

Amsterdam, 22 February 2024

IMMIGRATIE-en NATURALISATIEDIENST

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Subject: Notification regarding IND's letter titled IB 2023/81 Landgebonden asielbeleid Turkije Nummer & Titel.

Introduction

In this briefing, widespread and grave human rights violations in Turkey starting from the attempted coup d'état on 15 July 2016 until today, and the reports published in this field are included. As of today, it can be easily stated that the lawlessness and human rights violations, which have become a State policy in Turkey, continue unabated and over 100,000 individuals are at risk of being subjected to severe forms of persecution. Therefore, this briefing has been prepared with the aim and request to be taken into consideration in policy changes, especially with regard to members of the Hizmet Movement or persons recognised as such.

Stichting Justice Square,¹ based in Amsterdam, is a non-profit and non-governmental organisation working globally to make a meaningful impact on the lives of persecuted people, refugees, victims of war and those affected by conflict and displacement by promoting democratic values, encouraging international cooperation and advocating for the protection of human rights.

It is a well-known fact that people who had to flee Turkey for political reasons have been seeking asylum in different countries of Europe and the Netherlands for many years. After the 15 July 2016 failed coup attempt, members of the Hizmet Movement or thousands of people who were accepted as such also sought asylum in the Netherlands. In Turkey, especially after July 2016, the pressure and punishments against this group of people continued to increase. In February 2019, the Dutch Council of State (Raad van State) ruled that *"supporters of the Gülen Movement in Turkey bear a real risk of being subjected to treatment in violation of Article 3 of the ECHR during arrest and detention"*. In accordance with the Council of State decision acknowledging

1 <https://justicesquare.org/>

the presence of the persecution in Turkey, members of the Hizmet Movement or persons recognised as such were granted asylum status.

However, in light of the recent assessments conducted by government authorities, wherein they have considered the political and legal developments in Turkey, particularly pertaining to individuals classified as the high-risk category, notable adjustments have been observed in the nation's policy. On November 28, 2023, the Ministry of Justice and Security sent a letter, concerning the persons coming from Turkey to seek asylum in the Netherlands, to the Parliament (Tweede Kamer) on the country policy regarding Turkey. The letter, based on the report published by the Dutch Ministry of Foreign Affairs in August 2023, states that there are three distinct groups of refugees originating from Turkey, who fall under high-risk group according to the prevailing country policy.

The letter states that with regard to Gülenists, who are considered to be in the high risk group, there are improvements in the judgements delivered by the Turkish courts, especially in cases involving downloading and/or using a messaging programme (Bylock) on the phone, holding an account with a private bank (Bank Asya) and making bank transactions. It also states that the judgments delivered in favor of the defendants have also been affirmed by the the Court of Cassation and the Constitutional Court. The letter further argues that in view of this new situation, the '*arbitrariness*' that was previously common in criminal investigations against Gülenists was no longer persists to the same degree, that the intensity of criminal investigations against Gülen supporters decreased and that, given the developments during the reporting period, there was no reason to assume that the Turkish authorities' actions against Gülenists were arbitrary. Finally, in the light of the findings articulated in the letter, the Netherland authorities have decided to abandon the view that persons, in respect of whom asylum proceedings had been initiated up to that date, would face persecution if returned to their country of origin. And their cases would be assessed on the same level as those of the regular refugees, meaning that the likelihood of persecution they would face if they were to return to Turkey would also be assessed on a case-by-case basis by examining the individual circumstances of each asylum applicant.

However, in contrast to the findings presented in the letter, it is evident from the facts of the current situation in Turkey that there has been no decrease in the repression and persecution of members of the Hizmet Movement in the country, persisting as a State policy, nor does appear any decrease in human rights violations committed against the perceived members of the Hizmet Movement. In fact, very recently the Turkish Interior Minister and other state officials have firmly declared that the operations and [politically motivated unlawful] investigations and prosecutions against the supporters, or the perceived members, of the Hizmet will continue unabated.

1. Background Information on the Investigations and Prosecutions Against the Gülen Movement

Instances of human rights violations against dissidents in Turkey, particularly targeting members of the Hizmet Movement, have witnessed a marked and alarming escalation after the attempted coup d'état on 15 July 2016, and amounted to a "*crime against humanity*" and a civilian death (*civilliter mortuus*) as stated by the United Nations Working Group on Arbitrary Detention. Mass detentions along with the practice of torture have become pervasive in the immediate aftermath of the coup attempt. The Government issued State of Emergency Decrees to grant absolute immunity to the perpetrators of torture or other unlawful conducts against the victims during arrests, detentions, or interrogations, etc., effectively dealing a final blow to the remnants of the rule of law in the country. The mass investigations, detentions and arrests launched in the immediate aftermath of the attempted coup have surpassed half a million, and extending over a period of time due to the heavy workload of the judiciary. However, the investigations that started in relation to 15 July turned into a *witch hunt* against the Hizmet Movement and have continued to the present day.

a. Number of Investigations and Prosecutions

According to the statement made by the Turkish Minister of Justice, between 15/7/2016 and 13/7/2023, judicial proceedings were carried out against **693,162** people and **122,632** people were convicted. Currently, **67,893** persons are under preliminary investigation and **26,667 persons** are being prosecuted before the courts of first instance.² As of 31/12/2023, **63,643** files are pending before the 3rd Criminal Chamber of the Court of Cassation,³ and **95,043** files are pending before the Constitutional Court⁴. Almost all of the files pending before the 3rd Criminal Chamber of the Court of Cassation and the majority of the files awaiting review before the Constitutional Court relate to the period after the coup attempt. The current number of detainees or convicted persons held in Turkish penitentiary institutions due to their affiliation with Hizmet Movement is **15,539**.

As can be seen from these numbers, despite the eight years that have passed, investigations and trials are still ongoing against nearly **100,000** people and the files of at least **60,000** people are still pending before the Court of Cassation. As firmly concluded by the European Court of Human Rights (ECtHR, Court) in the *Yalçınkaya v. Turkey* judgement as the violations of the applicant's rights under Articles 7, 6, and 11⁵, the perceived members of Hizmet Movement have constantly been convicted of being an armed terrorist organization

2 <https://www.adalet.gov.tr/bakan-tunc-15-temmuz-u-anlatti#:~:text=Sonu%C3%A7lanan%20kararlara%20bakt%C4%B1%C4%9F%C4%B1m%C4%B1z%20zaman%20122,hakk%C4%B1nda%20da%20beraat%20karar%C4%B1%20verildi>

3 <https://www.resmigazete.gov.tr/eskiler/2024/01/20240123-10.pdf>

4 https://www.anayasa.gov.tr/media/9152/bb_2023_tr_son.pdf

5 ECtHR judgment, 26 September 2023, No. 15669/20

based on their lawful activities. Turkish courts examines the evidence submitted by the prosecution to establish whether the defendant had any affiliation with the Movement. The courts do not examine the evidence to decide whether the defendant has committed any unlawful act, let alone the commission of any crime. It simply suffices for them to conclude that the defendant had a connection with Hizmet, a finding that directly leads to the conclusion of her guilt, a ruling that the defendant is a member of an armed terrorist organization. Contrast to the arguments in the Ministry's letter, such rulings are still being unequivocally affirmed by the Court of Cassation.

Therefore, it should be noted that more than **100.000** people face the risk of going to prison today for the execution of their prison sentences, the minimum limit of which is 6 years and 3 months.

b. Dismissals from Public Office

After the coup attempt, people were not only subjected to criminal investigations and prosecutions. A state of emergency was declared on 20/7/2016 and **125,678** public officials were dismissed from public service permanently through the state of emergency decrees. Number of public employees dismissed is far more than the number indicated above because this number does not include the dismissals made through the other procedures, such as dismissals through the institutional proceedings. For example, **4,384** judges and prosecutors were not dismissed through the decrees but through the decisions of High Council of Judges and Prosecutors.

Likewise, this number does not include the number of persons dismissed while working in contracted for the autonomous/semi-autonomous or independent public institutions and organisations, and the number of dismissals made by the higher superiors of the institutions with the provisional article 35 of the Decree Law No. 375 in the 4-year period from the lifting of the state of emergency on 19/7/2018 until 31/7/2022, and by the high disciplinary boards of the relevant institutions and organisations from this date until today. It is not known exactly how many people have been dismissed from public service because the dismissals conducted through the procedures other than the emergency decrees are not published in the Official Gazette. It is, however, estimated that the number exceeds **250,000**.

For example, at least **10,000** people were dismissed from public service one week prior to the expiry date (31/7/2022) of the temporary Article 35 of the Decree Law No. 375, which authorises the superiors of institutions to dismiss employees.⁶ Again, although almost eight years have passed since the coup attempt, **445** police officers on active duty were suspended **on 28/12/2023**.⁷ As a result, it is not known exactly how many people were dismissed from

6 <https://serbestiyet.com/haberler/ozel-haber-ihraci-kolaylastiran-kanunun-son-haftasinda-en-az-10-bin-kisi-kamudan-ihrac-edildi-ihraclar-icin-devlet-fazla-mesai-yapiyor-98968/>

7 <https://twitter.com/AliYerlikaya/status/1740377511362498642?s=20>

their jobs after the coup attempt, as it was carried out under different names and procedures. There is no doubt that the officially announced figures are far below the reality.

Those dismissed from public office are also subject to criminal investigations. In other words, the dismissal decision is the first step in arbitrary and unlawful investigations to be initiated against those concerned, and the dismissal of those concerned from their jobs becomes one of the grounds for indictments and convictions.

Furthermore, those who are dismissed from their jobs by decrees are registered with the number 37 in their social security records. This record serves as a stigmatization and discrimination marker, creating significant prejudice and obstacles for individual victims of the decree laws in their pursuit of employment within the private sector. The existence of this record not only perpetuates bias but also hinders the chances of those impacted by decree laws to secure meaningful opportunities in the private sector. The social equivalent of this code is that the person is a "terrorist" regardless of whether there is a lawful judicial decision against them. Employers, who employ the victims of the decree laws despite the impugned marker, encounter pressures by means of municipal police and tax audits. If they continue to employ the dismissed persons after the informal notification (mostly by undercover police), they might be prosecuted on the basis of "aiding and assisting an armed terrorist organization. In this respect, implementation of such discriminatory practices, culminating in a pronounced social isolation from society, amounts to the risk of severe deprivation, and to potential civilian death and starvation.⁸

In addition to permanent dismissals, the decrees revoked the passports of the victims, and the administrative authorities continue imposing arbitrary restrictions on the victims' right to freedom of movement. Despite the Constitutional Court's decision, dated 22/01/2022, repealing the law authorising administrative bodies to impose passport restrictions without a judicial decision, the said restrictions have not been not lifted, but continue to be imposed on the victims. Seven months after the Constitutional Court's decision, the Ministry of Interior imposed administrative restrictions on 59,627 individuals, through a circular letter, dated 01/8/2022 and titled *Passport Administrative Decision Procedures*, blatantly ignoring the Constitutional Court's annulment decision.

Tens of thousands of individuals, victimized by such practices had to initiate legal proceedings before administrative courts to lift the unlawfully imposed restrictions. Most of the cases are still pending. Despite the Constitutional Court's ruling, the victims are deliberately compelled to deal with gruesome legal proceeding spanning over several years to

8 <https://www.politikyol.com/yeneroglundan-kod-36-37-tepkisi/>

challenge the Ministry's brazenly unlawful actions restricting their right to freedom of movement.⁹

c. Closed or Confiscated Institutions and Organisations

During the state of emergency, a total of 3,942 institutions and organisations, including 1,410 associations, 1,034 private schools, 835 student dormitories, 301 classrooms, 109 foundations, 53 newspapers, 47 private hospitals and health institutions, 29 publishing houses, 22 radios, 19 private television channels, 6 news agencies, 20 newspapers and magazines, 19 trade unions, 19 federations, 4 confederations and 15 private universities were either closed down or seized.¹⁰ When the number of dismissed people working in these institutions and organisations is included, the collective count of those who have suffered job losses in both the public and private sectors, left in a state akin to civilian death, amounts to approximately 400,000 people.

Regarding the persons working in the said institutions and organisations, a marker numbered 36 is recorded at their social security records, specifying the reason for the closure of the institutions. Therefore, those working in these closed institutions and organisations have been facing the same challenges as those who were dismissed from public service through the Decree Decree Laws. Due to these practices, people are marginalised in the society and left to civilian death, unable to even sustain their lives.¹¹

d. Violations of Rights in Prisons and During Detention

i. Torture Allegations and Deaths in Prisons

As Given the instrumentalization of the judiciary by the ruling AKP to suppress dissent and eradicate opposition, there has been a substantial increase in the number of political trials. Consequently, this surge has resulted in a significant rise in the number of political prisoners among the prison population. According to the data of the Ministry of Justice, while the total number of both detainees and convicts in prisons was 55.870 in 2005. As of June 1, 2023, this number has reached 357.572 for detainees and convicts in 407 in prisons, their their total capacity of 296.202 inmates. As can be seen, the number of detainees and convicts has increased approximately 6.4 times in 17 years.¹² If 100.000 more people who are members of the Hizmet Movement and who are likely to be imprisoned are added to this number, there will be no fresh air to breathe in prisons. The Institute for Crime & Justice Policy Research's World Prison Brief¹³ reports that "Turkey has a staggering incarceration rate of 392 per 100,000, making it, per capita, the top jailer in Europe and 12th in the world. International

9 <https://x.com/sdtnl03/status/1663586326342451202?s=20>

10 <https://twitter.com/OthersInfo/status/1733914475659407399>

11 <https://www.politikyol.com/yeneroglundan-kod-36-37-tepkisi/>

12 <https://www.ihd.org.tr/wp-content/uploads/2023/06/Verilerle-Turkiye-de-iskence-26-06-2023.pdf>

13 <https://www.prisonstudies.org/country/turkey>

organizations, including Human Rights Watch, have also unequivocally condemned the rise in torture, ill-treatment, and inhumane practices in Turkish detention facilities.”¹⁴

According to the Human Rights Association's (IHD) 2022 *"Turkey Prisons Rights Violations Report"*, a wide range of rights violations took place in Turkish prisons. The report verifies that *"at least 10.789 violations occurred in 2022 alone in relation to all titles of violations. Violations were taken according to the number of each applicant and the number of prisoners included in the applications. However, considering that these violations were applied to all prisoners, it would not be an exaggeration to say that the violations occurred hundreds of times more."*¹⁵

According to IHD data, the number of people claiming to have been subjected to torture and ill-treatment in prisons in 2022 is **247**. Beatings, all kinds of arbitrary treatment and arbitrary disciplinary penalties, solitary confinement, exile and transfers without demand, which are applied for various reasons (such as strip search, handcuffed examination, standing roll-call) from the moment of entry to prisons, have reached unprecedented levels recently. Restriction of access to health care, denial of the right to visit the prison infirmary, ill-treatment practices including handcuffing while being taken to the Forensic Medicine Institution, courthouse and hospital, failure to solve prisoners' health problems in a timely and effective manner is another long-standing problem area. Restrictions on access to health care aggravate the situation of 'sick prisoners', which is an important problem in prisons.

According to HRA data updated on 29/4/2022, there are **1.517** sick prisoners, of whom **651** are classified as seriously ill. In the first 6 months of 2023, **54** individuals incarcerated in various prisons applied to the Turkish Medical Association complaining mainly about the issues, such as lack of access to health care, imposition of handcuffed examination, and violation of privacy due to the insistence of the security forces to be in the doctor's room during the medical examination.

According to the Human Rights Foundation of Turkey (HRFT), at least **65** people died in prisons in 2022 and **10 people died** in the first five months of 2023 due to illness, suicide, violence, neglect etc. According to IHD, at least **83** prisoners died suspiciously in prisons in 2022. While a substantial number of these deaths are surrounded by serious allegations of suspicious circumstances, no effective investigation into the suspected deaths of prisoners has been carried out by the authorities.¹⁶

ii. Rights Violations, Torture Allegations and Deaths During Detention Procedures

14 <https://syriacpress.com/blog/2024/01/12/turkey-ranks-highest-in-europe-for-arrests-and-imprisonment-per-capita-eliciting-concerns-from-international-organizations/#:~:text=According%20to%20the%20Institute%20for,and%2012th%20in%20the%20world.>

15 <https://www.ihd.org.tr/ihd-2022-yili-turkiye-hapishaneleri-hak-ihlalleri-raporu/>

16 <https://www.ihd.org.tr/wp-content/uploads/2023/06/Verilerle-Turkiye-de-iskence-26-06-2023.pdf>

Prisons are not the only places where human rights violations are committed; ill-treatment and torture also occur in detention centres during detention procedures. Regarding this issue, the Ankara Bar Association shared with the public 5 separate reports, dated respectively 23 January, 2 March, 8 March and 4 April 2022, on torture occurred during detention.¹⁷

In 2022, a total of **1,201** people applied to the HRFT, complaining about the practices of torture and other ill-treatment. However, some of these applicants were relatives of torture survivors, while others were subjected to torture and ill-treatment outside Turkey. Of the **1,079** applicants to the HRFT, complaining of having been directly subjected to torture and other ill-treatment in Turkey;

- **547 (50.7%)** stated that they were subjected to torture and ill-treatment in official detention centres such as police headquarters, **61 (5.7%)** police stations and **69 (6.4%)** gendarmerie units. In addition, **331 (30.7%)** applicants stated that they were subjected to torture and ill-treatment in detention places and transfer vehicles of law enforcement officers.

According to the findings of the HRFT Documentation Centre, 1 person died suspiciously **under** detention in 2022. In the first five months of 2023, at least six individuals died under suspicious circumstances while in detention. Concurrently, within the same period, 270 individuals sought recourse with the Human Rights Foundation of Turkey (HRFT), communicating their complaints of torture and ill-treatment.

According to the findings of the IHD Documentation Unit, at least **1,347** people were subjected to torture and other ill-treatment in official detention centres in 2022.¹⁸

Torture and ill-treatment are carried out in detention both individually and collectively. One of the most obvious examples of this is the torture and ill-treatment of 27 female university students in Uşak province in September 2020.¹⁹ Another mass torture and ill-treatment was inflicted on 100 former diplomats detained in Ankara, which was verified by the Ankara Bar Association in its report on the allegations of ill-treatment and torture. The Ankara Bar Association made this extremely important study public on 26/5/2019, which proves the presence of systematic torture committed by the government agents.²⁰

e. Deaths

As of 31/12/2023, within a period of 8 years; the number of individuals who died in prisons is **138**, the number of individuals who allegedly committed suicide is at least **90**, the

17 <https://nordicmonitor.com/2023/01/the-report-that-ankara-bar-association-refused-to-publish-reveals-torture-at-the-police-station/>; <https://yeniyasamgazetesi5.com/ankara-barosunda-tartismalara-neden-olan-iskence-raporlari-yayinlandi/>

18 <https://www.ihd.org.tr/wp-content/uploads/2023/06/Verilerle-Turkiye-de-iskence-26-06-2023.pdf>

19 <https://humanrights-ev.com/statement-torture-and-ill-treatment-of-27-women-in-usak-turkey/>;
<https://boldmedya.com/2020/09/08/kiz-ogrencilere-iskence-kulotunu-indirip-otur-kalk-yaptirdilar/>

20 <https://www.institute.org/ankara-bar-report>

number of individuals died while in detention is 8, the number of individuals died while trying to flee the country to escape from the persecution is 36.²¹

f. Government-Sanctioned Abductions: National and Transnational Repression

Another unlawful practice is forced 'abductions'. To date, 99 people have been abducted from abroad and brought to Turkey, while 28 people have been abducted or forcibly disappeared in Turkey.^{22 23} Kidnapping activities continued unabated in 2023 and in this context; Mehmet Cintosun was kidnapped from Iraq in April 2023,²⁴ Emsal Koç was kidnapped from Tajikistan where she has been residing since 1994 on 02/6/2023,²⁵ Koray Vural was kidnapped from Tajikistan on 05/10/2023²⁶ and Mustafa Tan and Mustafa Bircan were kidnapped from Algeria on 27/12/2023 and brought to Turkey by the Turkish intelligence organisation (National Intelligence Organisation-MIT).²⁷ Again, Turkish-American political scientist Prof. Dr. Ahmet T. Kuru, who is of Turkish origin, was captured on 10/01/2024 at Kuala Lumpur Airport in Malaysia by an operation of the Turkish intelligence organisation on charges of being a member of the Gülen Movement and tried to be forcibly brought to Turkey, but this operation was prevented by the intervention of Malaysian authorities.²⁸

The aim of the kidnappings is not to initiate a judicial process against these people, but to obtain information through torture. One of the most vivid examples of this is the case of Mustafa Özben, a lawyer, who was kidnapped by the Turkish intelligence organisation in Ankara in broad daylight and tortured for ninety-two days.²⁹ The documentary "*92 Days in the Dark*", in which Özben describes his experiences, was published on 02/12/2023.³⁰

A weak international response, coupled with the absolute immunity granted by the Turkish government to agents of the Intelligence Organization engaged in acts of torture and other inhumane treatments, has emboldened the Turkish government, including the President himself, to publicly acknowledge and boldly admit to the abductions. More strikingly, the

21 <https://twitter.com/OthersInfo/status/1733914475659407399>

22 <https://twitter.com/OthersInfo/status/1750579293904658853/photo/1>;
<https://twitter.com/OthersInfo/status/1733914475659407399>

23 https://www.mit.gov.tr/basin-yansimasi_feto-mensubu-firari-koray-vural-mit-operasyonu-tacikistanda-yakalandi_12.html

24 <https://turkishminute.com/2024/01/25/turkeys-transnational-repression-2023-review/>

25 <https://turkishminute.com/2024/01/25/turkeys-transnational-repression-2023-review/>

26 <https://stockholmcf.org/turkish-national-illegally-renditioned-from-tajikistan-detained-over-gulen-links/>

27 <https://www.tr724.com/mitten-cezayirde-yasadisi-adam-kacirma-operasyonu/>

28 <https://www.tr724.com/akademisyen-prof-ahmet-t-kuruyu-malezada-kacirma-girisimi/>

29 <https://www.turkishminute.com/2023/12/01/lawyer-abducted-by-turkish-intel-talked-about-his-experience-in-new-documentary/>

30 <https://www.youtube.com/watch?v=K4PBRZ1m02M&t=2s> (Engelse ondertiteloctie beschikbaar)

government has taken the unprecedented step of publicizing images of victims, displaying evident marks of torture.³¹

For example, the photograph of Orhan İnandi, a citizen of Kyrgyzstan, who was abducted on 01/6/2021 and tortured for thirty-seven days, leaving him with a broken arm and other signs of torture, was blatantly shared by Anadolu Agency, the State-owned news agency.³²

Similarly, at least 10 abductees have not been heard from for years and are presumed to have been tortured to death.³³ The Turkish Government has also requested from 112 countries the extradition of a total of 1,269 persons, allegedly the members of the Hizmet Movement.³⁴

As evident from the foregoing, a significant number of individuals detained or imprisoned because of their affiliation with the Hizmet Movement face persecution in violations of their fundamental rights, particularly the right to life, right to freedom from torture and other forms of ill-treatment.

Turkey's transnational repression makes the asylum seekers, present even in a safe country, subject to constant fear and anxiety due to both the Turkish governments' extradition requests, and the Government's unlawful extraterritorial kidnapping operations -if such requests are denied. Considering the multitude of ongoing investigations and prosecutions, coupled with over 100,000 individuals currently facing the imminent threat of long-term imprisonment, the severity of the human rights situation in Turkey becomes more apparent.

2. Enemy Criminal Law Practices that Became State Policy

One might think that human rights violations against the members of the Hizmet Movement might have decreased due to some developments in judicial and political sphere, considering the passage of eight years since the attempted coup d'état. However, the information shared by the Turkish Minister of Interior on his Twitter (X) account on 30/1/2024 makes it evident that the Government continues to implement the '*enemy criminal law*' (*Feindstrafrech*)³⁵ practices against these individuals as a state policy. According to the

31 <https://www.turkishminute.com/2021/11/25/ucted-and-tortured-educator-inandi-gives-details-of-his-ordeal-at-first-hearing-of-his-trial/>

32 <https://www.aa.com.tr/tr/vg/video-galeri/fetonun-orta-asya-genel-sorumlusu-orhan-inandi-turkiyeye-getirildi/1#>

33 <https://www.turkishminute.com/2021/02/12/enforced-disappearances-in-turkey-an-old-habit-or-a-new-trend/>

34 <https://turkishminute.com/2024/01/25/turkeys-transnational-repression-2023-review/>

35 "The "Feindstrafrecht" (enemy criminal law) aims at curtailing the threat caused by dangerous individuals, which it views as enemies of the society, as sources of danger rather than as citizens. This would refer to anyone whose criminal actions meant the denial of the legal system as a whole, e.g. terrorists." See for the debates over the definition and application of the concept of "enemy criminal law", Felix Golser, "The Concept of Special Criminal Law as A Weapon against 'Enemies of the Society'", *Studia Iuridica* LXVII, available at: <https://bibliotekanauki.pl/articles/902801.pdf>

information shared by the Minister, between 01/01/2023 and 31/12/2023, **6,775 operations** were carried out against members of the Hizmet Movement, **9,639** people were detained, **1,689** people were arrested and judicial control measures were applied against **1,677** people.³⁶

The Turkish Interior Minister on his Twitter (X) account brazenly reiterates the Government's firm position and persisting policy that the members or supporters of the Hizmet Movement are the traitors and the most violent terrorists, who should be annihilated.

In short, multitude of the most recent operations, coupled with massive imprisonments, tortures and other kinds of grave human rights violations, carried out against the perceived members of the Hizmet Movement, clearly demonstrate government's relentless and persisting policy against these individuals despite the Grand Chamber of the ECHR's unequivocal ruling in Yalçinkaya judgment, finding violations of the applicant's rights under Articles 7, 6, ad 11 of the Convention, and holding that these individuals were/are prosecuted and convicted solely on the basis of their lawful activities.

3. Violation of the Presumption of Innocence and Hate Speech Used

On every occasion, the Minister of Interior, Mr. Ali Yerlikaya, firmly repeats the following remarks about the detained individuals in the police operations:

*"We will never tolerate the **traitors** who aim at the unity and solidarity of our country,³⁷ our fight against the "FETO members" **who attempted to stage a coup against the will of our nation** [volonté générale] continue with determination³⁸; we will not let the "FETO members," **traitors** go, **who mercilessly opened fire on our people and did not hesitate to bomb our Veteran Parliament**; "we will not forgive those who **tried to steal the future of millions of young** people with the exam questions they stole, we will not let the **traitorous "FETO"** be tolerated"³⁹; we will not let the **traitors** who opened fire on our people go;⁴⁰ we will not let the **traitors** who tried to **crush us with tanks** be tolerated;⁴¹ our operations against "FETO" who attempted a **treacherous coup on 15 July** continue **uninterruptedly**."⁴²*

The minister articulates these incriminating words about the individuals who had nothing to do with the controversial coup attempt. None of the individuals about whom the Minister utters above-cited incriminating words were indeed involved in the failed coup attempt, nor were they involved in any criminal activity. The Minister's words truly fall into the category of hate speech, violating the presumption of innocence of those arrested. These remarks evidently suggest that the police operations, and the judicial actions taken afterwards,

36 <https://x.com/AliYerlikaya/status/1752201691200393572?s=20>

37 <https://edition.cnn.com/videos/world/2024/01/29/istanbul-church-shooting-isis-intl-ldn-vpx.cnn>

38 <https://x.com/AliYerlikaya/status/1747488174031450620?s=20>

39 <https://www.turkishminute.com/2023/10/24/turkey-detains-611-people-over-alleged-gulen-link/>;
<https://x.com/AliYerlikaya/status/1716736507128500236?s=20>;

40 <https://x.com/AliYerlikaya/status/1710527745011113998?s=20>

41 <https://x.com/AliYerlikaya/status/1707627712817369184?s=20>

42 <https://x.com/AliYerlikaya/status/1676834343887437825?s=20>;
<https://twitter.com/AliYerlikaya/status/1760168600764285016>

are politically motivated government actions, targeting the perceived members of the Hizmet Movement.

The government's oppression through the instrumentalization of the judiciary has already turned into a witch-hunt against members of the Hizmet Movement. For example, 611⁴³ people were detained on 24/10/2023 and 748⁴⁴ people were detained on 06/7/2023 in two operations carried out on different dates. The accusations levelled against these people is *'providing financial aid to people whose spouses and relatives are in prison'*. According to the established case law of the Court of Cassation, visiting people in prison and meeting their needs is not an organisational activity.⁴⁵ Newly formed judiciary, including the Court of Cassation, disregards the universal principles of law, such as no crime and punishment without law, nor does it follow its own precedent concerning the cases of the members of the Movement.

Giving aid to those who have been dismissed and practically condemned to starvation by an executive decree, to those whose spouses are in prison, or to those who have just been released from prison, for purely humanitarian purposes or as a requirement of kinship/neighbourly relations do not constitute an offence.⁴⁶ Nevertheless, in the case of individuals associated with the Hizmet Movement, acts of assistance driven by humanitarian considerations have been construed as elements of the crime of membership in an armed organization or/and financing terrorism. Consequently, a total of 1,359 individuals were arrested in connection with these two operations.

It was not only the detainees who were affected by these operations, but also the people who were isolated from the society because their spouses were in prison. Immediate relatives of the detainees would face insurmountable challenges in securing employment in both public and private sectors, subjecting them to social isolation and starvation.

In January en February 2024, 472 individuals were arrested because of their affiliation with the Hizmet Movement. The alleged criminal acts attributed to the arrested individuals are purely lawful activities, none of which according to the Grand Chamber of the EctHR ruling in Yalçinkaya judgement constitutes a crime. Despite the EcHR rulings, the Turkish authorities continue to carry out operations against the perceived members or the supporters of the Hizmet Movement based on the Government's "guilt by association" policy.^{47 48}

43 <https://www.turkishminute.com/2023/10/24/turkey-detains-611-people-over-alleged-gulen-link/>

44 <https://stockholmcf.org/748-people-detained-in-june-over-gulen-links-says-new-interior-minister/>

45 Decision of the Criminal General Assembly of the Court of Cassation No. 30/4/2002 T., 2002/9-102 E., 2002/236 K.

46 3rd Criminal Chamber of the Court of Cassation dated 22/11/2021 and 2021/8301 E., 2021/10127 K.

47 <https://twitter.com/OthersInfo>

48 <https://x.com/AliYerlikaya/status/1747488174031450620?s=20>

4. Reports and Decisions on Human Rights Violations in Turkey and Arbitrary Practices Against the Hizmet Movement

a. Declaration by the Deputies of the Parliamentary Assembly of the Council of Europe

On 31 January 2024, MPs of the Parliamentary Assembly of the Council of Europe (PACE), of which Turkey is a member, issued a declaration entitled "*Systematic arbitrary deprivation of liberty in Turkey may constitute crimes against humanity*". "*In its recent judgments, the European Court of Human Rights has examined important cases, including Osman Kavala, Selahattin Demirtaş and Yüksel Yalçınkaya*", the MEPs said in the declaration, adding that the blatant disregard of due process principles and the abuse of vague terrorism charges in violation of the principle of 'no crime and punishment without law' (*nullum crimen sine lege*) clearly indicate a systematic failure to respect international law.⁴⁹

b. Freedom House 2024 Report

Freedom House's report "Free Them All 2024, Visible and Invisible Bars", published in 2024, states that the independence of the judiciary in Turkey has been further weakened, and that hundreds of thousands of public employees have been dismissed on the grounds of being affiliated with "FETÖ" by various decrees as a result of blacklisting previously conducted against the members of the Hizmet Movement, with complete disregard for the principles of the right to a fair trial. The report also clearly underlines that Gülenists, like the signatories of the Academics for Peace petition, have been banned from working in the public sector, their passports have been cancelled, their right to health care has been taken away, their liberty and security, and freedom of movement, have been affected as a result of being publicly labelled as "FETÖ" supporters, and they face an imminent threat of re-arrest and imprisonment as the criminal proceedings against them continue.⁵⁰

c. Human Rights Watch 2023 World Report

Human Rights Watch's "*World Report 2023*" noted that tens of thousands of people allegedly linked to the Hizmet Movement continue to face unfair trials on terrorism charges for their association with the group, with many serving long and arbitrary prison sentences and receiving no compensation following mass dismissals from public office and the judiciary.⁵¹

49

<https://pace.coe.int/pdf/b66b624d169db3d34e93f2e76642dc6d8a009292e2e660f4b9b1f82bc5cdc3eb/doc.%2015920.pdf>

50 <https://freedomhouse.org/tr/report/free-them-all/2024/visible-and-invisible-bars>

51 <https://www.hrw.org/world-report/2023/country-chapters/turkey>

d. August 2023 Report of the Dutch Ministry of Foreign Affairs

In the report on Turkey published by the Dutch Ministry of Foreign Affairs in August 2023, it was stated that a partial improvement was observed in terms of the rule of law in judicial proceedings, based on the favourable judgements given by the Court of Cassation and Constitutional Courts on some case files. The report noted that people can still easily be accused of membership of "FETÖ" and arbitrary investigations can be launched against them, and that these investigations usually result in the dismissal of Gülen Movement-affiliated individuals from the public sector. The report also noted that even housewives helping their relatives in prisons have faced charges of "FETÖ" membership.⁵²

e. Resolution 2528 of the Parliamentary Assembly of the Council of Europe

In Resolution 2528 of 24 January 2024, the Parliamentary Assembly of the Council of Europe strongly condemned the *"systematic or widespread use of torture and other forms of ill-treatment"* in States such as Russia, Azerbaijan and Turkey and referred to the reports revealing videos and photographs of torture and ill-treatment in Russian prisons. It referred to *the "Terter cases"* in Azerbaijan, *where detainees were subjected to "horrific methods of torture"* to extract confessions, *and to the resurgence of torture and ill-treatment in police custody and prisons in Turkey, despite previous progress in this area.*⁵³

f. Resolution 2509 of the Parliamentary Assembly of the Council of Europe

In its Resolution 2509 of 23 June 2023, the Parliamentary Assembly of the Council of Europe expressed concern, in particular in the aftermath of the attempted coup d'état in July 2016, that Turkey had also used some means of transnational pressure and its continued policy of pursuing persons allegedly linked to the *"Gülen Movement"*, inter alia referred to by the Turkish authorities as the *"Fethullahist Terrorist Organisation (FETÖ)"*.⁵⁴

g. UK Home Office Report dated 26 October 2023

A report published by the UK Home Office on 26 October 2023 stated that since the attempted coup, the Turkish government has launched a crackdown on individuals and groups perceived to be linked to the Gülen movement, resulting in hundreds of thousands of arrests and detentions, more than 117,000 convictions under anti-terrorism laws, the dismissal of more than 130,000 public servants, the cancellation of more than 230,000 passports, the closure of business enterprises and institutions and the subsequent seizure of their assets. Above all, the report noted, serious criminal charges have been brought against individuals for helping the families of those imprisoned for alleged links to Gülen, and against individuals

52 <https://www.ecoi.net/en/file/local/2100485/General+COI+report+Turkey+%28August+2023%29.pdf>

53 <https://pace.coe.int/en/news/9360/pace-calls-for-stronger-action-to-eradicate-torture-and-ill-treatment-in-places-of-detention-in-europe>

54 <https://pace.coe.int/en/files/32999/html>

for receiving or distributing financial aid donated by the followers of Gülen living abroad to those in need.⁵⁵

h. Statement by UK Home Office Officials

A statement was made **on 02 February 2024** by the UK Home Office officials on the "Turkey Migrant Return Deal" between the UK government and the Republic of Turkey, wherein they stated that 99% of asylum seekers who applied for asylum in the UK from Turkey were afraid to return to their country due to the lack of independence of the courts in Turkey and over-zealousness in applying the anti-terrorism law (fear of the state) and that Turkey "*did not meet the criteria to be accepted as a safe country*".^{56 57 58}

i. Report of the United States Department of the Interior

A report prepared by the United States State Department on 20 March 2023 stated that, despite the prohibition of torture and other cruel, inhuman or degrading treatment under the Constitution and laws of the Republic of Turkey, reports had been received that some police officers, prison authorities and military and intelligence units had resorted to such practices. It was also noted that local human rights organisations, bar associations, political opposition figures, international human rights groups have reported that government officials have threatened, ill-treated and possibly tortured some individuals in detention, and that persons allegedly linked to the PKK or the Gülen movement are more likely to be subjected to ill-treatment, abuse or possible torture.⁵⁹

1. Report by Sir Christopher CHOPE

In his report dated 27 September 2023, Sir Christopher CHOPE, citing a report by Freedom House, stated that the Turkish government was attempting to extradite dissidents from Council of Europe member states to Turkey through red notices, while bringing dissidents from non-Council member states such as China and Turkmenistan to Turkey through bilateral relations.⁶⁰

j. Mukadder Alakuş Decision of the United Nations Human Rights Committee

The United Nations Human Rights Committee (HRC), in Mukadder Alakuş, announced on 15/11/2022 held that the Turkish Constitutional Court is not an effective domestic remedy

55 <https://www.gov.uk/government/publications/turkey-country-policy-and-information-notes/country-policy-and-information-note-gulenist-movement-turkey-february-2022-accessible-version>

56 <https://www.independent.co.uk/news/uk/home-office-turkey-rishi-sunak-albania-recep-tayyip-erdogan-b2489312.html>

57 <https://www.standard.co.uk/news/politics/home-office-turkey-rishi-sunak-albania-recep-tayyip-erdogan-b1136543.html>

58 <https://www.thetimes.co.uk/article/blow-for-sunak-as-turkey-migrant-return-deal-collapses-x9fcjncvz>

59 <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/turkey/>

60 https://pace.coe.int/en/files/32828/html#_TOC_d19e610

regarding the applications involving unlawful detentions and convictions similar to the applicant's as the applicant's detention was evidently unjustified and arbitrary, and that the grounds for the conviction were contrary to the principle of legality of crimes and punishments, in that the applicant's right to a fair trial was violated, and that the conditions of detention in prison were contrary to human dignity.

The applicant, Alakuş, had been convicted on evidence submitted by the prosecution, such as holding a bank account with Bank Asya, having downloaded a messaging app (Bylock), and having attended a peaceful rally. It is important to note that these grounds of arrest and conviction are the most common grounds of arrest or/and conviction of all members of Hizmet Movement.

The Committee's decision is the first holding on the merits of a Hizmet-related case, concluding that the grounds of arrest and conviction violated the principle of legality, and the principle of "no crime and punishment without law", and also the right to a fair trial. The ECtHR referred to UN body decision in its Yalçınkaya judgement (Yalçınkaya judgement § 197).

k. United Nations Working Group on Arbitrary Detention Resolutions

The United Nations Working Group on Arbitrary Detention (WGAD) stated in its decision regarding the application of journalist Ali Ünal,⁶¹ that this application was of the same nature as the application of 19 alleged members of the Gülen Movement⁶² which it had previously examined, that **the arrests in all of these cases were arbitrary and that** such widespread or systematic imprisonment or other serious deprivation of liberty in violation of fundamental rules of international law *"may constitute crimes against humanity"* (§ 785).

In the case of Muhammet Şentürk,⁶³ the Working Group noted that it had observed this pattern of judicial decisions in the applications before it over the past six years concerning arrests and detentions in Turkey and abroad, but that in none of these cases did the Government provide an explanation as to how these activities amounted to a criminal act and that individuals were charged for their lawful activities. **The WGAD stated that the applicant's trial had followed the same pattern and that the Government had been unable to provide evidence as to how the alleged activities were related to a crime of terrorism** (§ 67).

In the Working Group's view, the **violation of the author's right to a fair trial was of such gravity as to render his detention arbitrary**. In the Working Group's view, a pattern

61 WGAD/3/2023, 03/5/2023; <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-3-AEV.pdf>

62 UN Working Group on Arbitrary Detention Opinions No. 1/2017, No. 38/2017, No. 41/2017, No. 11/2018, No. 42/2018, No. 43/2018, No. 44/2018, No. 78/2018, No. 84/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020, No. 51/2020, No. 66/2020, No. 74/2020 and No. 8/2022.

63 WGAD/2023/29, 03/5/2023; <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-29-Turkiye-Advance-Edited-Version.pdf>

emerged in which such persons **were targeted on the basis of their political or other opinion, in** contravention of Articles 2 § 1 and 26 of the Convention and Articles 2 and 7 of the Universal Declaration of Human Rights. **The applicant was therefore detained on prohibited grounds of discrimination** and his detention was therefore also arbitrary under Category V (§ 75). The Working Group also reiterated that such widespread or systematic imprisonment or other serious deprivation of liberty may constitute "*crimes against humanity*" (§ 76).

5. ECtHR's Yüksel Yalçinkaya Decision and Developments Afterwards

Following the botched coup attempt of 15 July, 2016, multitudes of applications were lodged with the ECtHR by individuals claiming to be the victims of the violations of their rights throughout the investigations and criminal proceedings launched against them. And to this date, the ECtHR has held that a total of 1,564 individuals, including 1,103 judges and prosecutors, were unlawfully detained.⁶⁴ In addition to them, thousands of cases of the same nature are still pending before the Strasbourg Court.

The first case in which the ECtHR seized the opportunity to rule over the merits of the case under Article 7, 6, and 11 is its Yüksel Yalçinkaya judgment announced on September 26, 2023⁶⁵

In March 2017, the Kayseri Assize Court convicted and sentenced the applicant, Yüksel Yalçinkaya, a public school teacher in Kayseri province, to 6 years and 3 months' imprisonment for membership of an armed terrorist organisation. The conviction was based on the applicant's use of the encrypted messaging application "*Bylock*", having a Bank Asya account and being a member of two professional non-governmental organisations (Aktif Eğitimciler Sendikası and Kayseri Volunteer Educators Association). The applicant applied to the ECtHR on 17 March 2020, claiming that his trial and conviction violated Articles 6, 7, 8 and 11 of the European Convention on Human Rights.

The application was initially referred to the Second Section of the Court. On 2 March 2021, the Division selected the application as a "*leading case*" in respect of similar cases. On 3 May 2022, the Second Section decided to waive jurisdiction in favour of the Grand Chamber. On 18 January 2023, the Grand Chamber held a public hearing on the application. On 26 September 2023, following closed deliberations on 18 January and 28 June 2023, it delivered its judgment. The Grand Chamber found violations of Articles 7, 6 and 11 of the Convention.

According to the Grand Chamber, the domestic courts interpreted the relevant provisions of the Turkish Criminal Code and the Anti-Terrorism Law in a far-reaching and unpredictable manner. The scope of the offence was unforeseeably extended to the applicant's

64 <https://justicesquare.org/after-15-july-violation-judgements-against-turkey-by-the-ecthr/>

65 <https://hudoc.echr.coe.int/?i=001-227636>

detriment, contrary to the purpose of Article 7 of the Convention. For these reasons, the Court found that there was a violation of Article 7 of the Convention in the case.

It is noteworthy that in the Yalçinkaya judgment the Court emphasised that there are currently more than 8,000 cases pending before it on similar charges and proceedings and that this number is likely to increase significantly in the future.

Another important aspect of the judgement is the ECtHR's emphasis on Article 46 of the Convention together with the violation of the principle of legality of crimes and punishments guaranteed under Article 7 of the Convention. According to the ECtHR's Yalçinkaya ruling, more than 100,000 people were convicted without even examining the existence of the elements of the crime of being a member of an armed terrorist organisation, which is a very serious crime.

To the ECtHR, Turkish judiciary treated and construed the crime of membership in an armed terrorist organization as a strict liability offence by equating the use of Bylock messaging app with being a member of an armed terrorist organization. According to the Government's logic, anyone who downloaded or used the impugned chat app has automatically become a member of an armed terrorist organization regardless of the purpose of the use, or the relevance of the content of the messages to the concerned offence. Bylock messaging app has been treated by the Turkish authorities as the identification of the "terrorists." And all the other proceedings turn into a formal process to secure the "terrorist's" conviction through sham trials. The ECtHR rejected the Government's arguments, and reiterated that the crime of membership in a terrorist organization under Turkish law [and everywhere in the world] is not a strict liability crime; in contrast, it is a specific-intent crime which requires the examination of the presence of specific intent for every individual accused of such a crime.

The ECtHR noted that more than 8,000 cases pending before it and over 100,000 cases are likely to be brought on the same grounds as those in the present case. The Court noted that the problem is of systemic character to which it calls for the authorities to find out effective solution without delay.

Recalling Article 90/5 of the Turkish Constitution, the ECtHR urged the Turkish Government to find a solution to this systemic issue and to **apply** the Yalçinkaya judgement **to all cases of a similar nature**. The ECtHR's Yalçinkaya ruling requires that the individuals who have been subjected to criminal proceedings, including those who were already convicted, on the basis of same or similar grounds of accusations that were considered in Yalçinkaya should be acquitted of all charges. Nevertheless, the ECtHR judgment has yet to be implemented by the Turkish government. On the contrary, Turkish authorities completely ignore the judgment and continue to prosecute and convict individuals on the same grounds as already considered in the ECtHR judgment to be lawful activities.

We would like to emphasize that Justice Square notified, on November 14, 2023, the Committee of Ministers of the Council of Europe, the monitoring body charged with the execution of the judgments of the ECtHR, regarding the failure of the Turkish authorities to fulfil the requirements of the Yalçinkaya Judgment.⁶⁶

Moreover, the Constitutional Court has not yet issued a single judgement complying with the case-law of the ECtHR in relation to thousands of cases of the same nature pending before it. The President of the Constitutional Court, let alone incorporating the ECtHR judgement into domestic law, said: *"We do not agree with the ECtHR judgement. The decision of the Constitutional Court is already clear. Therefore, they have made a decision different from our decision"*⁶⁷ and stated that they will definitely not comply with the Yalçinkaya judgement. Upon all these developments, Justice Square notified the Committee of Ministers for the second time on 13/02/2024 about the non-compliance with the Yalçinkaya judgement, by submitting the relevant examples of the national courts' judgements.⁶⁸

In addition to the statement of the President of the Constitutional Court reiterating that the ECtHR judgment shall not be implemented, President Erdoğan made a statement on the issue:

*"It is neither possible for us to respect the decisions of the institutions [ECHR] aligned with terrorist organisations, nor to listen to what they say [ECHR's Yalçinkaya decision]. Members of terrorist organisations and their supporters should futilely anticipate any semblance of favor in their regard. FETÖ scoundrels, who have already been convicted in the public conscience, will not benefit from this decision."*⁶⁹

Turkish Justice Minister Yılmaz Tunç claimed that the ECtHR is not a court of appeal [over the Turkish judiciary] and that it clearly exceeded its jurisdiction by evaluating the evidence in the case.⁷⁰

The statements about the ECtHR judgement made by the leaders of the government, including the president of the Constitutional Court, clearly shows the presence of a strong resistance to the implementation of the ECtHR judgement, which is binding under international law and the dictate of Article 90/5 of the Turkish Constitution. In fact, the Turkish Minister of Interior announced on his Twitter account that police operations have been carried out on various dates recently against a total of 737 individuals **after the Yalçinkaya judgement**

66 [https://hudoc.exec.coe.int/eng?i=DH-DD\(2023\)1389E](https://hudoc.exec.coe.int/eng?i=DH-DD(2023)1389E)

67 <https://www.ntv.com.tr/turkiye/aym-baskani-arслан-aihm-kararina-katilmiyoruz-bizim-kararimiz-belli,yq2H8IDPxUyfREUrt6nHmg>

68 <https://justicesquare.org/yuksel-yalcinkaya-v-turkiye-davasi-avrupa-insan-haklari-mahkemesi-kararinin-icrasi-uzerine-yeni-basvurumuz/>

69 <https://kronos36.news/tr/aihm-in-yalcinkaya-kararina-erdogandan-tepki-bu-karardan-ekmek-cikmaz/>

70 <https://www.reuters.com/world/conviction-based-app-use-violated-turkish-teachers-rights-european-court-says-2023-09-26/>

and on the grounds of alleged Bylock use and depositing money in Bank Asya. The courts have been consistently rejecting the reopening of cases requested by the convicted individuals seeking retrial in compliance with the ECtHR judgment. Judicial authorities continue the criminal proceedings against the members or supporters of the Hizmet Movement, and the judgments of the trial courts have been affirmed by the Court of Cassation as if the ECtHR judgment did not exist.⁷¹

The Constitutional Court, in its recent rulings, has disregarded the ECtHR judgment and repeated its previous judgments which were in clear contradiction with the ruling of the ECtHR. For example, the Constitutional Court, in its *Fatih Bölükbaşı and Others* decision, dated on December 14, 2023, concluded that there was a violation of the applicant's right on the ground that having a bank account with Bank Asya should not alone constitute the crime of terrorism he was charged with. When closely scrutinized the Court's judgment, it reveals that the Court found the violation because the applicant's bank account was not thoroughly examined in accordance with the Court of Cassation ruling. It is clear from the Constitutional Court's decision that if the applicant's affiliation with Hizmet Movement was established, there would be no doubt that the applicant's conviction of the membership in an armed terrorist organization was also established beyond a reasonable doubt. Like all other courts, the Constitutional Court rules, in all Hizmet-related cases, not on the universal principles of law, but on the prevailing Government policy of "*guilt by association*".

7. Turkey's Place in ECtHR Statistics

As per the statistics published by the ECtHR for 2023, Turkey holds the highest number of applications among the cases pending before the ECtHR. According to the ECtHR data, 23,397, or 34.2 per cent, of the 68,450 pending cases before the court are against Turkey. It is known that the vast majority of these applications were made after the coup attempt of July, 2016.^{72,73} These figures do not include over 100,000 additional files of which the ECtHR mentioned in the *Yalçinkaya* judgement, and more than 100,000 additional files that are likely to be brought before the Court by those dismissed from the public service through the state of emergency decrees. Taking into account all the figures, it is expected that around 250,000 applications will be submitted to the ECtHR from Turkey alone, and that almost all of these applications will result in violations.

71 <https://twitter.com/AliYerlikaya/status/171052774501113998?s=20>;
<https://twitter.com/AliYerlikaya/status/1716736507128500236?s=20>;
<https://twitter.com/AliYerlikaya/status/1744947220460212731?s=20>;
<https://twitter.com/AliYerlikaya/status/1744947220460212731?s=20>
<https://twitter.com/AliYerlikaya/status/1747488174031450620?s=20>;
<https://twitter.com/AliYerlikaya/status/1749793685527498788?t=7nyMKZYGMuvHyw8DgYaNrg&s=09>

72 <https://www.echr.coe.int/documents/d/echr/stats-analysis-2023-eng>

73 <https://www.dwturkce1.com/tr/t%C3%BCrkiye-23-bin-400-dava-ile-ai%CC%87hmde-birincis%C4%B1rada/a-68081105>

The reason for this situation is undoubtedly the Court of Cassation and especially the Constitutional Court, which ignore the violations of rights. Although the Constitutional Court sometimes issues token judgements of violation, none of these judgements address the essence of the problem and provides a solution to in what the ECtHR calls as a '*systemic problem*'.

There are more profound issues ingrained within the Turkish judiciary. Neither the Court of Cassation nor the lower courts respect and implement the judgment of the Constitutional Court. In this context, the Constitutional Court is no longer to be considered as an effective remedy in the domestic law. Therefore, it cannot be concluded, based on a few decisions of the Court, that Turkey has been normalized and becoming a safe country, especially for the members or the supporters of the Hizmet Movement. It should be noted that these few decisions did not deal with the issues central to the conclusion of the cases of this nature. For example, none of the decisions even imply that a mere affiliation with Hizmet movement should not be considered to be a membership in an armed terrorist organization.

8. The Power Struggle Among Turkish Judicial Authorities: Can Atalay Case and Debates on Counsel of State's Jurisdictions

Although the Constitutional Court has twice issued a decision finding a violation of the rights of Can ATALAY, who was elected as an MP in the last general elections in Turkey and was arrested and imprisoned before the election due to his involvement in the Gezi Park Protests, the 3rd Criminal Chamber of the Court of Cassation, for the first time in the history of Turkish law and in a clear violation of the Constitution, decided "*not to comply with the decision of the Constitutional Court*" and also filed a criminal complaint against the members of the Constitutional Court who signed the decision in favor of the MP.⁷⁴

Minister of Justice Yılmaz TUNÇ, who made statements on the issue, ignored the decision of the Court of Cassation, which clearly violates Article 153 of the Constitution, and described the crisis as "*a difference of opinion between the courts*" and pointed to the Grand National Assembly of Turkey as the place to resolve the crisis.⁷⁵ As a matter of fact, Can ATALAY's parliamentary membership was pronounced to be revoked by the Speaker of the Turkish Parliament, with blatant ignorance of the decision of the Constitutional Court, but reading, instead, the conviction decision affirmed by the Court of Cassation, in the General Assembly of the Parliament.^{76 77 78}

74 <https://www.yargitay.gov.tr/item/1755/basin-aciklamasi>

75 <https://www.adalet.gov.tr/adalet-bakani-tuncan-yargitay-ve-anayasa-mahkemesinin-can-atalay-kararlarina-iliskin-aciklama>

76 <https://www.reuters.com/world/middle-east/turkish-parliament-strips-status-opposition-mp-after-judicial-clash-2024-01-30/>

77 <https://www.al-monitor.com/originals/2024/01/turkeys-parliament-ejects-jailed-lawmaker-can-atalay-defying-top-court>

78 <https://apnews.com/article/turkey-parliament-can-atalay-e47f1acb8b25af062a94aef2e9ed885c>

On the other hand, the decisions taken or not taken by the higher judicial bodies are also harshly criticized by President Recep Tayyip Erdoğan. Erdoğan, in his statement dated 15/02/2024, targeting the Council of State, which decided to reinstate 445 judges who were acquitted, said: "It is not possible for us to remain silent about this decision taken by the Council of State. Just as we, as the People's Alliance, do not remain unresponsive to some strange decisions taken by the Constitutional Court, we cannot remain silent on this either. The Council of State does this from time to time and disturbs us with such decisions, but the fact that the Constitutional Court frequently makes such decisions seriously disturbs us. We will follow up on this matter in the same manner [as the disturbing decisions of the Constitutional Court], regarding the Council of State decision."⁷⁹ Immediately after President Erdoğan's statement, the Council of Judges and Prosecutors (HSK) took action and started a new investigation against 387 Judges and Prosecutors who were reinstated by the decision of the Council of State.⁸⁰

A concrete indicator of the Erdoğan regime's pressure on the judicial bodies is the statement made by an unnamed member of the Council of State to a journalist (İsmail Saymaz). This anonymous member of the Council of State stated that they were under great pressure due to the cases before them and that they were worried about the security of the members of the Council of State due to this pressure.⁸¹ The member of Counsel of State reminded that as a result of the Council of State being targeted in this way before, there was an armed attack on the Council of State building in 2006,⁸² and that the member of the Council of State, Mustafa Yücel ÖZBİLGİN was killed.

Such developments clearly indicates that the protection of the fundamental rights of the individuals completely depends on whether the Government, especially the President, favors it or against it. The clear provisions of the Constitution are no longer in effect to provide any protection to the rights. The Constitutional Court does not recognise the judgments of the ECtHR and the lower courts do not recognise the judgments of the Constitutional Court, respectively. Can Atalay case clearly established that whole state machinery, including the Parliament, has under the control of the presidential authority. Under the circumstances, it is impossible to conclude that the perceived members or the supporters of the Hizmet Movement can find an effective remedy against the violations of their fundamental rights, which amounts to the crimes against humanity.

79 <https://www.turkishminute.com/2024/02/15/erdogan-attack-top-court-say-unsettled-by-their-incomprehensible-rulings/>

80 <https://ground.news/article/review-decision-on-387-judges-and-prosecutors-reinstated-from-hsk-following-erdogans-reaction>

81 <https://www.sozcu.com.tr/ust-duzey-danistay-uyesi-baski-ve-tehdit-altindayiz-p23467>

82 https://en.wikipedia.org/wiki/Turkish_Council_of_State_shooting

Based on the unreliable findings that there are some positive judicial developments in Turkey, exacerbating the asylum process for individuals who have endured years of persecution, intimidation, marginalization, and severe forms of punishment for nearly eight years will only inflict additional suffering upon them. In the current situation, it cannot be argued that the members of the Hizmet Movement may effectively seek justice for the violations of their rights in the country given two members of the Constitutional Court, and numerous members of the other Supreme Courts are still behind bars on trumped up terrorism charges.

Conclusion

In Turkey, where anti-democratic and arbitrary practices have reached their peak with the recent developments, there is no sanctuary in the country, where the members of the Hizmet Movement (or those accused of belonging to this group) can be safe from the persecution, such as arbitrary arrest, torture and other forms of ill-treatment, long-term detention in prison, conviction of the most serious crimes upon trumped terrorism charges proceeded through sham trials, with a complete disregard for the principle of legality and the principles of the right to a fair trial. Government's avowed resistance to the recognition and the implementation of the ECtHR's *Yalçınkaya* judgement, and the recent operations carried out against the members or the supporters of the Hizmet Movement, leave no room for doubt that there has been no shift from the Government's initial (annihilation) policy against the Movement, which has amounted to crimes against humanity.

As such, we reiterate our firm belief that the Netherlands is one of the most advanced democracies in the world, with their strong adherence to respect for human rights and the rule of law, and have no doubt that the Dutch authorities will act in accordance with these principles when assessing the asylum applications of the members of the Hizmet Movement.

As stated in our founding document, we once again declare that we will continue our efforts to promote human rights and to reinforce democratic values, tolerance and mutual dialogue.

Finally, we would like to express our sincere appreciation and gratitude to the Dutch Government and the people of Netherlands for their understanding and always positive attitude extended to the members of the Hizmet Movement from the moment they arrived in the country.

We hereby respectfully submit this letter for your information, expressing our sincere respect and sentiments.