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IMMIGRATIE-en NATURALISATIEDIENST

Postbus 17 9560 AA Ter Apel

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

Related: 1st Notification Letter Dated **February 22, 2024**,¹

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 now become a State policy, continue unabated and more than 100,000 people are at risk of being subjected to ill-treatment or torture. 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/Gülen Movement or persons recognised as such.

Stichting Justice Square,² 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/Gülen 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*

¹ <https://justicesquare.org/indye-yapilan-bildirim/>

² <https://justicesquare.org/>

violation of Article 3 of the ECHR during arrest and detention" and due to the persecutions and this decision, members of the Hizmet/Gülen Movement or persons recognised as such were granted residence.

However, as a result of the assessments made by taking into account the political and legal processes in Turkey regarding these persons who are considered to be in the high risk group, it has been recently observed that some changes have been made in the country policy. As a matter of fact, the Ministry of Justice and Security sent a letter to the Parliament (Tweede Kamer) on 28/11/2023 on the country policy regarding Turkey. This letter is directly related to persons coming from Turkey to seek asylum. In the letter, based on the report published by the Dutch Ministry of Foreign Affairs in August 2023, it is stated that 3 groups of refugees from Turkey are in the risk group as a country policy.

In the letter sent to the Parliament, it was stated that with regard to Gülenists, who are considered to be in the risk group, the judgements in Turkey, especially with regard to downloading and/or using a messaging programme (Bylock) on the phone, opening an account in a private bank (Bank Asya) and making bank transactions, have started to be made in favour of the defendants and these judgements have been accepted by the Court of Cassation and the Constitutional Court. It was further argued that in view of this new situation, the '*arbitrariness*' that was previously common in criminal investigations against Gülenists was not a problem to the same extent, that the intensity of criminal investigations against Gülen supporters had 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, as was the current policy. Finally, in the light of the findings made throughout the letter, it was decided to abandon the view that persons in respect of whom asylum proceedings had been initiated up to that date were at risk should they return to their country of origin, and that, in the event of return, they would be assessed on the same level as other refugees, and that the likelihood of persecution would 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/Gülen 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/Gülen 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/Gülen Movement will continue unabated.

This information letter has been prepared with the aim and request that it be taken into consideration in the asylum evaluations to be made especially regarding the members of the Hizmet/Gülen Movement or people accepted as such.

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/Gülen 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.³ The mass detentions and torture that began in the immediate aftermath of the coup attempt, as well as the State of Emergency Decrees issued by the Government 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/Gülen 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 at the courts of first instance.⁴ As of 31/12/2023, **63,643** files are pending before the 3rd Criminal Chamber of the Court of Cassation,⁵ and **95,043** files are pending before the Constitutional Court⁶. 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 number of persons in Turkish penitentiary institutions currently under arrest or conviction for alleged membership of the Hizmet/Gülen Movement is **15,539**.

According to the information shared by the Turkish Minister of Interior Ali Yerlikaya, who was appointed to this position in July 2023, on X on **January 30, 2024**, clearly demonstrates that the practices of *criminal law of the enemy* which have become state policy against these individuals, are continuing. Mr. Yerlikaya states that **between January 1, 2023, and December 31, 2023**, there were **6,775 operations** conducted against members of the Hizmet/Gülen Movement. In

3 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.

4 <https://www.adalet.gov.tr/bakan-tunc-15-temmuz-u-anlatt#~: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>

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

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

these operations, **9,639 people were detained**, 1,689 people were arrested, and judicial control measures were applied to 1,677 people⁷. Again, according to the latest information provided by the Minister Yerlikaya personally on television on June 13, 2024, between **June 4, 2023, and June 3, 2024, 5543 operation** was carried out against the members of Hizmet/Gülen Movement, and **8892 people were detained**.⁸

Minister Ali YERLİKAYA reiterates the Government's firm unlawful stance and policy at every opportunity by posting tweets using the most abusive and dehumanizing language about the arrested persons that members or supporters of the Gülen Movement are "traitors and the most notorious terrorists who must be eliminated".⁹

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 11¹⁰, the perceived members of Hizmet/Gülen Movement have constantly been convicted of being an armed terrorist organization based on their lawful activities. Turkish courts examine 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/Gülen Movement, a finding that directly leads to the conclusion of his/her guilt, a ruling that the defendant is a member of an armed terrorist organization. Contrast to the arguments in the Ministry's letter mentioned above, 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. In fact, a state of emergency was declared on 20/7/2016 and **125,678** public officials were dismissed from their professions without even being given the right of defence and not to be employed in the public sector again by the decrees with the force of law issued within this scope. It should be noted immediately that this number is only the number of

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

8 <https://x.com/AliYerlikaya/status/1801229970003329297>

9 <https://x.com/AliYerlikaya/status/1790280001750712556>

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

dismissals made by State of Emergency Decree Laws. For example, this figure does not include **4,384** judges and prosecutors who were not directly dismissed by emergency decrees.

Likewise, this number does not include the number of persons dismissed while working in contracted, 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. Although it is not known exactly how many people have been dismissed from public service due to the fact that dismissals other than those made by State of Emergency Decree Laws are not published in the Official Gazette, it is estimated that this number is at least **250,000** people in terms of public servants. For example, at least **10,000** people were dismissed from public service one week before 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.¹¹ Again, although almost eight years have passed since the coup attempt, **445** police officers on active duty were suspended **on 28/12/2023**.¹² As a result, it is not known exactly how many people were dismissed from their jobs after the coup attempt, as it was carried out under different names and methods. 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 literally serves as a "*stigmatisation*" and when these people, who are banned from working in the state, want to work in the private sector, this record appears as an obstacle against them and they cannot work anywhere. The social equivalent of this code is that the person is a "*terrorist*" regardless of whether there is a finalised court decision against him/her or not. Despite this code, employers who employ people dismissed by the Decree of Emergency are pressurised by means of municipal police and tax audits. In this respect, this practice is a complete isolation from society, civilian death and starvation.¹³

Similarly, people's freedom of movement is also restricted. Although the Constitutional Court cancelled on 22/01/2022 the law authorising administrative bodies to impose passport restrictions without a court decision, the restrictions imposed on these people were not lifted

11 <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/>

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

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

and, moreover, as if the Constitutional Court's decision does not exist, 7 months later the Ministry of Interior imposed administrative restrictions on 59,627 people again with a letter dated 01/8/2022 and titled Passport Administrative Decision Procedures. Tens of thousands of people had to file lawsuits to the administrative courts for the removal of these restrictions and their lawsuits are still ongoing. In other words, the cancellation decision of the Constitutional Court is not being implemented by the administrative authorities and people are faced with years-long and uncertain litigation processes in order to obtain their passports.¹⁴

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.¹⁵ When the number of unemployed people working in these institutions and organisations is added, the number of people who have lost their jobs in the public and private sectors and who have been left to almost civilian death is around **400,000** people.

Regarding the persons working in the closed institutions and organisations, a record numbered 36 is recorded in the social security records as the reason for the closure of the institutions. Therefore, those working in these closed institutions and organisations are experiencing the same problems as those who were dismissed from public service with the Decree Decree Law. Due to these practices, people are marginalised and left to civilian death, unable to even sustain their lives.¹⁶

d. Violations of Rights in Prisons and During Detention

i. Violations of Rights, Torture Allegations and Deaths in Prisons

As a result of the political power's use of the judicial power as an instrument of oppression and intimidation, there has been a great increase in the prison population over the years and there are many more detainees and convicts than the capacity. According to the data of the Ministry of Justice, while the number of detainees and convicts in prisons was **55.870** in 2005, as of 01/6/2023, there were **357.572** detainees and convicts in 407 penal execution institutions with a total capacity of **296.202**. As can be seen, the number of detainees and convicts has increased approximately 6.4 times in 17 years. As of 01/6/2023, there were **61,370** detainees and convicts in prisons over capacity.¹⁷ According to the Annual Penal Statistics Published by **European Council, SPACE in June 2024**, Türkiye was the country with the highest number of

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

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

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

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

prisoners and detainees among the member states of the Council of Europe, **with 348,265 people as of January 31, 2023.**

If 100.000 more people who are members of the Hizmet/Gülen Movement and who are likely to be imprisoned are added to this number, there will be no fresh air to breathe in prisons.

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. According to the report; *"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."*¹⁸

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 in recent history. 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** ill prisoners, **651** of whom are seriously ill. In the first 6 months of 2023, **54** people from different prisons applied to the Turkish Medical Association on the grounds of problems in 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 examination. Furthermore, 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. Although there are serious allegations of suspicious circumstances for a significant number of these deaths, no effective investigation has been carried out.¹⁹

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

Prisons are not the only place where human rights violations are committed; ill-treatment and torture also occur in detention centres during detention procedures. Regarding this issue, the

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

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

Ankara Bar Association shared with the public 5 separate reports on torture during detention on 23 January, 2 March, 8 March and 4 April 2022.²⁰

In 2022, a total of 1,201 people applied to the HRFT on the grounds 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 for 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 and transfer vehicles of law enforcement officers.

According to the findings of the HRFT Documentation Centre, 1 person died suspiciously in detention in 2022. In the first five months of 2023, at least 6 people died in detention under suspicious circumstances. In the same period, 270 people applied to the HRFT on the grounds 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 2022.²¹

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 in September 2020.²² Another mass torture and ill-treatment was inflicted on 100 former diplomats detained in Ankara, and the Ankara Bar Association reported on the allegations of ill-treatment and torture. The Ankara Bar Association made this extremely important study, which proves the systematic torture of state officials, public on 26/5/2019.²³

In another latest incident, Esra Solin Dal was subjected to a strip search, which is an act of torture and entirely criminal, in an investigations carried out against journalist on April 23, 2024.²⁴ However, like the other examples, allegations of torture and ill-treatment in police custody and prison over the past 8 years have rarely been subject to effective investigations or the prosecution of perpetrators. Not surprisingly, the investigation against the officials accused of strip search has been concluded with the verdict of non-prosecution.²⁵

20 <https://nordicmonitor.com/2023/01/the-report-that-ankara-bar-association-refused-to-publish-reveals-torture-at-the-police-station/>; <https://yenyasamgazetesi5.com/ankara-barosunda-tartismalara-neden-olan-iskence-raporlari-yayinlandi/>

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

22 <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/>

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

24 <https://medyanews.net/journalists-protest-against-strip-searches-as-torture-in-istanbul/>

25 <https://www-tr724-com.cdn.ampproject.org/c/www.tr724.com/gazeteciye-ciplak-arama-iskencesine-takipsizlik-karari/amp>

e. Occured Deaths

As of 31/12/2023, in a period of 8 years; the number of people who died in prisons is **138**, the number of people who committed suicide is at least **90**, the number of people who died in police or gendarmerie detention centres is **8**, the number of people who died while fleeing from the lawlessness is **36**.²⁶

f. Forced Kidnappings

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.^{27 28} Kidnapping activities continued unabated in 2023 and in this context; Mehmet Cintosun was kidnapped from Iraq in April 2023,²⁹ Emsal Koç was kidnapped from Tajikistan where she has been residing since 1994 on 02/6/2023, Koray Vural was kidnapped from Tajikistan on 05/10/2023³⁰ 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).³¹ 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.³²

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 92 days.³³ The documentary *"92 Days in the Dark"*, in which Özben describes his experiences, was published on 02/12/2023.³⁴

Likewise, there is no harm in the publicisation of the pictures of the abducted persons in such a way that the torture inflicted on them can be seen by the official agency of the state itself.³⁵

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

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

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

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

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

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

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

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

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

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

For example, the photograph of Orhan İnandı, a citizen of Kyrgyzstan, who was abducted on 01/6/2021 and tortured for 37 days, with a broken arm was shared by Anadolu Agency.³⁶

Similarly, at least 10 abductees have not been heard from for years and are presumed to have been tortured to death.³⁷ The Turkish Government has also requested the extradition of a total of **1,269** persons from 112 countries, allegedly members of the Hizmet/Gülen Movement.³⁸

As can be understood from the foregoing, persons imprisoned due to their membership in the Hizmet/Gülen Movement have been and continue to be subjected to many violations of rights, particularly the right to life, torture and ill-treatment. Likewise, those who have requested asylum in a safe country have been subjected to constant anxiety due to extradition and those in other countries have been subjected to kidnappings. Considering the number of ongoing investigations and prosecutions, the seriousness of the situation in Turkey will be better understood when we consider that more than 100,000 people are currently facing the threat of imprisonment.

2. Enemy Criminal Law Practices that Became State Policy

One might think that the treatment and human rights violations in Turkey, in particular against members of the Hizmet/Gülen Movement, might have decreased due to some developments and the fact that it has been 8 years since the attempted coup d'état. However, the information provided by the Turkish Minister of Interior above makes it clear that this is not the case at all and that the '*enemy criminal law*' practices against these individuals, which have now become state policy, continue. According to the information shared by other institutions, between **01/01/2024 and 08/06/2024, 2,339** people were detained in the operations were carried out against members of the Hizmet/Gülen Movement.³⁹

Another interesting point in the post made by the Turkish Interior Minister on his personal X account, which confirms the above determination, is that while so many operations are carried out against the members of the Hizmet/Gülen Movement, which no civilised country with a developed democracy recognises as a terrorist organisation, due to their legal and routine activities, the struggle against ISIS⁴⁰, which there is no doubt that it is a real terrorist organisation and which caused the death of 1 person in their attack on **the Santa Maria Church in Istanbul on 28/01/2024** and claimed responsibility for this attack, is small. As a matter of fact, **only 1,607 operations were carried out** against ISIS between June 4, 2023 and June 3, 2024, **3,560 people were detained in these operations, 903 of them were arrested and 657 of them were given judicial control decisions.**⁴¹

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

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

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

39 <https://www.solidaritywithothers.com/post/turkey-rights-monitor-issue-207>

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

41 <https://x.com/AliYerlikaya/status/1801229970003329297/photo/3>

In short, the fact that the number of operations carried out and the number of protection measures applied to the people, who the ECtHR stated in *the Yalçınkaya judgement* that they were punished on the basis of assumptions and for actions that did not constitute a crime, is almost 3 times higher than that of ISIS, a bloody terrorist organisation, is a clear indication of the double standard in terrorism investigations and the hostile criminal law applied in the country.

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

Another striking point in the posts made by the Minister of Interior, who is one of the implementers of security policies, is that he includes hate speech that violates the presumption of innocence against people who have no finalised court decision against them and, more importantly, who have nothing to do with the coup attempt.

Minister Ali YERLİKAYA reiterates the Government's firm unlawful stance and policy at every opportunity by posting tweets using the most abusive and dehumanizing language about the arrested persons that members or supporters of the Gulen Movement are "traitors and the most notorious terrorists who must be eliminated".⁴²

Some of the statements Mr Yerlikaya made publicly on the X are as follows;

- *We will never tolerate the traitors who aim at the unity and solidarity of our country,*⁴³
- *Our fight against the "FETO members" who attempted to stage a coup against our national will will continue with determination,*⁴⁴
- *We will not let the "FETO member" traitors go, who mercilessly opened fire on our people and did not hesitate to bomb our Veteran Parliament,*⁴⁵
- *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",*⁴⁶
- *We will not let the traitors who opened fire on our people go,*⁴⁷
- *We will not let the traitors who tried to crush us with tanks be tolerated,*⁴⁸
- *Our operations against "FETO" who attempted a treacherous coup on 15 July continue uninterruptedly.*⁴⁹

42 <https://x.com/AliYerlikaya/status/1790280001750712556>

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

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

45 <https://x.com/AliYerlikaya/status/1744947220460212731?s=20>; <https://x.com/AliYerlikaya/status/1715328152501694799?s=20>

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

47 <https://x.com/AliYerlikaya/status/171052774501113998?s=20>

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

49 <https://x.com/AliYerlikaya/status/1676834343887437825?s=20>

4. Mass Detentions and Disregarding the Principle of *Nullum Crimen*

As can be seen from these statements, the pressure, arbitrary punishment and witch-hunt against members of the Hizmet/Gülen Movement continue intensively. For example, **611**⁵⁰ people were detained on **24/10/2023** and **748**⁵¹ people were detained on **06/7/2023** in two operations carried out on different dates. The accusation 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.⁵² Likewise, giving aid to those who have been dismissed by 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 does not constitute an offence.⁵³ However, when it comes to members of the Hizmet/Gülen Movement, the aid provided with humanitarian considerations was considered as an element of the crime of membership of an armed organisation and financing of terrorism, and for this reason, **1,359** people were detained in these two operations. It was not only the detainees who were penalised by these operations. People who were isolated from the society because their spouses were in prison and therefore could not find a job in the state or private sector were almost left to civilian death and starvation. For example, the disabled **Hatice YILDIZ (75)** was sentenced to 4 years in prison for sending money to her daughter and her ward mates in prison and was sent to prison on **23 March 2024**.⁵⁴ Again, **70 people**⁵⁵ were detained in the operations carried out against the Gülen movement on **March 29, 2024**, and the operation was again announced to the public by Ali YERLİKAYA with the same expressions of hatred.⁵⁶

The latest grave examples of the extent to which *Criminal Law of the Enemy* practices against the Gülen Movement in Turkey have reached was carried out in 20 days in May 2024. In the operations against the member of Hizmet/Gülen Movement,

- **May 11, 2024: 87** people detained,
- **May 14, 2024: 544** people detained,
- **May 21, 2024: 46** people detained,
- **May 24, 2024: 45** people detained,
- **May 28, 2024: 8** university students detained,
- **May 29, 2024: 9** people detained, and

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

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

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

53 3rd Criminal Chamber of the Court of Cassation dated 22/11/2021 and 2021/8301 E., 2021/10127 K.

54 <https://turkishminute.com/2024/03/23/75-year-old-woman-convicted-sending-money-to-inmates-taken-to-prison-on-stretcher/>

55 <https://www.turkishminute.com/2024/03/29/turkey-detained-70-people-over-alleged-gulen-link/>

56 <https://twitter.com/AliYerlikaya/status/1773583116352766162>

- **May 30, 2024: 90 people detained.**

In one of the widespread recent operations against the Gulen Movement that was carried out on **May 14, 2024**, and **544 people** were arrested in simultaneous operations in 62 provinces. According to the statement made by the Minister of Interior on his X account, the **arrested persons are accused of preparing for exams to recruit civil servants for public institutions**.⁵⁷ It is also understood that persons were arrested for non-criminal acts such as being a ByLock user and being called from a pay phone, which is refused to be as sufficient evidence for membership in a terrorist organization in the ECHR decision *Yalçinkaya v. Turkey* (Application no: 15669/20) and other hundreds of detention related cases.

According to Article 48 of the Constitution of the Republic of Türkiye; "*everyone has the freedom to work and contract in any field of his choice*." Article 49 of the Constitution states that "*work is everyone's right*".⁵⁸ Therefore, it is not a crime, but rather a constitutional right to apply for or prepare for the exams opened for the recruitment of civil servants to public institutions. In this case, the decision to detain **544 people** who are only preparing for these exams is not only against the law but also against reason and logic.

The latest figures provided by non-governmental organisations shows that operations against the member of Hizmet/Gulen Movement continues drastically with massive detentions. According to findings, only between June 3, 2024, and June 9, 2024, **136 people were detained** with the same allegations which are not considered as criminal offences.⁵⁹

4. Mass Detentions Against Women, Minors and Students

The level of persecution has now started to reach the **high school students and even primary school students**, who are mainly women, with one of the latest mass arrests took place on **6 May 2024**. The operation against university, high school, and primary school students in Istanbul, in which **38 people, including 14 students, most of whom were women and younger than 15**, were detained and 29 of these were arrested.

The accusations were providing educational coaching to children whose parents are imprisoned, thereby supporting the families⁶⁰. However, this operation differs from previous ones, as until now, there had not been a direct investigation into minors in such circumstances. **In this latest incident, it is observed that even minors are now being directly targeted in terrorism investigations related to the Gulen Movement.**

Many high school and university students, most of whom are girls, were detained along with their mothers. Sixteen children under the age of 18 were held in a separate unit from their

⁵⁷ <https://x.com/AliYerlikaya/status/1790280001750712556>

⁵⁸ <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.2709.pdf>

⁵⁹ <https://www.solidaritywithothers.com/post/turkey-rights-monitor-issue-207>

⁶⁰ <https://kronos36.news/tr/29-tutuklama-parkinson-hastasi-anne-kiziyla-birlikte-hapse-gonderildi/>

mothers at the police station and were subjected to psychological torture, being threatened by the police with statements such as **"we will make you vomit blood"**.⁶¹

In the operation⁶², which was urgently brought to the agenda by DEM Party MP Ömer Faruk Gergerlioğlu, **high school students** were interrogated for 16 hours and forced to give statements against their families. During the detention, **the children were not allowed to see their lawyers and were prevented from informing their relatives and were intimidated by the police officers to harm their families.**

When the details of the investigation are examined, as we reached through the lawyers in Türkiye, it is seen that the children's phones were tapped and that they were remotely followed by the police during social activities such as meetings, picnics, and dinners they went to with their families. As a result of this technical and physical surveillance, during which conversations and activities related to daily life were recorded, the following absurd questions were asked to the students:

- a. *"... it has been detected that your and ... cell phones received signal from the same tower (using the cell tower belonging to the same address). Please give your statement on this matter."*
- b. *"It is considered that the interview and signal data confirm that you stayed in the same house with ..., Please give your statement on the subject."*
- c. *"... you mentioned a person named ..., ... you made a plan to meet... Please give your statement on the matter."*
- d. *"It is evaluated that you met with ..., left with ..., had lessons with ... Please give your statement on the subject."*
- e. *"It is understood that the conversations were about a trip abroad... Give your statement."*
- f. *"Why are you staying in another house when your family resides in Istanbul?"*
- g. *"...it has been established that you first went to ... hospital, then visited the house at ... and stayed at ... house. Please give your statement about this."*
- h. *"It was detected that you entered the address "... and then left with a black bag labelled Aker, the contents of which were unknown. What was the purpose of this visit and what was in the bag?"*
- i. *"Since the person named went to the address of ... one day before you, your going to the same address one day later was considered as an organizational meeting. Give your statement about this."*

61 <https://www.turkishminute.com/2024/05/15/erdogan-crackdown-donot-spare-minors-teenagers-recount-trauma-of-police-custody/>

62 <https://x.com/gergerlioglueng/status/1788305041297641486>

- j. *(Upon your declaration that the contents of the bag were food, but another suspect described it as fruit) "... give your statement about the issues that contain contradictions."*
- k. *"It was found that you gave a white bag and ..., ... took something from inside your bag. Give your statement about this".*
- l. *"... it was found that you left the house at ..., then met with ..., ... then went to your family's residence and left there to meet with your friend Please give your statement on this matter."*

Detained people were also accused of hugging each other as it was a secret way of exchanging a criminal asset.⁶³ Obviously, it is seen that questions based on physical surveillance aim to portray routine activities of daily life as organizational activities and are based on questioning individuals' personal freedoms.

29 of the detainees, including female university students detained with their mothers, were arrested on the grounds some of them as follows:⁶⁴

- a. *R.G. for teaching English to 5 primary school students,*
- b. *H.A. on the grounds of providing English lessons to his/her middle school-aged daughter.*
- c. *N.E. on the grounds that he/she drove home the teacher who gave English lessons to his/her child,*
- d. *K.D. on the grounds that his/her daughter had invited her friends for dinner at her house,*
- e. *G.G. for making his/her daughter take English lessons in primary school,*
- f. *Z.T. on the grounds that he was an educational coach for students,*
- g. *H.K. (A university student) was arrested on the grounds that she and another friend were living in a house apart from their families.*

Another example of such investigations is the operation carried out on **May 28, 2024**, in which **8 university students were detained**. In the investigation carried out by the Istanbul Chief Public Prosecutor's Office, it is alleged that the Hizmet/Gülen Movement encouraged university students to stay together, that one of the students, in order to avoid attracting attention, fulfilled the procedures regarding the lease contract and invoices, that no documents related to the Hizmet/Gülen Movement were kept in the houses, and that all these were preparations for terrorist activities to be carried out.

One of the students detained on these allegations was Huzeyfe Sagbas. **Huzeyfe Sağbaş (24), a 4th year student at Akdeniz University, Faculty of Business Administration**, was detained in Antalya within the scope of the Gülen Movement investigations because he had rented a flat with a friend. However, Huzeyfe Sagbas had an accident on 5 December 2023 while

⁶³ <https://x.com/Hurriyet/status/1796217509118615887>

⁶⁴ <https://kronos36.news/tr/29-tutuklama-parkinson-hastasi-anne-kiziyla-birlikte-hapse-gonderildi/>

working as a courier to earn his university tuition and **was in intensive care for days due to head trauma caused by hitting his head**. According to doctors, Sagbas, who had **not yet regained full consciousness**, was unable to continue his studies. Despite this, Huzeyfe Sagbas **was detained and forced to testify against the other detainees**.⁶⁵

Another mass detention against the members of Hizmet/Gülen Movement was so called “Kıskaç 18”⁶⁶ operations simultaneously carried out in 17 cities on **May 30, 2024**, and **90 people** were arrested in police raids.⁶⁷ One of the people detained on these allegations was Esengül ARSLAN. **Esengül ARSLAN (23), a 3rd year student at Cerrahpaşa Florence Nightingale Faculty of Nursing**, who had to move to Istanbul after the catastrophic earthquake occurred on the 6th of February 2023 in Hatay, was detained in Istanbul within the scope of the Gülen Movement investigations because **the pocket money sent by her relatives abroad was considered as “terror financing”**.⁶⁸

Considering that this is the **18th of these operations**, it is seen that the massive and unlawful detentions against the Hizmet/Gülen movement have become commonplace and have started to lose their noticeabilities among not only local but also international public opinion. Regarding the **Turkish Penal Code 77/1-d**⁶⁹ and the resolution made by the **United Nations Working Group on Arbitrary Detention**, stating 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)⁷⁰, it can be confirmly declared that the investigations against the Hizmet/Gülen Movement in Turkey have now turned into an ethnic cleansing.

In the latest operation against the female members of Hizmet/Gülen Movement was carried out on June 8, 2024, and **7 women who were participating in live audio discussions on X**, where they were discussing the texts of Risale-i Nur, a Quranic exegesis written by the late Islamic scholar Said Nursi, the teachings of whom later helped inspire the faith-based Gülen movement. The operation, carried by Turkey’s National Intelligence Organization (MİT) and the Malatya Police Department’s Organized Crime Division, is an extremely unique example to indicate the level of arbitrary practices have reached with the recent developments, and even the daily life routines of the members, **such as participating in an open religious**

⁶⁵ <https://kronos36.news/moto-kuryelik-yaparken-kaza-geciren-universite-ogrencisi-gozaltina-alindi/>

⁶⁶ “Kıskaç” (clamp) is the discreditable name which was produced by the Minister of Interior specially for the operations against the member of Hizmet/Gülen Movement.

⁶⁷ <https://x.com/AliYerlikaya/status/1796044090628350145>

⁶⁸ <https://stockholmcf.org/turkish-court-arrests-student-for-receiving-money-from-relatives-abroad/>

⁶⁹ Turkish Penal Code 77/1-d

1) *The systematic performance an act, described below, against a part of society and in accordance with a plan with a political, philosophical, racial or religious motive shall constitute a crime against humanity:*

...

d) *Depriving one from his/her liberty;*

⁷⁰ 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>

discussion on an open platform like X, can easily be considered as criminal offence. So, there is no sanctuary in the country, where the members of the Hizmet/Gülen Movement (or those alleged 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.

Minister Ali Yerlikaya, in this context, continues to make provocative statements on his X account, saying, *"We will not give FETÖ supporters a chance. Our operations will continue with determination thanks to the outstanding efforts of our security forces for the peace, unity, and solidarity of our dear nation."*⁷¹ The Minister's accusatory words are directed at individuals who have no connection with the controversial coup attempt, the circumstances of which have not been identified through an independent and impartial judiciary so far. None of the arrested individuals were involved in the failed coup attempt or any criminal activity. The Minister's words fall into the category of hate speech and violate the presumption of innocence of those arrested.

These unlawful and arbitrary mass arrests and the ill-treatment during their detention at night in front of their family members and children as well as their exposure to the public through social media by the Minister of Interior in the most humiliating manner are not only clear manifestations of violence against people, including women and young girls, perpetrated by state organs, but have also reached the level of crimes against humanity.

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

a. US Department of State, 2023 Country Reports on Human Rights Practices, Turkey (Türkiye)- April 22, 2024⁷²

The Annual Country Reports on Human Rights Practices- the Human Rights Report – was released by Bureau of Democracy, Human Rights, and Labor on April 22, 2024. The report examines significant human rights issues in Türkiye included credible reports of: enforced disappearance; torture or cruel, inhuman, or degrading treatment or punishment by the government or on behalf of the government; arbitrary arrest or detention; serious problems with the independence of the judiciary; political prisoners or detainees; transnational repression against individuals in another country, and claims that the government took limited steps to identify and punish some officials who may have committed human rights abuses.

The headlights of the report are as follows,

71 <https://x.com/AliYerlikaya/status/1796044090628350145>

72 <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/turkey/>

- Domestic human rights organizations, bar associations, political opposition figures, international human rights groups, and others reported government agents engaged in threats and mistreatment of persons while in custody. Individuals with alleged affiliation with the **PKK or the Gulen movement were more likely to be subjected to mistreatment or abuse.**
- Observers noted **prosecutors and courts often failed to establish sufficient evidence to sustain indictments and convictions in cases related to supporting terrorism, and highlighted concerns regarding respect for due process and adherence to credible evidentiary thresholds.** In numerous cases authorities used secret evidence or witnesses that defense attorneys and the accused had no access or ability to cross-examine and challenge in court, particularly in cases related to national security. The government occasionally refused to acknowledge the use of evidence from, release testimony of, or allow defendants or their attorneys to hear the testimony of secret witnesses during court proceedings.
- The exact number of political prisoners was a subject of debate in the country. The Ministry of Justice announced **15,539 detainees remained in prisons on grounds of their alleged affiliation with the Gulen movement in July.** Human rights organizations reported political prisoners were more often subjected to solitary confinement and excluded from government initiatives to lower the prison population through amnesties and early releases.
- The government engaged in a **worldwide effort to apprehend suspected members of the Gulen movement.** There were credible reports the government exerted bilateral pressure on other countries to take adverse action against specific individuals, at times without due process. There were credible allegations Turkish intelligence forces kidnapped alleged members of the Gulen movement in foreign countries and returned them to Turkey to stand trial.
- There were credible reports the government attempted to use **INTERPOL red notices** to target specific individuals located outside the country, alleging ties to terrorism based on little evidence. Freedom House reported that following the 2016 coup attempt, the country uploaded tens of thousands of requests in INTERPOL for persons the government designated as affiliated with the Gulen movement. There were also reports individuals faced complications related to erroneous lost or stolen passport reports the government filed against suspected Gulen movement supporters in the years directly following the coup attempt. Targeted individuals often had no clearly identified role in the attempted coup but were associated with the Gulen movement or had spoken in favor of it. The reports to INTERPOL led to individuals' detention or prevented them from traveling.
- There were reports the government attempted to **control mobility** to exact reprisal against citizens abroad by refusing to renew the passports of some citizens with

temporary residency permits in other countries, on political grounds. The government often claimed such citizens were members of the Gulen movement organizations; these individuals were frequently unable to travel outside their countries of residence.

- There was evidence the government applied **bilateral pressure** on other governments to secure their assistance with renditions without full due process and couched such requests as cooperation on countering terrorism. In this context, in July, an official in Kosovo was found guilty and sentenced to prison for “abuse of official position or authority” for the deportation of **six Turkish nationals** in 2018 alleged by Turkish authorities to be followers of the Gulen movement. Upon their arrival in Turkey, the six individuals, including five who worked at Gulen affiliated educational institutions in Kosovo, were arrested and four were charged with “membership in a terrorist organization” and sentenced to between seven and nine years in prison, and the fifth was charged with “leading an armed terrorist organization” and sentenced to 15 years in prison.

b. 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.⁷³

c. 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 by various decrees as a result of investigations against members of the Hizmet/Gülen Movement, without the right to a fair trial on the grounds of being affiliated with “FETÖ”. 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 security and freedom of movement have been affected as a result of

73

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

being publicly labelled as "FETÖ" supporters, and they may be re-arrested due to ongoing investigations against them.⁷⁴

d. Human Rights Watch 2024 Report: "We Will Find You- A Global Look at How Governments Repress Nationals Abroad"

The Turkish government has openly said that it has been pursuing Turkish nationals abroad allegedly affiliated with the movement led by US-based Sunni Muslim cleric Fethullah Gülen. At this latest report, it is stated that Human Rights Watch is aware of several cases in which Turkish authorities abducted Turkish nationals and removed them to Türkiye, bypassing legal processes and court orders abroad, and that Türkiye's official Anatolian Agency news agency has also regularly published information about individuals the Turkish National Intelligence Agency has brought back to Türkiye and detained pending trial.

It is also stated in the report that Selahaddin Gülen, nephew of Fethullah Gülen, went missing in May 2021 while traveling to Kenya to marry his fiancé, a Kenyan national. Despite being a registered asylum seeker in Kenya, he was under a deportation order from the Kenyan authorities, based on an Interpol Red Notice from Türkiye, which required him to report weekly to the Directorate of Criminal Investigations headquarters in Nairobi. On one of these visits, he vanished. Photographs were released several weeks later of him in handcuffs in Ankara.

As another example given in the report, Orhan İnandı, whom the Turkish government accused of links to the Gülen movement in 2019, was abducted in Kyrgyzstan with the involvement of the Turkish authorities in May 2021. One week after he went missing, İnandı resurfaced in police custody in Ankara.

According to the report, after the May 2023 elections, Türkiye's intelligence agency continued the practice of organizing the abduction and rendition to Türkiye of individuals with alleged associations with the Gülen movement in collaboration with authorities in countries with weak rule of law frameworks. In July and September, Tajik authorities bypassed legal extradition processes by abducting Emsal Koç and Koray Vural before they were flown to Türkiye, where they were placed in pretrial detention pending trial.⁷⁵

e. United Nations Human Rights Council Working Group on Arbitrary Detention, Cihangir ÇENTELİ Resolution ⁷⁶

The Working Group on Arbitrary Detention of the United Nations Human Rights Council ruled that the deprivation of liberty of Cihangir Çenteli (39), who was arrested on the grounds

⁷⁴ <https://freedomhouse.org/tr/report/free-them-all/2024/visible-and-invisible-bars>

⁷⁵ <https://www.hrw.org/report/2024/02/22/we-will-find-you/global-look-how-governments-repress-nationals-abroad>

⁷⁶ <https://www.turkishminute.com/2024/03/06/un-working-group-found-rights-violation-in-case-of-air-force-cadet-sentenced-to-life/>

that he was seen in some military buildings on the night of 15 July and then sentenced to life imprisonment without any concrete evidence, violates Articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights and Articles 9 and 14 of the International Covenant on Civil and Political Rights.

f. Memorandum by Dunja Mijatovic, Council of Europe Commissioner for Human Rights, on Human Rights Violations in Turkey, 5 March 2024⁷⁷

In her report, the Commissioner pointed out that the authorities need to address a number of long-standing problems in the criminal justice system, such as the abuse of pre-trial detention and the lack of respect for fundamental legal principles such as the presumption of innocence, no punishment without law and the non-retroactivity of offences or the prohibition of double jeopardy. She also emphasised that the Turkish Penal Code and the Anti-Terror Law should be urgently and completely overhauled, taking full advantage of the Court's clear case-law as well as the Venice Commission and the Office of the Commissioner's conclusive recommendations on specific provisions of these laws. The Commissioner also urged the Turkish authorities to take urgent measures to neutralise the effects of the emergency decrees in terms of access to justice and an effective remedy, legal certainty and predictability. Likewise, the authorities are called upon to immediately implement the objectives in the Judicial Reform Strategy, not only in relation to individual measures but more generally to improve compliance with the Constitutional Court's jurisprudence. In her various subsequent interventions set out in this memorandum, the Commissioner reiterated her concerns about a wide range of serious problems affecting the Turkish justice system.

Consistent reports reaching the Commissioner confirm that the judiciary is strongly biased against political interests and that the Turkish judiciary is systematically not independent. In this context, the Commissioner notes that in 2022 the Council of Europe Group of States Against Corruption (GRECO) concluded that "the current level of compliance with the recommendations is not satisfactory globally" in relation to judges and prosecutors. GRECO also stated that "[...] the executive has a dominance in a number of key areas of the functioning of the judiciary, including the process of selection and recruitment of candidate judges and prosecutors; relocation of members of the judiciary against their will; disciplinary procedures and the training of judges and prosecutors."

g. 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/Gülen Movement continue to face unfair trials on terrorism charges for

⁷⁷ <https://rm.coe.int/memorandum-on-freedom-of-expression-and-of-the-media-human-rights-defe/1680aebf3d>

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.⁷⁸

h. 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 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.*⁷⁹

i. 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)"*.⁸⁰

j. 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 believed 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 officials, the cancellation of more than 230,000 passports, the closure of businesses and institutions and the subsequent seizure of their assets. Above all, the report noted, detentions have taken place of people who have been helping the families of those imprisoned for alleged links to Gülen, and even of people accused of receiving or distributing financial aid sent by Gülen's followers abroad to those in need.⁸¹

k. 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. In the statement in brief; 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

⁷⁸ <https://www.hrw.org/world-report/2023/country-chapters/turkey>

⁷⁹ <https://pace.coe.int/en/news/9360/pace-calls-for-stronger-action-to-eradicate-torture-and-ill-treatment-in-places-of-detention-in-europe>

⁸⁰ <https://pace.coe.int/en/files/32999/html>

⁸¹ <https://www.gov.uk/government/publications/turkey-country-policy-and-information-notes/country-policy-and-information-note-gulenist-movement-turkey-february-2022-accessible-version>

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*".^{82 83 84}

l. 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.⁸⁵

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

The United Nations Human Rights Committee (HRC), in its decision on Mukadder Alakuş announced on 15/11/2022, included very important points, just like the ECtHR's decision in Yalçinkaya. The grounds for the arrest and sentencing of the applicant Alakuş were that she had a deposit account in Bank Asya, that she had downloaded Bylock, a messaging application, to her phone and that she had attended a peaceful rally. In other words, these are the grounds for the sentencing of almost all members of the Hizmet/Gülen Movement. In summary, the HRC concluded that the Turkish Constitutional Court is not an effective domestic remedy for unlawful detention applications, that the applicant's detention was unjustified and arbitrary, that the grounds for punishment were contrary to the principle of legality of crimes and punishments, that the applicant's right to a fair trial was violated, and that the conditions of detention in prison were contrary to human dignity.

What makes the judgment important is that it is the first judgment on the merits by an international jurisdiction concerning the grounds for the sentencing of members of the Hizmet/Gülen Movement and that it establishes that the grounds for their sentencing violate the legality of crimes and punishments and the right to a fair trial. Due to its importance, the ECtHR referred to this UN judgement in its Yalçinkaya judgement (Yalçinkaya judgement § 197).

n. United Nations Working Group on Arbitrary Detention Resolutions

The United Nations Working Group on Arbitrary Detention **stated** in the application of journalist Ali Ünal,⁸⁶ that this application was of the same nature as the application of 19

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

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

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

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

86 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>

alleged members of the Gülen Movement⁸⁷ 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,⁸⁸ 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. **He 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 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 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).

6. ECtHR's Yüksel Yalçinkaya Decision and Developments Afterwards

Following the attempted coup d'état on 15/7/2016, numerous applications were made to the ECtHR due to violations of rights in the investigations and prosecutions initiated, and so far, the ECtHR has ruled that a total of **1,564** persons, **including 1,103** judges and prosecutors, were wrongfully detained.⁸⁹ In addition to these, thousands of cases of the same nature are still pending before the Strasbourg Court, pending judgement. The first case in which violation claims on the merits of the proceedings were examined was the Yüksel Yalçinkaya judgment announced on 26/9/2023.⁹⁰

a. Background of the Judgment

In March 2017, the Kayseri Assize Court sentenced the applicant, Yüksel Yalçinkaya, a teacher at a public school in Kayseri, 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

87 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.

88 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>

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

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

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 detriment, contrary to the purpose of Article 7 of the Convention. For these reasons, the Court finds that there has been a violation of Article 7 of the Convention.

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 regulated in Article 7 of the Convention. According to the ECtHR, in the case of Yalçinkaya, more than 100,000 people were punished without even investigating the existence of the elements of the crime of being a member of an armed terrorist organisation, which is a very serious crime, with the logic of formal crime and the assumption that everyone who uses Bylock is automatically a member of a terrorist organisation. However, this assumption has no legal basis and is merely an assumption.

According to the ECtHR, **more than 8,000** cases pending before it and more **than 100,000 cases** likely to be brought for the same reasons have the same problem and this problem is systemic. Recalling Article 90/5 of the Turkish Constitution, the ECtHR asked the Turkish Government to find a solution to this systemic problem and to **apply** the Yalçinkaya judgement **to all those in similar situations**. The principles set out in the Yalçinkaya judgement are of such a nature as to result in the acquittal of all the prison sentences imposed so far and all the ongoing trials. However, the judgement has **not been implemented** by the Turkish judicial authorities in the five months that have elapsed between the date of the judgement and the writing of this communication.

In this context, firstly, requests for retrial made by the convicted persons were rejected by the courts. By the way, we would like to emphasise that our Foundation notified the Committee of Ministers of the Council of Europe, which is the monitoring body for the implementation of the judgments of the ECtHR, on 14/11/2023 in accordance with Article 9/2 of the Rules of Procedure of the Committee of Ministers, regarding the failure of the Turkish authorities to fulfil the requirements of the Yalçinkaya Judgment.⁹¹

b. Statements made by the officials about the judgment

It has been observed that even after the notification made by our Foundation, the Turkish judicial authorities have not complied with the judgement and that investigations, lawsuits and convictions have continued on grounds similar to the grounds for violation in the Yalçinkaya judgement and that the Court of Cassation has continued to uphold the convictions. Moreover, the Constitutional Court has not yet issued a single judgement in line with the case-law of the ECtHR in relation to the thousands of cases of the same nature pending before it. **The President of the Constitutional Court**, let alone transposing 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"*⁹² and stated that they will definitely not comply with the Yalçinkaya judgement. Upon all these developments, our Foundation notified the Committee of Ministers for the second time on 13/02/2024 about the non-implementation of the Yalçinkaya judgement, together with examples of the judgement.⁹³

It is not only the President of the Constitutional Court who said that the Yalçinkaya judgement will not be obeyed. **President Recep Tayyip 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 not be in vain. FETÖ scoundrels, who have already been convicted in the public conscience, will not benefit from this decision."*⁹⁴ Likewise, **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.⁹⁵

As can be seen from the statements made by the most authorised persons regarding the implementation of the ECtHR judgement in domestic law, there is a very strong resistance to comply with the ECtHR judgement, which is binding under Article 90/5 of the Turkish

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

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

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

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

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

Constitution, and no step has been taken back from this understanding in the intervening period. More precisely, even the judgement of violation issued by the Grand Chamber of the ECtHR is not implemented in Turkey, and despite this judgement, extrajudicial proceedings and gross violations of rights continue. In fact, the Turkish Minister of Interior announced on his Twitter account that a total of 737 people were subjected to operations on different dates **after the Yalçinkaya judgement** and on the grounds of alleged Bylock usage and depositing money in Bank Asya, which are considered as grounds for violation in this judgement.⁹⁶

In addition, it is seen that in some of the violation decisions given by the Constitutional Court, the Yalçinkaya decision of the ECHR was not taken into account at all and the Constitutional Court made these decisions repeating the jurisprudence that led to the Yalçinkaya decision and giving these decisions for reasons that do not aim to solve the essence of the problem. For example, in the Fatih Bölükbaşı and Others decision, the Constitutional Court made a violation decision against an applicant who had an account at Bank Asya.⁹⁷ However, when the decision is examined, it is revealed that the Constitutional Court did not decide that having an account at Bank Asya alone does not constitute evidence of membership in a terrorist organization, as stated in the Yalçinkaya decision, and that it decided on a violation because the applicant's Bank Asya account movements were not fully investigated in line with the Supreme Court jurisprudence. Therefore, the Constitutional Court continues to ignore the justifications of the Yalçinkaya decision and decides on a violation only within the scope of the right to a fair trial.

c. Commencement of Retrial Against Yüksel YALÇINKAYA

Following the ECtHR's judgement in Yalçinkaya v. Turkey, which was finalised by the ECtHR and declared to the Committee of Ministers of the Council of Europe that its implementation would be followed in accordance with Article 9/2 of the Rules of Procedure of the Committee of Ministers, Yüksel YALÇINKAYA's lawyers filed a "retrial" request to Kayseri 2nd High Criminal Court. The trial held by the court on 2 April 2024 was followed with great interest by human rights defenders and became the most talked about topic (TT) on social media platform X with the hashtag "#YalçinkayaKararınaUyun". However, Yalçinkaya's family was not allowed to attend the hearing that started at 09:30 on 2 April 2024 at Kayseri 2nd High Criminal Court, and human rights defenders and lawyers coming from different parts of Turkey to provide legal support to Yalçinkaya were unlawfully prevented from approaching the

96 <https://twitter.com/AliYerlikaya/status/1710527745011113998?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>

97 <https://x.com/Cahitif06777067/status/1758126420293742957?s=20>

courtroom. For this purpose, the doors of the courtroom were locked and lawyers were forcibly removed by police teams.⁹⁸

At the hearing, the Court asked the Ankara Chief Public Prosecutor's Office for the **raw database data on ByLock**, the communication app that was used as evidence for Yalçinkaya's conviction and which was also the subject of the ECtHR's violation judgement, and the request was rejected by the Ankara Chief Public Prosecutor's Office. This means that the Ankara Public Prosecutor's Office, which holds the ByLock digital data on which Yalçinkaya's conviction was based, will not send the digital data to any court for examination. The 8000 similar applications currently pending before the ECtHR will suffer the same fate following a judgement of violation. In addition, the Kayseri Court decided to continue the investigation of other matters that do not constitute any criminal offence and unusually postponed the hearing to 12 September 2024, 6 months later. The fact that the court postponed the hearing for such a long time clearly reveals that the judicial authorities of the Republic of Turkey are resistant to implementing the Yalçinkaya decision.⁹⁹

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, 2016.¹⁰⁰¹⁰¹ 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.

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

98 <https://www.turkishminute.com/2024/04/02/teacher-retrial-after-landmark-ecthr-judgment- start-under-tight-security-measures/>

99 <https://www.tr724.com/yalcinkaya-durusmasi-12-eylule-ertelendi/>

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

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

members or the supporters of the Hizmet/Gülen 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/Gülen movement should not be considered to be a membership in an armed terrorist organization.

8. The Power Struggle Among Turkish Judicial Authorities and the Can Atalay Case

Although the Constitutional Court has twice issued a decision of violation against 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 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 clear contravention 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 of violation.¹⁰²

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.¹⁰³ As a matter of fact, Can ATALAY's parliamentary seat was cancelled by ignoring the decision of the Constitutional Court and reading the conviction decision against him in the General Assembly of the Parliament.^{104 105}

¹⁰⁶

On the other hand, the decisions taken or not taken by the higher judicial bodies are also harshly criticized by President Recep Tayyip Erdoğan. As a matter of fact, 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 in the Council of State."¹⁰⁷

¹⁰² <https://www.yargitay.gov.tr/item/1755/basin-aciklamasi>

¹⁰³ <https://www.adalet.gov.tr/adalet-bakani-tuncan-yargitay-ve-anayasa-mahkemesinin-can-atalay-kararlarina-iliskin-aciklama>

¹⁰⁴ <https://www.reuters.com/world/middle-east/turkish-parliament-strips-status-opposition-mp-after-judicial-clash-2024-01-30/>

¹⁰⁵ <https://www.al-monitor.com/originals/2024/01/turkeys-parliament-ejects-jailed-lawmaker-can-atalay-defying-top-court>

¹⁰⁶ <https://apnews.com/article/turkey-parliament-can-atalay-e47f1acb8b25af062a94aef2e9ed885c>

¹⁰⁷ <https://www.turkishminute.com/2024/02/15/erdogan-attack-top-court-say-unsettled-by-their-incomprehensible-rulings/>

These developments are the most important indication that constitutional and legal rights have been suspended in Turkey along with the provisions of the Constitution. At this point, a strange situation has emerged in which the Constitutional Court does not recognise the judgments of the ECtHR and the local courts do not recognise the judgments of the Constitutional Court. In such a situation, no one can be expected to feel safe. In an environment where the Supreme Court of Cassation, a high court, has the courage to openly disobey the decision of the Constitutional Court on grounds that have no legal equivalent, and to file criminal complaints against the members of the Constitutional Court, and where the Grand National Assembly of Turkey is a partner in this unlawfulness, it is de facto impossible for people, especially the opposition, to feel safe.

Making the asylum process more difficult for people who have been subjected to all kinds of pressure, intimidation, marginalisation, punishment and unlawful treatment and persecution for almost eight years, as if there is something normal in Turkey after all these developments, will cause irreparable and impossible damages for those who have been subjected to these unlawful acts. In the current situation, it cannot be claimed that even members of the Constitutional Court, let alone ordinary citizens, have legal guarantees and safeguards. Just like what happened to 2 members of the Constitutional Court and nearly 5 thousand judges and prosecutors who were detained and arrested on the morning of 16 July, just one day after the controversial failed coup attempt in 2016 and most of them are still in prison...

Conclusion

In Turkey, where anti-democratic and arbitrary practices have reached their peak with the recent events, there is no environment where all opposition groups, especially the members of the Hizmet/Gülen movement (or those accused of belonging to this group), who have been subjected to systematic, widespread and organised unlawfulness, can feel safe or return to Turkey, and no one's most fundamental rights, especially the right to life, are guaranteed due to the torture, ill-treatment and rights violations that continue in prisons and detention centres. The most important indicator of this is the ECtHR's Yalçınkaya judgement, which has not been implemented by the judicial authorities. In this judgement, the ECtHR found that the principle of 'legality of offences and punishments', which cannot be suspended even in times of war and states of emergency, was violated in all investigations and prosecutions against members of the Gülen Movement and that people were punished for actions that were not defined as crimes in the law. The seriousness of the situation will be better understood when it is considered that the number of people penalised for similar reasons is more than 100,000.

On the other hand, as can be seen from the concrete examples above, it is very likely that young people and children who come to the Netherlands seeking asylum and whose applications are rejected, as there is no investigation against them, will be arrested for those asylum applications alone if they are sent back to Türkiye **as they are all considered suspects because**

of their families in Turkish judicial practice although they are not currently under investigation.

In short, although 8 years have passed since the controversial coup attempt, it can be easily claimed that nothing has changed in the treatment of members of the Hizmet/Gülen Movement. As a state policy, 'crimes against humanity' continue to be systematically committed against these people in line with a certain plan and these people are almost left to civilian death.

As such, we reiterate our belief that the Dutch authorities will respect the principle of human rights and the rule of law in the evaluation of the asylum applications of the members of the Hizmet/Gülen Movement, as in the past.

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/Gülen Movement from the moment they arrived in the country.

We hereby submit this information letter to your information with our most sincere feelings.

Stichting Justice Square,