wisdom not to be bitten twice by the same snake. It is impossible for us to respect or heed the decisions of institutions that align themselves with terrorist organizations."*

35. Similar statements were made by the Minister of Justice, Yilmaz Tunc, after the announcement of the judgment of the Grand Chamber: "..***It is unacceptable for the ECtHR to overstep its authority and issue a judgment of violation by examining the evidence in a case where our judicial authorities at all levels, from the court of first instance to the Court of Appeal, from the Court of Cassation to the Constitutional Court, have deemed the evidence sufficient***."

36. In a statement made on September 26, 2023, Minister of Justice Yılmaz Tunç said: *"The European Court of Human Rights (ECtHR) had emphasized that the application, interpretation, and evaluation of evidence by national courts could not be the subject of its review. However, in today's Yalçınkaya decision, the ECtHR has departed from this established jurisprudence. The ECtHR has clearly overstepped its authority by evaluating the evidence and has made the application of legal rules and the evaluation of evidence by national courts the subject of its review. Despite repeatedly stating in its own jurisprudence that it does not have the authority to evaluate evidence, the ECtHR has chosen to evaluate evidence in the context of the FETÖ trials. Despite being thoroughly informed and objected to by our Government, the ECtHR, by accepting as the applicant's representative in the Grand Chamber hearing a person against whom two separate arrest warrants have been issued by the Turkish judiciary on charges of FETÖ membership, has made it clear from the outset that it would not conduct an impartial trial and has issued a decision that is contrary to the law and the European Convention on Human Rights. Our country will continue its fight against terrorism with determination in accordance with national legislation and international obligations."*

In a statement made on September 28, 2023, the Minister of Justice said: *"Each person on trial must be evaluated separately, especially in terms of the evidence collected. This is how it works in criminal law. Therefore, we do not believe that this decision will set a precedent. Our review is ongoing.* ***We particularly believe that*** **this decision pertains only to that specific case***. Because each case has its own unique characteristics. Each person on trial must be evaluated separately, especially in terms of the evidence collected. This is how it works in criminal law. Therefore,* ***we do not believe that this decision will set a precedent****."*

37. The then-President of the Constitutional Court, Zühtü Arslan, also made a statement on October 1, 2023, saying*: "The decision of the Constitutional Court is already clear. Therefore, they [the European Court of Human Rights] made a different decision from ours."* [1]

The messages of tolerance issued by state authorities regarding actions that are incompatible with the Convention have found resonance within the judiciary, resulting in the failure to

[1] https://www.ntv.com.tr/turkiye/aym-baskani-arslan-aihm-kararina-katilmiyoruz-bizim-kararimiz-belli,yq2H8lDPxUyfREUrt6nHmg

implement the requirements of the ECtHR Grand Chamber's judgment in any way during the nearly one-year period following the judgment became final.

38. These statements raise serious concerns regarding the independence and impartiality of the judiciary in the execution of this judgment, and we urge the Committee to take these developments into account when assessing the situation.

VI. NO PROGRESS ON GENERAL MEASURES TO PREVENT RECURRENCE OF SIMILAR VIOLATIONS

1. Overall Comments About the Information Reported By the Government in the Action Plan

39. Starting from paragraph 25 of the Action Plan, the Government states that it provides up-to-date information regarding current judicial practices. We would like to state at the outset that all the information presented by the Government as up-to-date information is what the Grand Chamber has already thoroughly analyzed in its judgment. The Government does not bring forward any new information representing the steps taken to bring judicial practice into conformity with the Yalçınkaya judgment. The summary of the judicial practice presented by the Government between paragraphs 25 and 30 with regard to the offence of membership in an armed terrorist organization is already noted and evaluated by the Court in the judgment. So, the assertion of the Government that *"the current practice and case-law of the Turkish judicial authorities show that a practice compatible with the principles laid down by the Court has become established"* (para 30 of the Action plan) does not reflect the truth.

40. To support this argument, the Government presents some sample decisions from first-instance courts, regional appeal courts, and the Court of Cassation.

41. It must be noted by the Committee of Ministers that all the sample decisions provided are acquittal decisions, most of which were issued on procedural grounds. The Government does not provide the Committee with any reasoned conviction decisions, which would allow the Committee to assess how the courts evaluate the constituent elements of the offense of membership in an armed terrorist organization. It is through these conviction decisions that the Committee could properly assess whether the courts have appropriately considered the findings of the Court in the Yüksel Yalçınkaya judgment. This does not mean that people are not being convicted in practice. On the contrary, courts at all levels routinely and persistently apply anti-terror legislation in cases similar to that of Yüksel Yalçınkaya in the same manner as they did before the Court's judgment. We will showcase concrete conviction cases below and send them herewith to the Committee for its assessment. (See annexed sample conviction decisions)

42. Secondly, we would like to point out that all the sample court decisions presented by the Government themselves demonstrate that the systemic problematic implementation of the legislation by the courts in similar cases persists. The only element that the courts consistently

consider in practice is whether the person used the ByLock application, disregarding the contents of the messages sent, except in very rare instances where they examined the messages and rendered acquittal decisions for the defendants. As explained below, ironically, these rare instances themselves refute the Government's argument that ByLock was used exclusively by members of the Gulen movement. *(See sample decision of the 3rd Criminal Chamber of the Court of Cassation Court dated 27 February 2024, presented in paragraph 39 of the Action plan).* The Chamber, in this case, quashed the conviction decisions of the first instance court and the regional appeal court taking into account "***the accused person's statement to the effect that "he had downloaded the ByLock software on the recommendation of a customer named Mutlu and that he had corresponded on it only to inform his customers about the special offers in his store, that he had not participated in any organisational activities and that he had no connection with the organisation" as well as the content of the correspondence in the ByLock findings and evaluation report were similar to what he stated in his defense submissions."***

43. The sample decisions also demonstrate that courts at all levels are primarily focused on establishing a link between the defendant and the Gulen movement. Once this link is established, whether through the use of ByLock or other means, they convict the defendants regardless of the presence of the constituent material or mental elements of the offense. The acquittal decisions presented by the Government indicate that when this link to the Gulen movement is not established, the courts render acquittal decisions. This systemic problematic practice of the judiciary is in fact what led to the finding of a violation of Article 7 of the Convention.

2. General measures on Ongoing Cases under Articles 7 and 46 of the Convention

2.1 Required general measures for ongoing cases under Articles 7 and 46 of the Convention

44. To comply with and fully implement the Yüksel Yalçınkaya judgment, Türkiye must adopt general measures that address the systemic problem identified by the Court. This includes changing the expansive and improper interpretation of domestic anti-terror legislation that contradicts the established case law of the Court of Cassation and the European Court of Human Rights as described in the judgment. The required measures for Turkish authorities are outlined by the Court in paragraphs 413 to 418 of the judgment.

45. The ECtHR specifically mentioned the judiciary among the authorities responsible for fulfilling this obligation. The ECtHR explicitly stated in its judgment that the competent authorities of the Republic of Türkiye, particularly the judiciary, must avoid practices that result in violations of Articles 7 and 6 of the Convention in similar cases as part of the general measures to be implemented.

46. The judgment implies that the Turkish Government must ensure that judicial practices in cases involving alleged or actual sympathizers of the Gulen/Hizmet movement, prosecuted for membership in a terrorist organization, are aligned with the principles established in the Yüksel Yalçınkaya case. These general measures include preventing similar violations in new investigations, ongoing prosecutions, and cases that have resulted in final convictions. In other words, law enforcement and judicial authorities must apply the principles set out in the Yalçınkaya judgment at all stages of criminal proceedings. For cases that have been closed with final convictions, the principle of *restitutio in integrum* requires domestic courts to reopen cases that are similar to Yüksel Yalçınkaya's situation.

47. Since no legislative changes have been made to modify the judicial practice and the violation stems from judicial practices rather than a specific legal provision, judicial authorities are obligated to consider the ECtHR's judgment at every stage of the proceedings. Therefore, in similar ongoing cases, national courts, when interpreting substantive criminal law and criminal procedural law, must adhere to the principal findings that form the core of the Yalçınkaya judgment to ensure they do not conflict with the Convention. National courts must give due consideration to the relevant Convention standards as interpreted and applied in the present judgment. The national judicial authorities must not treat the mere existence or use of the ByLock application as evidence of membership in a terrorist organization as this violate Article 7 of the ECHR. Even if the use of ByLock is conclusively established and "could prima facie suggest some kind of connection with the **Gülen movement**" (§ 264), imputing criminal responsibility to a user of the application without proving that all the requirements for **membership in an armed terrorist organization** (including the necessary intent) have been met is not acceptable under the Yüksel Yalçınkaya judgment (§ 264).

48. In fact, the principles established by the Court in the Yalçınkaya judgment apply not only to cases where the use of the ByLock program was the sole and decisive factor for conviction, but also to other areas where convictions were based on attending religious gatherings, depositing money in Bank Asya, or participating in any activities of the Gülen movement for religious reasons, regardless of whether there was an allegation of using ByLock. It is not sufficient to merely demonstrate a person's connection or membership to the Gülen movement in any way; the material and mental elements of the crime of membership in a terrorist organization, particularly the existence of specific intent, must be proven in the trial without leaving any room for doubt.

2.2. No progress made on the general measures under Articles 7 and 46 of the Convention

49. The Government contends that *'the current practice and case-law of the Turkish judicial authorities show that a practice compatible with the principles laid down by the Court has become established.'* (Action Plan § 30) The Action Plan refers to the decisions made by

Turkish judicial authorities, asserting that being a ByLock user is not considered a presumption of strict liability and is not used as a direct basis for punishment (Action Plan § 57). However, this claim does not align with the reality on the ground. In practice, many individuals have been detained, arrested, convicted, or are currently serving finalized sentences for membership in an armed terrorist organization solely because they were identified as ByLock users.

2.2.1 First Instance Courts

50. The Government presents a number of first instance court decisions, which, according to the Government, demonstrate that the practice has changed and already conforms with the Yalçınkaya judgment.

51. All the sample decisions presented by the Government demonstrate that the first instance courts are primarily focused on determining whether the defendants have actually used the ByLock app. The samples show that in the cases presented, first instance courts did not convict the defendants solely based on the allegation of ByLock use when the CGNAT records indicated limited access. As stated in paragraph 35 of the Action Plan, in all the decisions presented between paragraphs 31-37, the courts deemed the findings and evaluation reports crucially important in determining that the accused was a ByLock user. In fact, this statement by the Government itself is evidence that the practice has not changed and is still in violation of the Yüksel Yalçınkaya judgment's findings.

51. First, the Court had already rejected the Government's arguments regarding the findings and evaluation report submitted to the Court in support of its defense, even though there were some religiously motivated messages, as in the case of the Yuksel Yalcinkya case. Secondly, in none of these decisions did the first instance courts evaluate the material and mental elements of the alleged offense. Another interesting aspect of the decisions presented by the Government is that the prosecutors in all these cases appealed the acquittal decisions, which demonstrates that people have been arrested, detained, or indicted based on these types or levels of evidence by the prosecutors.

52. The Government states in para 37 of the Action Plan that there are many such acquittal decisions and encloses 10 different decisions to support its arguments.

53. Since all the decisions presented by the Government are acquittal decisions from the first instance courts, along with the stereotypical short approval decisions from the regional appeal courts and the Court of Cassation, it is not possible for the Committee of Ministers to assess the veracity of the Government's contention that the first instance courts abide by the principles set out in the Yüksel Yalçınkaya judgment. **In fact, the decisions we have collected through the social media followers of our associations, as presented below, show the contrary to what the Government is reporting in the Action Plan:** (See annexed decisions)

1. The Istanbul 25th High Criminal Court convicted a person accused of using the ByLock program, stating that it was not necessary for individuals within the ByLock network to communicate with each other. (Annex 1) The 3rd Criminal Chamber of the Court of Cassation upheld this ruling on **February 7, 2024**, without further evaluation. (Annex 2)

2. The Manisa 3rd High Criminal Court convicted the accused based on messages that included topics such as organizing a picnic, collecting donations, sacrifices, and scholarships, having a 555 TL *(around 14 EURO)* account in Bank Asya, and being a member of the Active Educators Union since February 17, 2012, until resignation on June 30, 2016. (Annex 3) The 3rd Criminal Chamber of the Court of Cassation upheld this ruling on **April 3, 2024**, without further evaluation. (Annex 4)

3. The Istanbul 23rd High Criminal Court convicted the accused on **January 22, 2024** for allegedly using ByLock without obtaining the USER ID or relevant information, holding an account in Bank Asya, and being a member of an association. The court stated that, although ID numbers related to the ByLock accounts could not be determined, the ByLock finding was evaluated against the accused considering other evidence in the case file. Regarding Bank Asya, the court remarked that the unusual increase in account activity in September and October 2014 was evaluated against the accused. (Annex 5)

4. The Istanbul 13th High Criminal Court convicted the accused **on May 8, 2024** for using ByLock, noting that the identified ByLock messages were related to obtaining medical reports and instructions for medication, consistent with the accused's profession as a doctor. (Annex 6)

5. The Diyarbakır 9th High Criminal Court convicted the accused on **February 26, 2024** based on account movements in Bank Asya. Despite a previous reversal decision by the Court of Cassation, the subsequent reasoned judgment stated that the accused, although claiming to have opened the account for school fees, had several accounts that were considered organizational behavior. The court concluded that the accused acted on instructions to aid the organization. (Annex 7)

6. The Gaziantep 7th High Criminal Court convicted the accused on **February 29, 2024** for using ByLock, despite no message contents or USER ID being detected. The court based the ByLock accusation on interpreting the letters in the names of the accused's daughter and spouse. (Annex 8) The Gaziantep 4th Regional Court of Appeal upheld this ruling**.** (Annex 9)

7. The Batman 2nd High Criminal Court convicted the accused on **January 30, 2024** solely for having an account in Bank Asya. The court stated that although the accused's

activities did not show continuity, diversity, and intensity to indicate inclusion in the hierarchical structure of the armed terrorist organization, they were considered actions serving the purpose of the organization, thus constituting the crime of aiding the armed terrorist organization. (Annex 10)

8. The Manisa 2nd High Criminal Court convicted the accused **February 7, 2024** for using ByLock, despite no message contents being found. The court noted that although a witness claimed not to know the accused, the witness admitted to being a ByLock user, and it was deemed unlikely that the accused's inclusion in ByLock was coincidental. (Annex 11)
9. The Istanbul 24th High Criminal Court convicted the accused on **February 13, 2024** based on the alignment of base data, the use of ByLock, holding an account in Bank Asya, and being connected with a social association. (Annex 12)
10. The Antalya 10th High Criminal Court convicted the accused for using ByLock and holding an account in Bank Asya. (Annex 13) The 3rd Criminal Chamber of the Court of Cassation upheld this ruling on **March 20, 2024**, without further evaluation. (Annex 14)
11. The Istanbul 24th High Criminal Court convicted the accused on **July 9, 2024** based on union membership and holding an account in Bank Asya. (Annex 15)
12. In a decision issued by the Gaziantep 7th High Criminal Court (ACM) on **February 20, 2024**, the accused was convicted based on the alleged use of ByLock. (Annex 16) The court also called individuals from the ByLock friends list as witnesses, and despite their denial of the allegations, the accused was convicted of membership in an armed terrorist organization based on ByLock usage, although no message contents were found. This decision was later upheld by the Gaziantep Regional Court of Appeal **on May 9, 2024.** (Annex 17)
13. The İzmir 2nd High Criminal Court convicted the accused on **July 16, 2024** for using the ByLock application, even without determining the message contents. (Annex 18)
14. The Kastamonu High Criminal Court convicted the accused on April 27, 2023 for using ByLock, despite not determining the ID number. (Annex 19) The court also convicted several defendants of membership in an armed terrorist organization based on ByLock usage, despite the absence of ID numbers and message contents. The Ankara Regional Court of Appeal upheld this ruling on **February 28, 2024**. (Annex 20)
15. In a decision issued by the Antalya 10th High Criminal Court (ACM) on **February 15, 2024**, the accused was convicted based on the alleged use of the ByLock application

without determining the USER ID and message contents, as well as having an account in Bank Asya. (Annex 21)

16. The Hatay 2nd High Criminal Court convicted several individuals on **July 18, 2024** for using the ByLock application and holding an account in Bank Asya, even without determining the message contents. (Annex 22)

17. The Ankara 29th High Criminal Court convicted the accused on December 22, 2022 for using the ByLock application without determining the USER ID and message contents. (Annex 23) The Ankara Regional Court of Appeal upheld this ruling on March 25, 2024. (Annex 24)

18. The Batman 2nd High Criminal Court convicted the accused on **February 15, 2024** for using the ByLock application and holding an account in Bank Asya, despite not determining the USER ID and message contents. (Annex 25)

19. The Hatay 2nd High Criminal Court convicted several individuals on **June 27, 2024** for using the ByLock application and holding an account in Bank Asya without determining the message contents. (Annex 26)

20. In a decision issued by the Ankara 15th High Criminal Court (ACM) on **June 28, 2024**, the accused was convicted based on the alleged use of the ByLock application and having an account in Bank Asya. (Annex 27)

21. In a decision issued by the Hatay 2nd High Criminal Court (ACM) on **June 27, 2024**, several individuals were convicted based on the alleged use of the ByLock application. (Annex 28)

22. The Antalya 8th High Criminal Court convicted several individuals on J**anuary 12, 2024** for using the ByLock application and holding an account in Bank Asya, despite not determining the ID number and message contents. After a reversal decision by the Court of Cassation, the subsequent trial indicated that the GSM line connected to the ByLock program 124 times between October 12, 2015, and January 18, 2016. (Annex 29)

23. The Istanbul 14th High Criminal Court convicted the accused on May 17, 2023 for having an account in Bank Asya and being a member of the Aktif-Sen association. (Annex 30) The court considered the increase of 16,244.2 TL in the account balance at Bank Asya between December 31, 2013, and December 24, 2014. The Istanbul Regional Court of Appeal upheld this ruling on May 14, 2024. (Annex 31)

24. The Gaziantep 10th High Criminal Court convicted the accused on **May 31, 2024** for having an account in Bank Asya. Despite the fact that the accused was not a ByLock user, had no adverse witness testimony, had no record of attending schools associated

with the movement, and had no involvement with institutions closed by decree, the court still sentenced the accused to membership in an armed terrorist organization for opening an account at Bank Asya and making transactions that caused a sudden increase in the account balance. (Annex 32)

25. The Samsun 2nd High Criminal Court sentenced the accused, and the 3rd Criminal Chamber of the Court of Cassation upheld the ruling on September 20, 2022. After the Constitutional Court accepted the appeal on December 14, 2023, the Samsun Regional Court of Justice retried the case. Upon reviewing all account transactions, the court convicted the accused on **June 5, 2024**, for membership in an armed terrorist organization, citing the transfer of funds from another bank to Bank Asya as evidence. (Annex 33)

26. The Diyarbakır 8th High Criminal Court convicted the accused on **February 14, 2024**, for using the ByLock application despite the absence of message contents. The Constitutional Court had previously issued a violation ruling on the individual application, but it did not change the outcome. The court accepted the "data analysis report and ByLock detection and evaluation report" as sufficient evidence, even though the people on the friend's list were not heard as witnesses. (Annex 34)

27. The Yozgat 2nd High Criminal Court convicted the accused on **February 14, 2024**, for using the ByLock application and having an account in Bank Asya, although the message contents were not found to be incriminating. (Annex 35)

28. The Adana 2nd High Criminal Court convicted the accused on **May 2, 2024**, for using the ByLock application and having an account in Bank Asya. The court referenced the "matching of the message content regarding the birth of the defendant's sister with civil records" in the ByLock detection and evaluation report. Regarding Bank Asya, the court noted "significant account activity from February 2014 to October 2015." (Annex 36) The appeal request was denied on July **17, 2024**. (Annex 37)

29. The Mersin 9th High Criminal Court convicted a 76-year-old individual on October 4, 2018 for membership in an association. The court primarily cited the individual's membership in the Erdemli Akdeniz Eğitim Gönüllüleri Kültür Yardımlaşma ve Dayanışma association and a donation made to the Bahar Hanımlar association as key evidence. (Annex 38) The 3rd Criminal Chamber of the Court of Cassation upheld this ruling on **May 29, 2024**, without further evaluation. (Annex 39)

30. The Kayseri 2nd High Criminal Court convicted the accused on **January 11, 2024**, for using the ByLock application. (Annex 40)

31. The Kütahya 2nd High Criminal Court convicted the accused on **June 5, 2024**, for using the ByLock application. The initial trial had been overturned by the 3rd Criminal

Chamber of the Court of Cassation, which required further investigation of ByLock users linked to the accused. During the retrial, witnesses who were connected to the accused via User ID were heard, and their testimony, along with the fact that they worked at the same workplace, led to the conclusion that the accused used ByLock. (Annex 41)

32. The Bursa 2nd High Criminal Court convicted the accused on **June 5, 2024**, for using the ByLock application. The court emphasized that "determining that the perpetrator knowingly and willingly obtained a User-ID registered in the ByLock server; that the ByLock system was only accessible to members of the organization, thereby establishing at least membership in the FETÖ/PDY armed terrorist organization, is necessary and sufficient." The court also stated that "there is no need to prove that the accused communicated with others within the network or the content of those communications." (Annex 42) The Bursa Regional Court of Appeal upheld this ruling on **July 10, 2024**. (Annex 43)

33. The Istanbul 24th High Criminal Court convicted the accused on **May 14, 2024**, for using the ByLock application and having an account in Bank Asya. The ByLock detection report from December 15, 2022, noted that "the base data is consistent." (Annex 44)

34. The Mugla 2nd High Criminal Court convicted the accused on **March 26, 2024**, for having an account in Bank Asya. The court's reasoning included the following: "According to the expert report, the accused's banking transactions began during the period of instructions from the organization leader, and these transactions were carried out in line with the instructions and were beneficial to the bank. The defense's contrary claims were deemed an attempt to evade punishment." (Annex 45)

35. The Hatay 3rd High Criminal Court convicted the accused on **February 29, 2024**, for using the ByLock application. Despite the absence of message contents, the court noted that "the ByLock connection dates during 2015-2016 indicate that the accused maintained a connection with the organization even after the December 17-25, 2013, process. (Annex 46)

36. The Antalya 8th High Criminal Court convicted the accused on **March 15, 2018**, for using the ByLock application and being a member of an association, despite the absence of message contents. It appears that the people on the accused's ByLock friend's list were not heard as witnesses. (Annex 47) The 3rd Criminal Chamber of the Court of Cassation on **February 14, 2024** upheld this ruling. (Annex 48)

37. The Düzce 2nd High Criminal Court convicted the accused on **May 31, 2024**, for using the ByLock application and having an account in Bank Asya. Following a reversal

decision by the Court of Cassation, the court heard witnesses from the accused's ByLock friend's list. Despite the witnesses denying the ByLock allegations, the court convicted the accused, highlighting the accused's deposit of money into their Bank Asya account in September 2014 and the opening of a participation account with 13,000 TL on September 9, 2014. (Annex 49)

38. The Samsun 4th High Criminal Court convicted the accused on **May 3, 2024**, for using the ByLock application, having an account in Bank Asya, being a member of an association, and accessing news websites like Aktif Haber, Rota Haber, Samanyolu Haber, and Zaman.com, despite the absence of message contents. (Annex 50)

39. The Yozgat 2nd High Criminal Court convicted the accused on **June 28, 2024**, for having phone contacts with individuals from the community, having an SGK record, and witness statements. (Annex 51)

40. The Malatya 2nd High Criminal Court convicted the accused on **June 27, 2024**, for using ByLock and having an account in Bank Asya. The court accepted as evidence the deposit of 3,962 TL into the accused's existing Bank Asya account on February 7, 2014, despite the last transaction in the account being on December 15, 2009. The court also noted that the accused opened a participation account in US dollars on September 30, 2014, depositing 609.41 USD the same day. Although the message contents were not determined, the court ruled that "the accused used ByLock, which was exclusively used by FETÖ terrorist organization members." (Annex 52)

41. The Izmir 18th High Criminal Court convicted the accused on **July 4, 2024**, for using the ByLock application. (Annex 53)

42. On **May 8, 2024**, the Bayburt 18th High Criminal Court convicted the accused for using the ByLock application, despite the absence of message contents. (Annex 54)

43. The Izmir 18th High Criminal Court convicted the accused on **September 10, 2019**, for using the ByLock application. (Annex 55) This ruling was upheld by the Court of Cassation on April 25, 2024. (Annex 56)

44. The Konya 6th High Criminal Court convicted the accused for using the ByLock application, despite the absence of message contents. (Annex 57) The Court of Cassation upheld this ruling on **May 27, 2024**. (Annex 58)

45. The Ankara 32nd High Criminal Court convicted the accused on **May 16, 2024**, for using the ByLock application, despite the absence of message contents. The court deemed the consistency between HTS and CGNAT records sufficient for conviction. (Annex 59)

46. The Van 5th High Criminal Court convicted on October 8, 2019 the accused for using the ByLock application, despite the absence of message contents. The reasoned judgment stated, "Although the accused persistently claimed not to have used the program, there was no argument supporting this defense, and nothing in the prosecutor's office's report invalidates the ByLock detection. BTK data and ByLock detection were considered concrete evidence, leading to the conclusion that the accused effectively used the ByLock program, which is the organization's internal secret communication tool." (Annex 60) The 3rd Criminal Chamber of the Court of Cassation upheld this ruling on **June 12, 2024**. (Annex 61)

47. The Kocaeli 2nd High Criminal Court convicted the accused on **December 20, 2023**, for using the ByLock application. The reasoned judgment noted that witnesses from the accused's ByLock friend's list were not heard, stating that "the individual listed in the ByLock ID list was sentenced to 8 years and 9 months by the Denizli 3rd High Criminal Court on charges of membership, which was decisive in the conviction." (Annex 62)

48. The Hatay 2nd High Criminal Court convicted the accused on **July 18, 2024**, for using the ByLock application and having an account in Bank Asya, despite the absence of message contents. The reasoned judgment stated, "Although message contents related to the accused's use of ByLock were not obtained, it is significant that the program was installed and used only for communication within the organization, that people outside the organization were unaware of this program until after the July 15 coup attempt, that communication could only be carried out between individuals with usernames and passwords, and that the program's secrecy and legal elements meant that the lack of content does not change the criminal qualification." (Annex 63)

49. The Antalya 8th High Criminal Court convicted the accused on **April 19, 2024**, for using the ByLock application following a reversal decision by the Court of Cassation. The reasoned judgment highlighted an expert report noting that "CGNAT and GPRS base station records were partially inconsistent but generally technically compatible." Despite finding no new evidence against the accused or message content, the court concluded that "the ByLock program, exclusively used by FETÖ/PDY armed terrorist organization members, was intensively used by the accused, proving their membership in the organization's hierarchical structure." (Annex 64)

50. After the Court of Cassation overturned the previous trial for not discussing whether the accused's actions constituted aiding the organization, the court retried the case. The accused was convicted for membership in TSİAD and for depositing 10,000 TL into Bank Asya on January 13, 2014, after taking out a loan from Şekerbank. The Izmir 15th High Criminal Court convicted the accused on May 10, 2024, for depositing money

into Bank Asya and being a member of an association. The previous trial had been overturned by the Court of Cassation for not discussing whether the accused's actions constituted aiding the organization. The retrial resulted in the accused being convicted for membership in TSİAD and depositing 10,000 TL into Bank Asya on January 13, 2014, after taking out a loan from Şekerbank. (Annex 65)

51. The Istanbul 24th High Criminal Court convicted the accused on **March 12, 2024**, for using the ByLock application, despite the absence of message contents. During the trial, the accused admitted to using ByLock, stating, "I found the application unnecessary and deleted it shortly after installing it on my phone. The person who installed it for me was someone I never contacted again. As a school employee, I could not have known that ByLock was a secret program. If I had known, I would never have allowed it. I assumed it was something normal and tried to use it to contact someone for an internship arrangement but was unsuccessful, so I deleted the app soon after." Despite this, the court emphasized that the accused had "partially confessed, and the findings confirm that the accused was a ByLock user within the FETÖ/PDY organization," leading to a conviction. (Annex 66)

52. The Istanbul 25th High Criminal Court convicted the accused on **June 30, 2022**, for using the ByLock application, despite the absence of message contents. (Annex 67) This ruling was upheld by the Court of Cassation on **February 7, 2024**. (Annex 68)

53. The Canakkale 2nd High Criminal Court convicted the accused on **March 8, 2024**, for using the ByLock application, despite the absence of message contents. The reasoned judgment noted that "CGNAT records obtained from BTK were consistent with the area where the accused lived, and the accused connected to ByLock IP addresses 57 times." (Annex 69)

54. The Kocaeli 4th High Criminal Court convicted the accused on **March 6, 2024**, for using the ByLock application. Although the USER ID number could not be fully determined, the court considered a forensic report that stated, "Based on this information, it is evaluated that the ByLock account with USER ID ... might have been used by the accused." Despite this uncertainty, the court still convicted the accused for using ByLock. (Annex 70)

55. The Constitutional Court issued a violation decision regarding banking transactions. After the violation decision, the Manisa 3rd High Criminal Court retried the case on **December 12, 2023**, and convicted the accused for the account activities at Bank Asya. The reasoned judgment stated that "depositing money into a Bank Asya account connected to the organization could be considered as aiding the organization, and for

aiding to constitute a crime, the accused must have knowingly and willingly helped the organization." (Annex 71)

56. The Constitutional Court issued a violation decision regarding banking transactions. After the violation decision, the Usak 2nd High Criminal Court retried the case on **March 12, 2024**, and convicted the accused for the account activities at Bank Asya. The reasoned judgment stated that "Although the accused's defense attorney requested a review of all the accused's bank accounts at the first hearing on February 15, 2024, there was no concrete evidence in the case file to support the claim that any other bank had made the accused open an account at Bank Asya. According to the Sakarya Regional Court of Appeal, there was no other transaction that could have forced the accused to choose Bank Asya. Therefore, there was no justification to review all the accused's bank accounts. The accused's actions, such as opening an account and depositing money into Bank Asya, were not routine banking transactions. This was confirmed by the accused's defense on February 15, 2024, where they stated, 'My Bank Asya account was opened in 2006, and I continued to use it after it was transferred to TMSF." (Annex 72)

57. The Hatay 2nd High Criminal Court convicted the accused on **May 30, 2024**, for the account activities at Bank Asya. The court noted that "although the accused initially claimed to use the account for investment purposes, later they contradicted themselves by stating that they deposited wedding gold into the account. The accused opened a participation account on September 10, 2014, and February 4, 2015, in line with the instructions." (Annex 73)

58. The Yozgat 2nd High Criminal Court convicted the accused on **February 14, 2024**, for using the ByLock application and for the account activities at Bank Asya, despite the absence of message contents. The court attributed a ByLock ID number to the accused based on the silent letters in their name and hometown. The reasoned judgment also cited that the accused "opened an account and deposited 20,000 TL into a 372-day participation account on September 22, 2014, and continued transactions with this account." (Annex 74) The Kayseri Regional Court of Appeal upheld this ruling on **April 25, 2024**. (Annex 75)

59. In a case where the Court of Cassation overturned a previous ruling due to the absence of a "ByLock detection and evaluation report," the Antalya 10th High Criminal Court, in its decision dated **May 21, 2024**, reconvicted the accused without determining the USER ID or message contents. The court relied solely on "CGNAT records found in the case file and the comparison of CGNAT records with HTS records" to justify the conviction. (Annex 76)

60. The Zonguldak 2nd High Criminal Court convicted the accused on **January 24, 2024**, for account activities in Bank Asya. The reasoned judgment highlighted that "the total amount of 19,500.00 TL transferred from Akbank corresponded with the date and amount of the loan withdrawn from Akbank, indicating that the loan was deposited into the Bank Asya account on the same day, and the opening of a term deposit account on September 26, 2014, is noteworthy." The Kayseri Regional Court of Appeal upheld this ruling on **April 25, 2024**. (Annex 77)

54. We have received dozens of similar decisions from across the country. The sample decisions, rendered by courts in various provinces throughout Turkey, clearly show that the practice of the first-instance courts has not changed at all. As can be seen, none of these decisions includes any assessment of the material and mental elements of the offense as required by the Yüksel Yalçınkaya judgment. Instead, they reflect the persisting systemic problematic practice of automatically sentencing individuals based on their alleged use of the ByLock application. We would like to particularly draw the Committee's attention to the fact that all these first-instance court decisions were rendered recently, in the aftermath of the announcement of the Yüksel Yalçınkaya judgment on September 26, 2023. As you can see, none of the decisions makes any implicit or explicit reference to the Court's Yüksel Yalçınkaya judgment, which could be interpreted as another indication of the first instance courts' disregard for the judgment.

2.2.2. Regional Appeal Courts and Court of Cassation

55. The Government argues in paragraph 38 of its action plan that the regional courts of appeal or the Court of Cassation quash first-instance court decisions when they fail to apply the criteria established by the Court of Cassation, thereby ensuring a uniform practice. To support this assertion, the Government presents some sample decisions quashing the first-instance courts' decisions in the following paragraph onwards.

56. It can be observed from these sample decisions that both the regional courts and the Court of Cassation are focusing solely on whether the person used Bylock. Several decisions indicate that there are individuals who admitted to using Bylock for personal or commercial purposes, which counters the Government's argument that this application was used exclusively by members of the Gülen movement (see decisions presented in paragraphs 39-41) In these decisions defendants accepted their use of Bylock application and as there was no any other information that could be interpreted against the defendants the Court of Cassation had no any other option than quashing the first- instance court's decisions. One must carefully note how problematic this practice is, as these conviction decisions were rendered by the first-instance courts and subsequently approved by the regional courts of appeal, even in the absence of any credible evidence linking the defendants to the Gülen movement.

57. In paragraph 44 of the Action Plan the Government asserts that “the Court of Cassation further finds it necessary to inquire other issues, *inter alia,* those adduced by the defendants to exculpate themselves in addition to the ByLock findings and evaluation report.” The only element that the Court of Cassation looks at is whether the person used the Bylock application in reality. It asks first-instance courts to make a further examination by interrogating the persons seen on the contact list as identified in the findings and evaluation report. There are numerous examples which we have presented above shows the practice of the Court of Cassation contrary to what the Government argues. In many cases, as can be seen from the decisions presented above, first instance courts convicted the defendants even after making this further investigation although the witnesses denied their connection with the defendants through the Bylock application.

58. To make a fair assessment, the Committee of Ministers should not only rely on the government's reports and the explanations in the Court of Cassation's quashing decisions but should also request reasoned judgments from the first-instance courts in the same cases. Additionally, it should investigate the outcomes of cases that were quashed by the Court of Cassation, as in many instances, defendants are reconvicted by first-instance courts for the same offense by circumventing the Court of Cassation's quashing decision. Interestingly, although the Government has presented several quashing decisions rendered for procedural reasons, it has not provided a single acquittal decision from the first-instance courts following retrials conducted after the Court of Cassation’s quashing decisions. Nor has it provided any decisions from the regional courts of appeal in favor of the defendants.

59. For example, in a case where the Court of Cassation overturned a previous ruling due to the absence of a "ByLock detection and evaluation report," the Antalya 10th High Criminal Court, in its decision dated **May 21, 2024**, reconvicted the accused without determining the USER ID or message contents. The court relied solely on "CGNAT records found in the case file and the comparison of CGNAT records with HTS records" to justify the conviction. (Annex 76) This is the current routine practice of the judiciary. None of the decisions presented by the Government, nor the numerous decisions we are presenting here, include any assessment of the essential elements of the offense of membership in an armed terrorist organization as outlined in the Yüksel Yalçınkaya judgment. The Government's abstract statement in paragraph 51 of the Action Plan, which argues the contrary, is contradicted by numerous decisions that we are presenting in the annex to this communication.

3. General measures on Ongoing Cases under Articles 6 and 46 of the Convention

3.1 Required general measures for ongoing cases under Articles 6 and 46 of the Convention

60. In ongoing cases before the domestic court, the findings of the Yalçınkaya judgment concerning the violation of Article 6 must also be taken into account. If there are objections to the validity of evidence in pending cases, domestic courts must address the procedural deficiencies identified by the ECtHR in relation to Article 6 of the Convention. This includes removing invalid evidence from the case file and ensuring that judgments are not based on such evidence. In this context, any objections to the validity of raw ByLock data must be carefully examined and discussed in accordance with the principles of adversarial proceedings and equality of arms. If the data cannot be proven beyond a reasonable doubt, it should not be used as a basis for judgment.

3.2 No progress made on the general measures under Articles 6 and 46 of the Convention

61. The explanations given by the Government do not reveal any meaningful change in the practice. As can be seen in the annexed court decisions the courts at all levels continue to fail to provide any justification for withholding the ByLock data from the defendants despite their requests and they do not even respond to their requests asking for data at least allegedly relating to them. This persistent stance of the judiciary continues to deprive the defendants of the opportunity to present counter-arguments, challenge the validity of the reasons, or dispute whether all efforts had been made to strike a fair balance between the competing interests and to protect their defense rights. No court has had the opportunity to review the raw data in the past eight years, including since the announcement of the Yüksel Yalçınkaya ruling, nor have they shown any interest in requesting access to the impugned data. Any of the concerns raised by the defendants regarding the reliability of the ByLock evidence—such as the inconsistencies between different ByLock user lists issued by the MİT (National Intelligence Organisation), as well as the discrepancy between the number of identified users and those ultimately prosecuted, and the number of downloads—have likewise not been addressed by the domestic courts. The domestic **courts continue to fail to consider that the ByLock data had already been processed and used not only for intelligence purposes but also as criminal evidence to initiate investigations and arrests, including that of the applicant**, before the magistrate's court's order for their examination. Additionally, the applicant's arguments concerning the MİT's lack of authority to collect data for use as evidence in criminal proceedings, and the claim that the criminal peace judgeship's decision dated December 9, 2016, could not retroactively render such collected evidence "lawful" and reliable, **were not addressed by either the Ankara Regional Court of Appeal or the Court of Cassation. No court has ever responded to these arguments.** The national courts **continue to fail to**

address the defendants' objections to the accuracy of the data with relevant and sufficient reasoning, despite the critical importance and determinative effect of this data on the convictions.

62. We would like to invite the Committee to review the attached decisions to verify that nothing has changed in practice and that the judiciary's systemic non conformity with the Yüksel Yalçınkaya judgments and its case law continues to persist. Moreover, we would like to remind the Committee that, as the courts' decisions are often generic and largely copied from one another, they do not always accurately reflect the demands of the defendants made during hearings or through written submissions during the trial or appeal process.

63. That said, the following court decisions reveal more clearly the courts' disregard for the defendants' arguments regarding the validity of Bylock evidence in their cases.

64. For instance, R.U. was convicted by the İzmir 18th Assize Court, based on his alleged use of the ByLock application. This conviction was upheld by the Court of Cassation on April 25, 2024. His repeated requests during the trial phase for obtaining an expert report regarding both the job posting allegations and the ByLock application, as well as the requests for witness testimony, were disregarded by the court. (Annex 55)

65. Likewise, E.E was convicted by the Bursa 2nd Assize Court **on June 5, 2024,** based on the use of the ByLock application. The following statements in the judgment are of particular importance: *"Accordingly, determining that the perpetrator knowingly and willingly obtained a User-ID registered on the ByLock server; that the perpetrator joined the ByLock system and thus gained access to a secret communication network, which only a member of the organization could have, is necessary and sufficient to conclude that the individual is at least a member of the FETÖ/PDY armed terrorist organization. Furthermore, it is not required to establish whether the individuals within this network had communication content with other persons within the network. For those involved in the ByLock system, identifying with whom and what the content of their communications were within the system would only be relevant if the individual were being prosecuted for being an organization leader and if the existing evidence were deemed insufficient to determine that the individual was an organization leader."* This decision was upheld by the Bursa Regional Court of Appeal on July 10, 2024. Regarding the allegation that the defendant used ByLock, a request was made to hear the testimony of the owner of the phone line associated with the application as a witness, but this request was denied. Only those who benefited from effective remorse were heard as witnesses. The court considered only the evidence deemed unfavorable to the defendant. The principle of adversarial proceedings was violated. (Annex 42)

66. As can be seen from these sample decisions, the Government's assertion in paragraph 75 of the Action Plan that "the reasonable and substantiated requests related to the case file do

not remain unaddressed" is incorrect and does not reflect the actual systemic problematic practice. Defendants' repeated requests at the first instance courts are either rejected or left unanswered, and the same arguments are mostly disregarded by the regional appellate courts and the Court of Cassation. The trials often do not go beyond the mere completion of obligatory formal processes aimed at securing convictions. The Government provides some sample decisions of the Constitutional Court where the court rendered violation judgments in exceptional cases. However, these judgments are not complied with by the first instance courts, the regional courts, or the Court of Cassation. Defendants are often re-convicted by the first-instance courts, which superficially refine their reasoning.

67. The decisions of the Constitutional Court, presented in the Action plan, highlight the lack of seriousness in the judicial practice concerning ByLock cases, showing that the first-instance courts are completely disregarding the defendants' demands. These decisions are often upheld at the appellate and cassation levels. Even when applicants are fortunate enough to obtain violation decisions from the Constitutional Court, a new vicious cycle begins, where defendants are retried and reconvicted for the same offense. By the time this phase is reached, the defendants will have, unfortunately, already served their sentences of 6 years and 3 months in prison, at best.

68. In the Action Plan, the Government cites the Ferhat Kara decision of the Constitutional Court to support its arguments. We would like to draw the Committee's attention to the fact that this decision has already been extensively analyzed in the Yüksel Yalçınkaya case and, therefore, does not add any value to the implementation of the said judgment.

69. The decisions of the Court of Cassation that the Government presents in the Action Plan likewise only serve to prove the continuation of the systemic problem. The Court of Cassation now merely requires the presence of a ByLock findings and evaluation report in the case file. Once such a report exists, the court requires the lower court to inquire whether there is an investigation or prosecution against the individuals listed in the ByLock findings and evaluation report, specifically those who added the accused, those whom the accused added, and those with whom the accused was in contact.

70. For example in the decision of Istanbul 25th assize court, a copy of which is attached herewith, it was decided to sentence the person alleged to have used the Bylock program by stating that it is not necessary for the persons involved in the Bylock network to have had a conversation with another person within the network (Annex 67), and this decision was upheld by the decision of the 3rd Criminal Chamber of the Court of Cassation dated 7.2.2024 without any evaluation (Annex 68).

71. Similarly, in a decision dated 20 February 2024, the Gaziantep 7th Assize Court convicted the defendant on the grounds that he was a ByLock user (Annex 16). In the aforementioned

decision, the court also heard witnesses who were on the ByLock friends list. Although these witnesses denied the allegations, the court nonetheless sentenced the defendant for membership in an armed terrorist organization, despite the absence of any message content from the ByLock application. This decision was upheld by the Gaziantep Regional Court of Appeals on 9 May 2024 (Annex 17).

72. The Kastamonu Assize Court decided to sentence several defendants for being members of an armed terrorist organization on the grounds that they used the ByLock application, even though the ID number and message contents were not identified (Annex 19). This decision was subsequently upheld by the Ankara Regional Court of Appeals on 28 February 2024 (Annex 20).

73. In the Action Plan, it is argued that the inclusion of the findings and evaluation report in the file and its submission for examination provided the opportunity to exercise the right of defense (Action Plan § 91). However, this argument was raised by the Government before the Grand Chamber's judgment was delivered and was not accepted by the Grand Chamber.

74. A fundamental aspect of the right to a fair trial is that criminal proceedings (including their procedural elements) must be adversarial, and there must be equality of arms between the prosecution and the defense, as stated by the Grand Chamber (see *Yalçınkaya v. Turkey*, no. 15669/20, § 306). In finding a violation in *Yalçınkaya*, the Grand Chamber did not examine whether the contested ByLock data was lawfully obtained, admissible, or whether the national courts had made material errors in their assessment, but rather examined the fairness of the proceedings as a whole, including the manner in which the evidence was obtained and used and the manner in which objections to the evidence were dealt with (see *Yalçınkaya v. Turkey*, no. 15669/20, § 310).

75. There are serious doubts as to whether the content and integrity of the ByLock raw data were compromised during the period from its acquisition by MIT to its delivery to the judicial authorities. The Grand Chamber also pointed to these doubts and considered it problematic that the national courts did not take into account the request to submit the data for independent review. In this respect, although in practice an expert review of the findings and evaluation report is submitted to the domestic courts, this review does not include an examination of the raw data obtained by MIT, and its scope may be limited to an assessment of various reports and records already available in the case file (see *Yalçınkaya v. Turkey*, no. 15669/20, § 333).

76. Taken together, the inclusion of the findings and evaluation report, as stated by the Government in its Action Plan, in the file and made available for the parties to review, does not sufficiently provide them with the opportunity to fully exercise their rights of defense.

4. General measures on Ongoing Cases under Articles 11 and 46 of the Convention

4.1 Required general measures for ongoing cases under Articles 11 and 46 of the Convention

77. The Court observed in the Yuksel Yalcinkaya judgment that, in cases where there are no objective grounds establishing the essential elements of the offense of being a member of an armed terrorist organization—such as in the Yüksel Yalçınkaya case —the domestic courts' use of statements or acts that were non-violent, and which should generally be protected by the Convention, may result in an infringement of the concerned rights. The Court stressed that the fact that these statements or acts are used in a corroborative or supplementary manner in criminal proceedings does not alter this conclusion.

72. According to the Court, the interpretation of Article 314 § 2 of the Criminal Code regarding the applicant's membership in Aktif Eğitim-Sen and the Kayseri Voluntary Educators Association significantly broadened the scope of this provision in an unforeseeable way. It failed to offer the minimum protection against arbitrary interference and, as such, could not be deemed "prescribed by law" as required by Article 11 § 2 of the Convention. Thus, judicial practices resulting in the conviction of an individual for the offense of membership in an armed terrorist organization would violate Article 11 of the Convention, as was the case in the Yüksel Yalçınkaya case, regardless of whether the information was used as the sole evidence or as supplementary evidence in the defendant's incrimination.

4.2 No progress made on the general measures on ongoing cases under Articles 11 and 46 of the Convention

73. The Government asserts in paragraphs 124 and 138 of its Action Plan that the recent sample decisions demonstrate that the practice has become settled in the domestic law, which does not reflect the situation on the ground. To support its argument Government presents several first-instance court decisions rendered by different courts in 2019 and 2021. From the decisions presented by the Government, it appears that defendants were acquitted in cases where membership in a dissolved trade union or association was the sole evidence against them. The Government also presents several acquittal decisions where membership in dissolved organizations was used alongside other evidence, such as depositing money into Bank Asya. In these cases, the courts acquitted the defendants because they could not find any irregularities in the banking transactions according to their problematic approaches. Thus, it seems that in such situations, the courts did not use membership in dissolved organizations as decisive evidence for convicting the defendants.

74. Among the decisions presented by the Government however, there is not a single case similar to Yüksel Yalçınkaya , where defendants were convicted for their use of the Bylock application alongside other evidence, such as membership in dissolved organizations. In fact, the similar arguments presented by the Government in the action plan regarding the conviction

of defendants based on their membership in dissolved organizations had already been assessed by the Court in the Yüksel Yalçınkaya judgment, and these arguments were known to the Grand Chamber.

75. The following decisions we obtained through the social campaign demonstrate that **the practice similar to that in the Yüksel Yalçınkaya case has not changed at all**:

1. The Manisa 3rd High Criminal Court convicted the accused based on messages that included topics such as organizing a picnic, collecting donations, sacrifices, and scholarships, having a 555 TL *(around 14 EURO)* account in Bank Asya, and being a member of the Active Educators Union since February 17, 2012, until resignation on June 30, 2016. The 3rd Criminal Chamber of the Court of Cassation upheld this ruling on **April 3, 2024**, without further evaluation. (Annex 3-4)
2. The Istanbul 23rd High Criminal Court convicted the accused on **January 22, 2024** for allegedly using ByLock without obtaining the USER ID or relevant information, holding an account in Bank Asya, and being a member of an association. The court stated that, although ID numbers related to the ByLock accounts could not be determined, the ByLock finding was evaluated against the accused considering other evidence in the case file. Regarding Bank Asya, the court remarked that the unusual increase in account activity in September and October 2014 was evaluated against the accused. (Annex 5)
3. The Istanbul 14th High Criminal Court convicted the accused on May 17, 2023 for having an account in Bank Asya and being a member of the Aktif-Sen association. The court considered the increase of 16,244.2 TL in the account balance at Bank Asya between December 31, 2013, and December 24, 2014. The Istanbul Regional Court of Appeal upheld this ruling on May 14, 2024. (Annex 30-31)
4. The Mersin 9th High Criminal Court convicted a 76-year-old individual on October 4, 2018 for membership in an association. The court primarily cited the individual's membership in the Erdemli Akdeniz Eğitim Gönüllüleri Kültür Yardımlaşma ve Dayanışma association and a donation made to the Bahar Hanımlar association as key evidence. (Annex 38-39)
5. The Antalya 8th High Criminal Court convicted the accused on **March 15, 2018**, for using the ByLock application and being a member of an association, despite the absence of message contents. It appears that the people on the accused's ByLock friend's list were not heard as witnesses. The 3rd Criminal Chamber of the Court of Cassation **February 14, 2024** upheld this ruling. (Annex 47-48)
6. The Samsun 4th High Criminal Court convicted the accused on **May 3, 2024**, for using the ByLock application, having an account in Bank Asya, being a member of an

association, and accessing news websites like Aktif Haber, Rota Haber, Samanyolu Haber, and Zaman.com, despite the absence of message contents. (Annex 50)

7. After the Court of Cassation overturned the previous trial for not discussing whether the accused's actions constituted aiding the organization, the court retried the case. The accused was convicted for membership in TSİAD and for depositing 10,000 TL into Bank Asya **on January 13, 2014**, after taking out a loan from Şekerbank. The Izmir 15th High Criminal Court convicted the accused on May 10, 2024, for depositing money into Bank Asya and being a member of an association. The previous trial had been overturned by the Court of Cassation for not discussing whether the accused's actions constituted aiding the organization. The retrial resulted in the accused being convicted for membership in TSİAD and depositing 10,000 TL into Bank Asya on January 13, 2014, after taking out a loan from Şekerbank. (Annex 65)

76. We have received dozens of similar decisions where membership in a dissolved trade union or association has been used by the first-instance courts as supplementary evidence, as was the case in the Yüksel Yalçınkaya judgment. As evidenced by these attached decisions, none of the courts assessed how membership in a dissolved organization could establish the constituent elements of the offense of being a member of an armed terrorist organization. Thus, the systemic violation of Article 11 of the Convention persists. The Committee must carefully review the sample court decisions presented by the Government and request that the Government provide additional sample conviction decisions where courts used membership in a dissolved organization as supplementary evidence in convicting defendants.

5. No Authoritative or Guiding Decisions by the Constitutional Court Since the Yüksel Yalçınkaya Judgment

77. If a case falling within the scope of an ECtHR judgment, such as the Yüksel Yalçınkaya ruling, results in a final conviction and an individual application is submitted to the Constitutional Court (CC), the CC should find a violation in light of the ECtHR's judgment. This is not only mandated by the Convention and the ECtHR's case law but also reflects the CC's duty to assess the broader impact of its decisions on human rights issues.

78. Although nearly one year has passed since the announcement of the Yüksel Yalçınkaya judgment, the Constitutional Court has not issued any guiding decisions in cases similar to Yüksel Yalçınkaya in line with the Court's judgment. Instead, it has maintained its previous stance in comparable cases.

79.The Government's action plan initially discusses landmark decisions by the Constitutional Court, such as the Ferhat Kara decision, which had already been addressed in the Yüksel Yalçınkaya judgment. In fact, the Ferhat Kara decision was a key basis for subsequent national jurisprudence regarding the Bylock application and cases involving actual or alleged members

of the Gülen movement. This decision underpinned over 8,000 cases pending before the Court, which had been examined and found inadmissible by the Constitutional Court, eventually leading to the Court's findings about the systemic issues within the Turkish judiciary in these cases.

79. Following the Yüksel Yalçınkaya judgment, the Constitutional Court has rejected applications related to 'automatic' convictions where the elements of the crime were not demonstrated, and some of the criteria accepted were not present.

80. In one of these cases, the grounds for the applicant's conviction for membership in the organization were alleged meetings with their spouse at their residence, collecting money on behalf of the organization, and membership in Yarsav, an association for judges and prosecutors dissolved after the July 2016 attempted coup. The applicant argued in their application to the Constitutional Court that, according to Turkish law, the crime of membership in an armed terrorist organization requires specific knowledge and intent, and that a conviction for membership in an armed organization necessitates proving that the perpetrator acted knowingly and willingly within the organization's hierarchical structure and adopted its objectives. The applicant contended that the lack of justification for how the elements of the crime were realized violated their right to a reasoned decision and that the principle of no punishment without law was breached due to the broad interpretation of Article 314/2 of the Turkish Penal Code. However, ten months after the Yüksel Yalçınkaya decision, the Constitutional Court dismissed the application on **12 August 2024**, stating that there was 'no violation of this principle and right.' There was no difference between the case subject to this conviction and the Yüksel Yalçınkaya case, and the reasons for the conviction in the application were even less substantial and much weaker. By rejecting the application on the grounds of the principle of no punishment without law and the right to a fair trial, especially after the Yüksel Yalçınkaya decision, the Constitutional Court has ignored the ruling of the European Court of Human Rights.[2]

81. In a similar application subject to the Constitutional Court's decision, the applicant was sentenced to 6 years, 10 months, and 15 days in prison on the grounds that their name was found in a profiling list that had been unlawfully prepared and obtained, that they participated in religious conversation gathering *(sohbet)* before 2013, and that there were some HTS (Historical Traffic Search) records of unknown content related to certain individuals. In their application to the Constitutional Court, the applicant claimed that the use of expired HTS records and unlawfully obtained, false profiling records as evidence, without discussing how these constituted a crime, the use of intelligence information and religious discussions as evidence in contradiction to previous Court of Cassation decisions, and the fact that their

[2] Constitutional Court's decision dated **August 12, 2024**, with application number 2024/2379

objections were not considered at any stage, along with the claim that the moral element of the crime of membership in a terrorist organization was not established and that the decisions did not contain sufficient reasoning, amounted to a violation of their right to a fair trial.

82. Similarly, the applicant argued that evaluating actions related to personal and social relationships, which are legal and constitute the exercise of a right, as a crime based on a completely arbitrary and unpredictable interpretation of the law, without proving that they were carried out for terrorist purposes, clearly violated the principle of "no crime and punishment without law."

83. In the Yalçınkaya case, where the penalty was imposed based on less substantial evidence, the Constitutional Court reviewed the application only within the scope of the right to a fair trial and found the claims regarding the violation of the right to a reasoned decision to be manifestly unfounded. For some reason, the court did not conduct an examination regarding the alleged violation of the principle of "no punishment without law," nor did it even acknowledge that such a claim was made, dismissing this important allegation by grouping it with "other violation claims" and rejecting it on the grounds that it did not meet the admissibility criteria.

84. In other words, the Constitutional Court's stance, which had previously deemed the Yalçınkaya application inadmissible, continued as if the European Court of Human Rights had not found a violation under Article 7 in the Yalçınkaya case for the same reasons, and the Constitutional Court found all allegations of the violation, including the right to a fair trial and the principle of "no punishment without law," inadmissible.[3] In other words, the Constitutional Court's stance, which had previously deemed the Yalçınkaya application inadmissible, continued as if the ECtHR had not found a violation under Article 7 for the same reasons in the Yalçınkaya case, and the Constitutional Court found all the allegations, including the violation of the right to a fair trial and the principle of 'no punishment without law,' inadmissible. [4]

85. As is known, in the Yalçınkaya decision, the ECtHR recognized the failure to investigate whether the elements of the crime were fulfilled and the automatic punishments imposed based on substituted criteria instead of actual crime elements as violations of Article 7. In one of these decisions, the applicant, who was punished on the grounds of being a member of the Aktif Eğitim-Sen (Active Education Union), organizing peaceful religious conversation meetings, and having witness statements against them, stated in their application to the Constitutional Court that there was no "personalization" and "justification" in the decisions made throughout the trial and in the appellate court's decision, thereby violating the right to a fair trial. They also argued that, as required by Article 7 of the Convention and as established in Supreme Court

[3] The Constitutional Court's decision dated July 26, 2024, and application number 2023/2179
[4] The Constitutional Court's decision dated March 27, 2024, with application number 2023/4910.

precedents, punishment was imposed without establishing the elements of the crime, especially the moral element, thus violating the principle of 'no crime without law.'

86. Ten months after the Yalçınkaya ruling, the Constitutional Court ruled on this application and, as if such a ruling had never been issued by the ECtHR, once again found the allegations of violations of the right to a fair trial and the principle of 'no crime without law' inadmissible on the grounds that they were 'manifestly ill-founded."[5]

87. In another case subject to a Constitutional Court decision, the reason for the applicant's punishment was their involvement in banking activities with Bank Asya. In other words, the accusation was based on depositing money into a bank that was under the supervision and control of the state, which the Government, in its defense in the Yalçınkaya application, stated was not the primary incriminating evidence but could only serve as supporting evidence alongside ByLock (Yalçınkaya/Turkey § 236). [6] The applicant argued in their application form that banking activities were legal and routine banking transactions and that the elements of the alleged crime had not been fulfilled, claiming a violation of the principle of 'no punishment without law' and the right to a fair trial. However, in its decision issued nine months after the Yalçınkaya ruling, the Constitutional Court once again ignored the principles and issues highlighted in the Yalçınkaya ruling and found the application inadmissible. [7]

88. In the previous decision mentioned, the Constitutional Court found the application regarding the conviction based on banking activities with Bank Asya inadmissible. Curiously, just 14 days before this decision, the Court had consolidated over 100 applications related to convictions for the same reason and, this time, ruled that the right to a fair trial had been violated.[8] However, the sole violation claim of these applicants is not limited to the right to a fair trial. In both the application form and the supplementary explanations, the applicants argued that, in addition to the violation of the right to a fair trial, the principle of "no crime without law" was also violated. They stated, *"the court decisions did not demonstrate how the elements of the crime of membership in an armed terrorist organization were established. It was not explained when the applicant joined the organization, what their position was within the organization's hierarchy, from whom they received orders/instructions, and to whom they gave orders/instructions (material element). The aspects of knowingly and willingly joining this*

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5 The Constitutional Court's decision dated July 26, 2024, and application number 2023/2179

6 *"236. The Government has stated that the above arguments also apply to the applicant's deposit transactions at Bank Asya, which was considered by the authorities as part of the financial structure of the terrorist organization, and to the applicant's membership in organizations affiliated with FETÖ/PDY. These were used as supporting evidence for the applicant's membership. However, the Government acknowledged that even 'suspicious' deposit transactions made at Bank Asya following F. Gülen's call, intended to benefit the organization, or membership in a union or association linked to FETÖ/PDY would not be sufficient on their own to prove membership in FETÖ/PDY. They would only serve as supporting elements when considered alongside other significant evidence, as in the concrete case."*

7 The Constitutional Court's decision dated June 25, 2024, with application number 2023/18692

8 The Constitutional Court's Mehmet Burak Akbudak decision, Application No: 2021/53091, Decision Date: June 11, 2024

structure with an understanding of FETÖ/PDY's specific goals, or being aware of the coup attempt (moral element), were not assessed at all. The assumption was made that the applicant should have known that FETÖ/PDY was an armed organization and that they should have known this due to their position." In doing so, they claimed a violation of the principle of "no crime without law." However, just as in the aforementioned decisions, the Constitutional Court ignored this claim and only ruled on the right to a fair trial. By citing the violation of the right to a fair trial, the Court did not find it necessary to separately examine the applicants' other complaints in terms of admissibility and merits (§ 26). In other words, the Constitutional Court completely disregarded the claims of a violation of the principle of "no crime without law" and, by categorizing this significant violation claim among "other violation claims," did not even see the need for further examination. According to the Constitutional Court, the ruling on the violation of the right to a fair trial was sufficient, and there was no need to examine other violation claims.

89. Another issue with the Constitutional Court's rulings, which overlook the principle of "no crime without law," is that these decisions do not contribute to resolving the "systemic problem" that the ECtHR emphasized repeatedly in the Yalçınkaya ruling. On the contrary, they contribute to the continuation and even exacerbation of this problem. The first case where the Constitutional Court consolidated applications related to individuals punished for engaging in banking activities with Bank Asya was not the Mehmet Burak Akbudak application. In fact, a year before this decision and prior to the Yalçınkaya ruling, the Constitutional Court had issued the Hakan Darıcı and others decision for the same reasons and justifications.[9] Following this decision, the applicants requested a retrial. However, in the retrials conducted after the Yalçınkaya judgment, the first instance courts imposed the same sentences on the defendants.[10] These convictions have demonstrated that the Constitutional Court's decisions, particularly those that ignore the principle of "no crime without law," do not contribute to solving the "systemic" problem emphasized by the Grand Chamber in the Yalçınkaya judgment. The most significant issue in these trials is the automatic imposition of sentences without investigating the elements of the crime. In these cases, instead of determining whether the defendants were members of the organization, the focus is on their connections with a certain structure or formation, i.e. Gulen movement, and if any such connection is found, the individuals are convicted as members of the organization. In other words, these cases completely disregard the points that the Court required to be addressed and on which it based its violation ruling under Article 7.

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9 The Constitutional Court's decision dated June 20, 2024, with application number 2021/34045

10 Example decisions: Uşak Heavy Penal Court's decision dated 12/3/2024, Case No: 2023/420, Decision No: 2024/75, and Manisa 3rd Heavy Penal Court's decision dated 12/12/2023, Case No: 2023/244, Decision No: 2023/255

90. As concluded in the Yalçınkaya judgment by the Grand Chamber (§ 413-418), the issue at hand is not an isolated or exceptional case but rather a collection of numerous and interconnected violations that constitute a model or system. Consequently, in no similar case of persons prosecuted in Turkey is the existence of the elements of the crime examined, and legal and routine activities that do not in any way constitute the essential elements of the crime—namely, force and violence—are used as grounds for punishment. The range of so-called “criteria” that, despite not being elements of the crime, are treated as such is so broad that there is practically no one in the country who could not be punished based on them. This is precisely why the ECtHR has stated that this emerging judicial practice violates the principle of "no crime without law" and is the source of a systemic problem.

91. As can be seen from the decisions of the lower courts and the Constitutional Court mentioned above, there is no difference between the decisions of the Turkish judiciary before and after the Yalçınkaya ruling. Despite the significant amount of time that has passed since the Yalçınkaya judgment, the Constitutional Court has not issued a single ruling in accordance with the requirements of this judgment. Instead, it has found similar applications inadmissible, persistently ignored the claims of violations of the principle of "no crime without law," which was the most critical issue in the Yalçınkaya judgment, and has not complied with the ECtHR’s rulings, especially in the Yalçınkaya case. The reason why there are more than 8,000 cases of the same nature as Yalçınkaya pending before the ECtHR and potentially over 100,000 more cases that could be submitted is due to the Constitutional Court’s failure to render decisions in line with the ECtHR’s rulings.

6. General measures on Closed Cases with Final Convictions

6.1 Required general measures for closed cases under Articles 6, 7 and 46 of the Convention

92. The ECtHR ruling in the Yalçınkaya case revealed a significant backlog of similar cases, with approximately 8,000 pending before the Court at the time of the judgment. This number is indicative of a broader issue, as the Court noted that the figure could potentially rise to over 100,000 cases, depending on the total number of alleged users identified by the authorities. (See § 414) In fact, this number is only the tip of the iceberg.

93. The Court stated in paragraph 418 of the judgment that *“The Court is therefore of the opinion that in order to avoid it having to establish similar violations in numerous cases in the future, the defects identified in the present judgment need, to the extent relevant and possible, to be addressed by the Turkish authorities on a larger scale – that is, beyond the specific case of the present applicant. It accordingly falls to the competent authorities, in accordance with the respondent State’s obligations under Article 46 of the Convention, to draw the necessary conclusions from the present judgment, particularly in respect of, but not limited to, the cases currently pending before the domestic courts, and to take any other general measures as*

appropriate in order to resolve the problem identified above that has led to the findings of violation here."

94. The only necessary conclusion that the Turkish Government must draw regarding closed cases is that it has to take measures to provide *restitutio in integrum* in cases that have already been closed with a final conviction, irrespective of whether the case is pending before the ECtHR or not.

95. In this regard, the reopening of criminal proceedings in similar cases that have been closed with a final conviction is the most appropriate, if not the only, way to remedy other similar violations, to put an end to the violations found in the present case, and to provide the applicant with a remedy. In the Turkish legal system, there are generally two main extraordinary remedies that may address similar violations by reopening cases that were closed by final convictions. The first remedy is the reopening of judicial proceedings under Article 311 § 1 of the Code of Criminal Procedure. The second one is the appeal by the Chief Public Prosecutor of the Court of Cassation to the competent criminal chamber of the Court of Cassation in accordance with Article 308 (and 308/A for cases finalized by regional appeal courts) of the Code of Criminal Procedure.

6.2 No progress was made on the general measures on closed cases under Articles 6, 7, and 46 of the Convention

6.2.1 The Government's action plan does not include any steps taken or planned to be taken regarding similar cases

96. The action plan does not include any steps taken or planned regarding similar cases to Yüksel Yalçınkaya, which were closed by a final conviction decision. The government has not yet made any legislative changes to allow retrial in cases like the Yüksel Yalçınkaya case, where the Court identified a systemic problem also with regard to closed cases. As presented below, the judiciary rejected the reopening of cases of convicted persons by interpreting the existing possible remedies most strictly.

6.2.2 Reopening of cases by trial courts under article 311 § 1 of the Code of Criminal Procedure categorically rejected by trial courts

97. Following the judgment of the Grand Chamber in Yalçınkaya case, a large number of individuals in similar situations filed requests for the "reopening of criminal proceedings" before the competent assize courts in accordance with Article 90 of the Turkish Constitution, Article 46 of the ECHR, and Article 311 § 1 of the Code of Criminal Procedure.

98. Article 311 § 1 of the Code of Criminal Procedure could serve as a legal basis for trial courts to address deficiencies in cases similar to that of Mr. Yüksel Yalçınkaya, provided that the Government, and specifically the judiciary, genuinely intended to implement the Yüksel Yalçınkaya judgment.

99. We would like to bring the Constitutional Court's Ibrahim Er and others' judgment (No: 2019/33281) to the attention of the Committee of Ministers, which imposes an obligation to trial courts to reopen criminal proceedings, under the principle of the objective effect of the Constitutional Court's judgments, in the similar cases where the Constitutional Court already found a violation.

100. In its judgment on the Yılmaz Çelik Application (Application Number: 2014/13117), the Constitutional Court examined the case of an applicant who had been convicted of membership to a terrorist organisation under Article 314 § 2 of the Turkish Criminal Code. With its judgment dated 19 July 2018, the Constitutional Court ruled that the right to a fair trial had been violated on the grounds that the trial court's reasoning that the said structure had the elements of a terrorist organization had been insufficient. Upon the reopening of the criminal proceeding by the trial court, the applicant was acquitted complying with the judgment of the Constitutional Court. Following the Constitutional Court's judgment in the Yılmaz Çelik case, many others, who had been sentenced for being a members of the same terrorist organization, were also acquitted as the result of the reopened cases.

101. However, in the case of İbrahim Er and Others, who were convicted with a final judgment for membership in the same organization *(the organization that was the subject matter of the Yilmaz Celik case)* and had not previously made an individual application to the Constitutional Court, had their applications for reopening rejected by the local courts in accordance with the Constitutional Court's decision. Subsequently, they made an individual application to the Constitutional Court. On 26 January 2023, the Constitutional Court reminded that it had already examined the same issue in its Yılmaz Çelik case and held that *the rejection of the local courts' request for reopening of criminal proceedings within the scope of the objective effect of this constitutional interpretation and the necessity to apply the Constitutional Court's decision to other cases of the same nature violated the right to a fair trial in the context of the right to a reasoned decision*. In other words, the Constitutional Court held that where a violation of a right established in the Convention and the Constitution has been found, it must be applied to all similar pending and finalized proceedings and cases without the need to bring them before the courts concerned.

102. Ibrahim Er and others' judgment of the Constitutional Court constitutes a sufficient basis for reopening the criminal proceedings under Article 311 § 1 of the Code of Criminal Procedure.

103. One of the undersigned NOGs, **Stichting Justice Square**, which has closely followed on the ground the implementation of the Court's Yüksel Yalçınkaya judgment, had made an open appeal to its followers on its social media accounts, to collect examples of judgments of the courts that rejected retrial requests. It received many such decisions in response to that call and **submitted to the Committee of Ministers the copies of some of those decisions together with the initial reasoned conviction judgments rendered by the relevant first-**

instance courts. We hereby refer to that submission dated 23 October 2023 as the practice has been unchanged since then.[11]

104. As can be understood from these judgments, the assize courts have categorically rejected the reopening requests of convicts who were convicted of the same offense based on similar evidence, including the alleged use of the ByLock app. Additionally, it is evident from some conviction decisions that individuals were sentenced on the grounds of having an account with Bank Asya, which was presumed legal until its closure, as stated in the Grand Chamber's judgment. Furthermore, some individuals were convicted based on their membership in associations that were legally established and operated before their closure—associations which, as emphasized in the Yüksel Yalçınkaya judgment, were directly related to the exercise of a right protected under Article 11 of the Convention. In none of these conviction judgments did the trial courts prove or analyze the existence of the material and mental elements of the offense of being a member of a terrorist organization, as described in the Yalçınkaya case. Similarly, the defendants' right to defense was violated under conditions similar to those described in the Yalçınkaya case. The criminal prosecutions were nothing more than formal procedures carried out to announce the conviction of the defendant. In all the examples submitted to the Committee of Ministers, the trial courts did not consider any of the defense arguments presented by the defendants.

105. We would like to point out that the requests for the reopening of criminal proceedings of persons convicted of the same offense under similar circumstances as Yüksel Yalçınkaya have been categorically rejected by the trial courts and therefore no general measures have been taken yet by the Turkish authorities to remedy the deficiencies identified in the cases closed by the final judgments similar to Yüksel Yalçınkaya's case, and therefore no *restitutio in integrum* measures were taken in respect of similar cases including the ones pending before the ECtHR. The Committee of Ministers is respectfully invited to inquire whether and why this remedy has not been applied in practice.

6.2.3 The extraordinary remedy under Articles 308 and 308A of the Code of Criminal Procedure has not been utilized to enable the retrials in similar cases despite the demands of convicted persons

106. Under Article 308, the Chief Public Prosecutor of the Court of Cassation may appeal against judgments of trial courts that have been upheld by any criminal chamber of the Court of Cassation. The Chief Public Prosecutor could initiate this appeal either *ex officio* or upon request. There is no time limit for filing an appeal if it is made in favor of the accused.

107. Similarly, the Chief Public Prosecutor's Office of the Regional Court of Appeal may lodge an appeal with the Regional Court of Appeal against final decisions of the criminal chambers

[11] NGO Submission of the Stichtung Justice Square, dated 31 October 2023, https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22yuksel%22],%22execdocumenttypecollection%22:[%22CEC%22,%22acp%22,%22acr%22,%22obs%22],%22execidentifier%22:[%22DH-DD(2023)1389E%22]}

of the Regional Court of Appeal as set out in Article 308A of the Code of Criminal Procedure. The Chief Public Prosecutor's Office may act *ex officio* or upon request within thirty days from the date of the decision. There is no time limit for appeals in favour of the accused.

108. As of the date of this submission, this remedy has not been used in any case, neither ex officio nor upon the request of the convicted persons. The Committee of Ministers should inquire whether and why this remedy has not been applied in practice.

VII. CONCLUSIONS AND RECOMMENDATIONS TO THE COMMITTEE OF MINISTERS

109. Following the judgment of the Grand Chamber in Yüksel Yalçınkaya v. Turkey (no. 15669/20), the Government submitted its action plan approximately 11 months after the announcement of the Yüksel Yalçınkaya ruling. The statements made by the high-level political figures, including the President, questioning the credibility and authority of the Grand Chamber's judgment appear to have had a significant impact on the judiciary's ongoing problematic practice leading to systemic violations of the Convention rights. This, in turn, has affected or hindered the proper, effective, and timely implementation of the judgment, particularly in similar cases.

110. Contrary to what the Government states, no meaningful change, if not any, has been observed in the judiciary's practice in the cases concerning the alleged or real members of the Gulen movement. The judiciary's practice based on an unacceptable "guilty by association" approach remains unchanged.

111. The Government has not reported any changes or planned steps regarding the general measures needed for closed cases with final convictions, which clearly indicates the Government's disregard for the Court's findings under Article 46. This Article requires the application of the Court's findings in the Yüksel Yalçınkaya case to other already concluded cases. The courts have categorically rejected defendants' requests to reopen cases where the grounds for the convictions were based on the same lawful acts as reviewed in the Yüksel Yalçınkaya judgment. Therefore, these final judgments continue to be enforced by the authorities, and individuals remain imprisoned as a result of wrongful convictions.

112. When the content of the Action Plan and its annexes are considered as a whole, it is evident that the Government has no intention of taking meaningful steps to address the issues identified in the Grand Chamber's judgment. The judicial decisions included in the Action Plan, which appear to be merely symbolic, do not reflect the actual established practice in the country. The absence of any reference to the Grand Chamber's Yalçınkaya judgment in the decisions of the Turkish courts, including the Court of Cassation and the Constitutional Court, clearly demonstrates the Government's reluctance to ensure the implementation of the judgment.

113. This judgment is of particular importance as the issue affects—and may continue to affect—a large number of people. The 8,000 pending cases similar to that of Yüksel Yalçınkaya indicate that the applicants in all these cases have already been sentenced to at least 6 years and 3 months' imprisonment for the same offense, in violation of Articles 6 and 7 of the Convention. This also means that their sentences have either already been served, are currently being served, or are yet to be served in maximum-security prisons. Every day, people across the country are being arrested for wrongful convictions similar to the one in the Yüksel Yalçınkaya case. Investigations and prosecutions continue with arrests and detentions—carried out in the most humiliating manner—on charges similar to those arising from the systemic problem identified in the Yüksel Yalçınkaya judgment. These facts underscore the importance and urgency of fully, effectively, and promptly implementing the Yüksel Yalçınkaya judgment in similar cases, in line with the Court's findings.

114. Moreover, the systemic problem identified in the Yüksel Yalçınkaya judgment is not limited to those allegedly prosecuted for using ByLock.

115. In all cases, the judicial authorities have simply treated a person's affiliation with Hizmet/Gülen movement as a membership in an armed terrorist organization. Such treatment blatantly disregarded the fact that the Movement has categorically rejected the use of violence, and advised and encouraged its members to distance themselves from any radical and extremist ideas. The Movement has been known as "a faith-inspired, non-political, cultural and educational movement whose basic principles stem from Islam's universal values, such as love of the creation, sympathy for the fellow human, compassion, and altruism." Turkey's leading politicians, previous presidents, leading artists, scientists, etc. praised the activities of the Movement. Despite the Movement's well-known ideals and activities disclosed to the public, the present Government's hostility against the Movement following the December 17/25 corruption investigations should not justify an automatic conclusion that a person who was affiliated with the Movement is a member of an armed terrorist organization and shall face the harshest punishment accordingly without further evidence that the person specifically intended to promote the Government's alleged aims, such as to overthrow the elected government. A controversial coup attempt cannot be attributed to those who had nothing to do with it. The Government brazenly inserts the controversial coup attempt in every case related to the members of the Movement, who had no relation, even in any abstract manner, to the controversial attempt.

116. It is important to note that the Gulen Movement has never had any opportunity to defend itself against the accusations asserted by the Government. Nor any defendant could defend the Movement in his case without facing cruel treatment and punishment. Therefore, the members of the Movements could and may only defend their cases based on their own acts.

However, present and prevailing authority in the country has declared the movement as an armed terrorist organization, and thus, any member of the Movement or anyone who was affiliated with the Movement has automatically become a member of an armed terrorist organization even if the person has never involved in any criminal activity, nor has she ever advocated or encouraged having recourse to violence or unlawful or criminal activity. The Government's approach leaves no room for the defendants to prove their innocence against the bogus charges if they are perceived by the authorities as members of the Movement. This creates an irrebuttable presumption that the members of the Movement are the members of an armed terrorist organization even if they have had nothing to do with any criminal activity or purpose thereof. Such presumption was addressed in the Grand Chamber's Yalçınkaya judgment, finding, *inter alia,* a violation of Article 7. According to the latest figures announced by the Turkish Minister of Justice on October 6, 2023, 253,754 real or alleged members of the Hizmet movement have been prosecuted for membership in a terrorist organization since July 2016, and 122,904 of them have already been convicted. Such sheer numbers show the gravity of the situation to be addressed with utmost seriousness

117. Because of these facts and the worryingly persistent systemic problem identified by the Court, coupled with statements from high-level political figures questioning the authority of the Yüksel Yalçınkaya judgment and the Court itself, the Committee of Ministers must take urgent action to ensure the implementation of the Grand Chamber's Yüksel Yalçınkaya judgment. This is particularly crucial in respect of, but not limited to, the cases currently pending before the domestic courts, in accordance with the Court's findings.

118. For these reasons, we kindly invite the Committee of Ministers to:

- **Include the Yüksel Yalçınkaya v. Turkey (no. 15669/20) case on the agenda of its December 2024 DH meeting under the debated meeting category, as the case requires urgent attention;**
- **Adopt an interim resolution with concrete suggestions to Türkiye for the execution of the judgment;**
- **Keep the case on the agenda of the quarterly CM Human Rights meetings;**
- **Invite the Turkish Government to regularly and adequately inform the Committee about domestic practices by providing samples of reasoned conviction decisions at all levels;**
- **Urge Turkey to take meaningful and effective steps, including any necessary legislative measures, to address the systemic problem and resolve persistent issues related to ongoing criminal proceedings and closed cases with final convictions.**

Yours sincerely,

Mustafa ÖZMEN

Chairman of the Justice Square Foundation

On behalf of all co-signatories

Annexes: 77 (Sent For the Secretariat's use and analysis)

Co-signatories:

- **Justice Square Foundation** (Netherlands)
- **Italian Federation for Human Rights** (Italy)
- **Cross Border Jurists Association** (Germany)
- **The Arrested Lawyers Initiative** (Belgium)
- **Solidarity with OTHERS** (Belgium**)**