Amsterdam, September 30, 2024

IMMIGRATIE-en NATURALISATIEDIENST

Postbus 17 9560 AA Ter Apel

Subject: Update on Recent Mass Detentions of Gülen Movement Members in Türkiye

I. INTRODUCTION

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

It is a well-known fact that people who had to flee Türkiye for political reasons have been seeking asylum in different countries of Europe and the Netherlands for many years. After the 15 July 2016 failed coup attempt, members of the Hizmet Movement or thousands of people who were accepted as such also sought asylum in the Netherlands. In Türkiye, especially after July 2016, the pressure and punishments against this group of people continued to increase.

In our previous notifications dated **22 February and 5 June, 2024, and attached to this letter,** you were informed about the widespread and grave human rights violations in Türkiye starting from the coup attempt on 15 July 2016 until today.

A change has been observed in the policy and practices of the Netherlands government vis-a-vis the persons seeking asylum. The Ministry of Justice and Security sent a letter to the Parliament (Tweede Kamer) on 28/11/2023 on the country policy regarding Türkiye. This letter is directly related to persons coming from Türkiye 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 Türkiye 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 Türkiye, especially with regard to

1 https://justicesquare.org/

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, the following statements clearly indicate that the **repression and persecution** of members of the Hizmet Movement **have not diminished**. As a matter of fact, as the Turkish Interior Minister in particular and state officials have announced, the operations and unlawful investigations and prosecutions against these individuals continue unabated.

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.[2] As of 31/12/2023, **63,643** files are pending before the 3rd Criminal Chamber of the Court of Cassation,[3] **and 95,043** files are pending before the Constitutional Court.[4] 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 Movement is **15,539**.

On the other hand, 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 stated that **between January 1, 2023, and December 31, 2023**, there were **6,775 operations** conducted against members of the Hizmet/Gulen Movement. In these operations, **9,639 people were detained,** 1,689 people were

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

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

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

arrested, and judicial control measures were applied to **1,677 people**[5]. 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/Gulen Movement, and **8892 people were detained**.[6]

Minister Ali Yerlikaya, in this context, regularly makes 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.*"[7] 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.

II. ECtHR'S YALÇINKAYA V. TÜRKIYE DECISION AS A MILESTONE

a. Yüksel Yalçınkaya v Turkiye Decision In General

Following the failed coup attempt of 15 July, 2016, multitudes of applications were lodged with the ECtHR by individuals claiming to be the victims of the violations of their rights throughout the investigations and criminal proceedings launched against them. And to this date, the ECtHR has held that a total of 1,564 individuals, including 1,142 judges and prosecutors, were unlawfully detained.[8] In addition, the number of cases currently pending before the ECtHR **is 65,050** according to the latest statistics. Of this number, **37.2%**, or **24,200,** are from Turkey alone. Whereas in the **37** most developed countries of the world, where the rule of law prevails, the number of cases before the ECHR is only **9,0502.**[9]

The first case in which the ECHR seized the opportunity to rule over the merits of the case under Article 7, 6, and 11 is its Yüksel Yalçınkaya judgment announced on September 26, 2023[10]

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

5 https://x.com/AliYerlikaya/status/1752201691200393572?s=20
6 https://x.com/AliYerlikaya/status/1801229970003329297
7 https://x.com/AliYerlikaya/status/1796044090628350145
8 https://justicesquare.org/after-15-july-violation-judgements-against-Türkiye-by-the-ecthr/
9 https://www.echr.coe.int/documents/d/echr/stats-pending-month-2024-bil
10 https://hudoc.echr.coe.int/?i=001-227636

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 found that there was a violation of Article 7 of the Convention in the case.

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

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

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

The ECtHR noted that more than 8,000 cases pending before it and over 100,000 cases are likely to be brought on the same grounds as those in the present case. The Court noted that the

problem is of systemic character to which it calls for the authorities to find out effective solution without delay.

Recalling Article 90/5 of the Turkish Constitution, the ECtHR urged the Turkish Government to find a solution to this systemic issue and to **apply** the Yalçınkaya judgement **to all cases of a similar nature.**

b. Developments in Türkiye Following the Yalçınkaya Decision

The ECtHR's Yalçınkaya ruling requires that the individuals who have been subjected to criminal proceedings, including those who were already convicted, on the basis of same or similar grounds of accusations that were considered in Yalçınkaya should be acquitted of all charges. Nevertheles, the ECtHR judgment has yet to be implemented by the Turkish government. On the contrary, Turkish authorities completely ignore the judgment and continue to prosecute and convict individuals on the same grounds as already considered in the ECtHR judgment to be lawful activities.

We would like to emphasize that **Justice Square notified, on November 14, 2023**, the Committee of Ministers of the Council of Europe, the monitoring body charged with the execution of the judgments of the ECtHR, regarding the failure of the Turkish authorities to fulfil the requirements of the Yalçınkaya Judgment.[11]

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

Specifically, following the announcement of the judgment on 26 September, President Erdogan made the following statement at the Parliament: *"… Even the UK, a founding member of the system, could not endure the European Court of Human Rights, which overstepped its authority under the influence of some countries and disregarded Turkey's sovereign rights****. It is impossible for us to either respect the decisions of institutions aligned with terrorist organisations or to heed what they say****. Moreover, this is not the only issue. Those who lecture us on democracy are playing three monkeys in the face of the Islamophobia that has enveloped them like a venom."*[12]

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

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

12 https://tccb.gov.tr/assets/dosya/2023-10-01-TBMM-Konusma.pdf

twice by the same snake. It is impossible for us to respect or heed the decisions of institutions that align themselves with terrorist organizations."[13]

Similar statements were made by the Minister of Justice, Yilmaz Tunc, after the announcement of the judgment of the Grand Chamber: "..***It is unacceptable for the ECtHR to overstep its authority and issue a judgment of violation by examining the evidence in a case where our judicial authorities at all levels, from the court of first instance to the Court of Appeal, from the Court of Cassation to the Constitutional Court, have deemed the evidence sufficient***."[14]

In a statement made on September 26, 2023, Minister of Justice Yılmaz Tunç said: *"The European Court of Human Rights (ECtHR) had emphasized that the application, interpretation, and evaluation of evidence by national courts could not be the subject of its review. However, in today's Yalçınkaya decision, the ECtHR has departed from this established jurisprudence. The ECtHR has clearly overstepped its authority by evaluating the evidence and has made the application of legal rules and the evaluation of evidence by national courts the subject of its review. Despite repeatedly stating in its own jurisprudence that it does not have the authority to evaluate evidence, the ECtHR has chosen to evaluate evidence in the context of the FETÖ trials. Despite being thoroughly informed and objected to by our Government, the ECtHR, by accepting as the applicant's representative in the Grand Chamber hearing a person against whom two separate arrest warrants have been issued by the Turkish judiciary on charges of FETÖ membership, has made it clear from the outset that it would not conduct an impartial trial and has issued a decision that is contrary to the law and the European Convention on Human Rights. Our country will continue its fight against terrorism with determination in accordance with national legislation and international obligations."*[15]

In a statement made on September 28, 2023, the Minister of Justice said: *"Each person on trial must be evaluated separately, especially in terms of the evidence collected. This is how it works in criminal law. Therefore, we do not believe that this decision will set a precedent. Our review is ongoing.* ***We particularly believe that*** **this decision pertains only to that specific case**. *Because each case has its own unique characteristics. Each person on trial must be evaluated separately, especially in terms of the evidence collected. This is how it works in criminal law. Therefore,* ***we do not believe that this decision will set a precedent***."[16]

The then-President of the Constitutional Court, Zühtü Arslan, also made a statement on October 1, 2023, saying*: "The decision of the Constitutional Court is already clear. Therefore, they [the European Court of Human Rights] made a different decision from ours."* [17]

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13 https://tr.euronews.com/2023/10/01/erdogan-yeni-anayasa-cagrisi-yapti-aihm-ve-abyi-elestirdi

14 https://www.aa.com.tr/tr/gundem/adalet-bakani-tunctan-aihmin-turkiye-aleyhindeki-yalcinkaya-kararina-tepki/3001568

15 https://x.com/yilmaztunc/status/1706691787002191985

16 https://www.adalet.gov.tr/adalet-bakani-tunc-gazetecilerin-sorulari-yanitladi

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

The statements about the ECtHR judgement made by the leaders of the government, including the president of the Constitutional Court, clearly shows the presence of a strong resistance to the implementation of the ECtHR judgement, which is binding under international law and the dictate of Article 90/5 of the Turkish Constitution. In fact, the Turkish Minister of Interior announced on his Twitter account that police operations have been carried out on various dates recently against a individuals **after the Yalçınkaya judgement** and on the grounds of alleged Bylock use and depositing money in Bank Asya. The courts have been consistently rejecting the reopening of cases requested by the convicted individuals seeking retrial in compliance with the ECtHR judgment. Judicial authorities continue the criminal proceedings against the members or supporters of the Hizmet Movement, and the judgments of the trial courts have been affirmed by the Court of Cassation as if the ECtHR judgment did not exist.[18]

c. There is No Authoritative or Directive Decision Issued by the Constitutional Court Since the Yüksel Yalçınkaya Decision

Where a case falling within the scope of an ECtHR judgment, such as the Yüksel Yalçınkaya judgment, results in a final conviction and an individual application is made to the Constitutional Court (CC), the CC must find a violation in light of the ECtHR judgment. This is not only mandated by the Convention and the case-law of the ECtHR, but also reflects the duty of the Constitutional Court to assess the wider impact of its judgments on human rights issues.

One year after the pronouncement of the Yüksel Yalçınkaya judgment, the Constitutional Court has not issued any guiding ruling in line with the Court's judgment in cases similar to Yüksel Yalçınkaya. Instead, it maintained its previous position in similar cases. That is, following the Yüksel Yalçınkaya judgment, the Constitutional Court rejected applications for 'automatic' convictions where the elements of the offense were not shown and some of the accepted criteria were not present.

In one of these cases, the grounds for the applicant's conviction for membership in the organization were alleged meetings with their spouse at their residence, collecting money on behalf of the organization, and membership in Yarsav, an association for judges and prosecutors dissolved after the July 2016 attempted coup. The applicant argued in their application to the Constitutional Court that, according to Turkish law, the crime of membership in an armed terrorist organization requires specific knowledge and intent, and that a conviction for membership in an armed organization necessitates proving that the perpetrator acted knowingly and willingly within the organization's hierarchical structure and

18 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

adopted its objectives. The applicant contended that the lack of justification for how the elements of the crime were realized violated their right to a reasoned decision and that the principle of no punishment without law was breached due to the broad interpretation of Article 314/2 of the Turkish Penal Code. However, ten months after the Yüksel Yalçınkaya decision, the Constitutional Court dismissed the application on **12 August 2024**, stating that there was 'no violation of this principle and right.' There was no difference between the case subject to this conviction and the Yüksel Yalçınkaya case, and the reasons for the conviction in the application were even less substantial and much weaker. By rejecting the application on the grounds of the principle of no punishment without law and the right to a fair trial, especially after the Yüksel Yalçınkaya decision, the Constitutional Court has ignored the ruling of the European Court of Human Rights.[19]

In a similar application subject to the Constitutional Court's decision, the applicant was sentenced to 6 years, 10 months, and 15 days in prison on the grounds that their name was found in a profiling list that had been unlawfully prepared and obtained, that they participated in religious conversation gathering *(sohbet)* before 2013, and that there were some HTS (Historical Traffic Search) records of unknown content related to certain individuals. In their application to the Constitutional Court, the applicant claimed that the use of expired HTS records and unlawfully obtained, false profiling records as evidence, without discussing how these constituted a crime, the use of intelligence information and religious discussions as evidence in contradiction to previous Court of Cassation decisions, and the fact that their objections were not considered at any stage, along with the claim that the moral element of the crime of membership in a terrorist organization was not established and that the decisions did not contain sufficient reasoning, amounted to a violation of their right to a fair trial.

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

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

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

In other words, the Constitutional Court's stance, which had previously deemed the Yalçınkaya application inadmissible, continued as if the European Court of Human Rights had not found a violation under Article 7 in the Yalçınkaya case for the same reasons, and the Constitutional Court found all allegations of the violation, including the right to a fair trial and the principle of "no punishment without law," inadmissible.[20] In other words, the Constitutional Court's stance, which had previously deemed the Yalçınkaya application inadmissible, continued as if the ECtHR had not found a violation under Article 7 for the same reasons in the Yalçınkaya case, and the Constitutional Court found all the allegations, including the violation of the right to a fair trial and the principle of 'no punishment without law,' inadmissible. [21]

As is known, in the Yalçınkaya decision, the ECtHR recognized the failure to investigate whether the elements of the crime were fulfilled and the automatic punishments imposed based on substituted criteria instead of actual crime elements as violations of Article 7. In one of these decisions, the applicant, who was punished on the grounds of being a member of the Aktif Eğitim-Sen (Active Education Union), organizing peaceful religious conversation meetings, and having witness statements against them, stated in their application to the Constitutional Court that there was no "personalization" and "justification" in the decisions made throughout the trial and in the appellate court's decision, thereby violating the right to a fair trial. They also argued that, as required by Article 7 of the Convention and as established in Supreme Court precedents, punishment was imposed without establishing the elements of the crime, especially the moral element, thus violating the principle of 'no crime without law.'

Ten months after the Yalçınkaya ruling, the Constitutional Court ruled on this application and, as if such a ruling had never been issued by the ECtHR, once again found the allegations of violations of the right to a fair trial and the principle of 'no crime without law' inadmissible on the grounds that they were 'manifestly ill-founded."[22]

In another case subject to a Constitutional Court decision, the reason for the applicant's punishment was their involvement in banking activities with Bank Asya. In other words, the accusation was based on depositing money into a bank that was under the supervision and control of the state, which the Government, in its defense in the Yalçınkaya application, stated was not the primary incriminating evidence but could only serve as supporting evidence alongside ByLock (Yalçınkaya/Turkey § 236). [23] The applicant argued in their application form

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

21 The Constitutional Court's decision dated March 27, 2024, with application number 2023/4910.

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

23 *"236. The Government has stated that the above arguments also apply to the applicant's deposit transactions at Bank Asya, which was considered by the authorities as part of the financial structure of the terrorist organization, and to the applicant's membership in organizations affiliated with FETÖ/PDY. These were used as supporting evidence for the applicant's membership. However, the Government acknowledged that even 'suspicious' deposit transactions made at Bank Asya following F. Gülen's call, intended to benefit the organization, or membership in a union or association*

that banking activities were legal and routine banking transactions and that the elements of the alleged crime had not been fulfilled, claiming a violation of the principle of 'no punishment without law' and the right to a fair trial. However, in its decision issued nine months after the Yalçınkaya ruling, the Constitutional Court once again ignored the principles and issues highlighted in the Yalçınkaya ruling and found the application inadmissible. [24]

In the previous decision mentioned, the Constitutional Court found the application regarding the conviction based on banking activities with Bank Asya inadmissible. Curiously, just 14 days before this decision, the Court had consolidated over 100 applications related to convictions for the same reason and, this time, ruled that the right to a fair trial had been violated.[25] However, the sole violation claim of these applicants is not limited to the right to a fair trial. In both the application form and the supplementary explanations, the applicants argued that, in addition to the violation of the right to a fair trial, the principle of "no crime without law" was also violated. They stated, *"the court decisions did not demonstrate how the elements of the crime of membership in an armed terrorist organization were established. It was not explained when the applicant joined the organization, what their position was within the organization's hierarchy, from whom they received orders/instructions, and to whom they gave orders/instructions (material element). The aspects of knowingly and willingly joining this structure with an understanding of FETÖ/PDY's specific goals, or being aware of the coup attempt (moral element), were not assessed at all. The assumption was made that the applicant should have known that FETÖ/PDY was an armed organization and that they should have known this due to their position."* In doing so, they claimed a violation of the principle of "no crime without law." However, just as in the aforementioned decisions, the Constitutional Court ignored this claim and only ruled on the right to a fair trial. By citing the violation of the right to a fair trial, the Court did not find it necessary to separately examine the applicants' other complaints in terms of admissibility and merits (§ 26). In other words, the Constitutional Court completely disregarded the claims of a violation of the principle of "no crime without law" and, by categorizing this significant violation claim among "other violation claims," did not even see the need for further examination. According to the Constitutional Court, the ruling on the violation of the right to a fair trial was sufficient, and there was no need to examine other violation claims.

Another issue with the Constitutional Court's rulings, which overlook the principle of "no crime without law," is that these decisions do not contribute to resolving the "systemic problem" that the ECtHR emphasized repeatedly in the Yalçınkaya ruling. On the contrary, they contribute to the continuation and even exacerbation of this problem. The first case where the Constitutional Court consolidated applications related to individuals punished for

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linked to FETÖ/PDY would not be sufficient on their own to prove membership in FETÖ/PDY. They would only serve as supporting elements when considered alongside other significant evidence, as in the concrete case."

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

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

engaging in banking activities with Bank Asya was not the Mehmet Burak Akbudak application. In fact, a year before this decision and prior to the Yalçınkaya ruling, the Constitutional Court had issued the Hakan Darıcı and others decision for the same reasons and justifications.[26] Following this decision, the applicants requested a retrial. However, in the retrials conducted after the Yalçınkaya judgment, the first instance courts imposed the same sentences on the defendants.[27] These convictions have demonstrated that the Constitutional Court's decisions, particularly those that ignore the principle of "no crime without law," do not contribute to solving the "systemic" problem emphasized by the Grand Chamber in the Yalçınkaya judgment. The most significant issue in these trials is the automatic imposition of sentences without investigating the elements of the crime. In these cases, instead of determining whether the defendants were members of the organization, the focus is on their connections with a certain structure or formation, i.e. Gulen movement, and if any such connection is found, the individuals are convicted as members of the organization. In other words, these cases completely disregard the points that the Court required to be addressed and on which it based its violation ruling under Article 7.

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

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

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

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

100,000 more cases that could be submitted is due to the Constitutional Court's failure to render decisions in line with the ECtHR's rulings.

d. Retrial and Reissued Conviction Decision Regarding Yüksel Yalçınkaya

Article 311/2 of the Turkish Criminal Procedure Code obliges domestic courts to reopen criminal cases when the European Court of Human Rights finds that the conviction was given in violation of the European Convention on Human Rights or its protocols. As underlined also in the Yüksel Yalçınkaya judgment Article 46 of the Convention has the force of a constitutional rule in Türkiye in accordance with Article 90 § 5 of the Turkish Constitution.

Due to these statutory requirements, the retrial of Mr. Yüksel Yalçınkaya commenced on 28 November 2023 at the same Kayseri 2nd Assize Court, which had previously convicted the applicant. The court started the retrial by asking relevant authorities for information such as the applicant's Bylock Evaluation and Determination Report, and the Bank Asya transaction statements of the applicant, already assessed in the Grand Chamber judgment. The trial court also requested whether it was possible to obtain the raw data related to the content of ByLock, and, if possible, decided to ask for it to be sent to the court.

Before the second hearing, held on 2 April 2024, the Department of Anti-Smuggling and Organized Crime (KOM) responded to the court's requests for accessing the raw data by stating that:: "Since the raw data is not readable, it cannot be processed or separated based on User ID. Providing the entirety of the raw data to any suspect or defendant is also not possible, as it would contain information related to all suspects associated with ByLock." In fact, the reply given by KOM was already known to the Grand Chamber, as noted in paragraph 121 of the judgment, where the Court summarized the Analysis Report on Intra-Organisational Communication Application, prepared by KOM and submitted by the Government during the Grand Chamber proceedings. But this did not affect the Court's finding of violation of Article 6 of the Convention.

The Court's finding of a violation of Article 6 was based, among many other factors (See §§ 331-335), on the applicant's inability to directly challenge the ByLock data held by the prosecution, as well as the national courts' failure to adequately address the applicant's objections to the accuracy of this data with relevant and sufficient reasoning, despite its critical importance (§ 337).

At the last hearing held on 12 September 2024, the trial court heard two witnesses who were allegedly on the applicant's ByLock contact list. Both witnesses denied having been in contact with him through ByLock and provided no information regarding any organizational activity involving the applicant. With regard to the ByLock data, the applicant's representative requested that the court ensure access to the raw data for independent examination and presented arguments questioning the accuracy and reliability of this data. However, the court rejected this request.

Will observe from the prosecutor's opinion requesting the conviction of the defendant, the prosecutor primarily based his argument on the defendant's use of the ByLock application, his membership in two associations that were closed after the coup attempt due to their affiliation with the Gülen movement, and his financial transactions with Bank Asya, without explaining how these actions, which were mere manifestations of the exercise of fundamental rights, could constitute the material and mental elements of the offense of membership in a terrorist organization. These were the grounds for the applicant's previous conviction, which resulted in the violation of Articles 6, 7, and 11 of the Convention.

At the end of the hearing, the court concluded that there were no legal violations in the procedures carried out during the previous stage regarding the applicant and that the prior judgment was in accordance with the law and procedure. Accordingly, the Court decided to APPROVE the previous decision dated 21/03/2017 and file numbered 2017/136-121, which had caused the ECHR's decision of violation, and to impose a ban on Yalçınkaya from travelling abroad, despite the fact that he had completed his sentence in the previous trial.

This decision is open to appeal before the regional appellate court and the Court of Cassation. However, it has significant repercussions, sending a message to other first-instance courts that are obliged to implement the principles of the Yüksel Yalçınkaya judgment in similar cases. The decision of the court in the applicant's case is another proof of the judiciary's persistent inaction in implementing and complying with the Yüksel Yalçınkaya judgment. Unlike the Kavala and Demirtaş judgments, which Türkiye has consistently refused to implement, the disregard of the Yüksel Yalçınkaya judgment by both the Turkish judiciary and the executive affects tens of thousands of people, with violations continuing daily.

III. REPORTS ON HUMAN RIGHTS VIOLATIONS IN TÜRKİYE AND ARBITRARY PRACTICES AGAINST THE HİZMET MOVEMENT

a. "Türkiye, Individuals Associated with the Gülen Movement: The Finnish Immigration Service's fact-finding mission to Ankara and Istanbul 2 – 6 October 2023[28]

As mentioned above, members of the Hizmet Movement or thousands of people who were accepted as such sought asylum in other European Countries. Many countries also examine carefully the developments in Türkiye and take the picture of the recent the situation of individuals associated with the Gülen movement. In a latest report released by Finnish Immigration Service in June 2024, the facts given in our notifications has been repeated by the officials Finnish Immigration Service's Country Information Service.

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28 https://migri.fi/documents/5202425/5914056/FIS_Türkiye_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+(2).pdf/a14fa35f-a65a-9339-e331-fec99e9cd8c3/FIS_Türkiye_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+(2).pdf?t=1723630918594

In the very beginning of the reports, it is stated that the report by the **Finnish Immigration Service's Country Information Service** has been compiled in accordance with the common EU guidelines for processing country of origin information as well as guidelines for fact-finding missions. The report makes use of the interviews conducted during the fact-finding mission. The report is based on independent research and analysis by the **Country Information Service**.

The highlights of the report are as follows:

- The report states that there is no foreseeable criterion for whom such investigations may be carried out and that the identity of those targeted and the group to which they belong may vary according to the political atmosphere in the country. (Page 8, 1/1.2)
- On the other hand, the report notes that individuals who have already been prosecuted, completed their sentences, or been acquitted are also being monitored by the government and may be subject to further investigation and detention in the future. (page 11-13, 1.2.2)
- The report found that the majority of investigations and detentions of members of the Gülen movement in Türkiye were carried out on the grounds of 'restructuring'. (page 14, 1.2.3)
- The report also states that the children of members of the Gülen movement, who were not at the age of criminal liability in 2016 when the 15 July coup attempt took place, are now being targeted for investigation and detention. (page 17, 1.2.4)
- The report further states that human rights defenders who oppose the human rights abuses suffered by detainees in so-called 'FETÖ' investigations are being labeled as terrorists or supporters of terrorism by the Turkish government and subjected to similar investigations. (page 18, 1.2.6)
- The report also states that the ByLock application, which is considered to be the strongest evidence in so-called 'FETÖ' investigations and which the ECtHR Yalçınkaya judgment clearly states that it cannot be used as evidence, is still being used by local courts as the basis for convictions. (page 24, 2.2)
- It is also highlighted in the report that people who were detained, imprisoned, or dismissed from their jobs within the scope of so-called 'FETÖ' investigations were left to civilian death and could not fully reintegrate into society. (page 31, 3.1)
- One of the most striking points in the report is the harsh treatment women face in detention centers or prisons. It is emphasized in the report that women are subjected to degrading treatment when arrested such as being strip searched. It is also emphasized that heavily pregnant women are constantly arrested and sent to prison

despite a clear prohibition by the law. They are forced to give birth in hospitals while being guarded by prison officers and returned immediately back to prison once they have given birth. There have been instances where mothers have been forcibly separated from adopted children for their links to the Gülen movement. According to the Turkish legal expert, women have been ill-treated in custody. The Victims of the Emergency Decree Platform has information on **12 women who became pregnant while in custody and some of them had to give birth**. The women were also forced to other actions, such as performing oral sex with police officers. (page 44-45, 4.4)

The Finnish Immigration Service's report reveals the fact that an enemy criminal law against the Gülen movement in Türkiye is being continued to be applied, which has clearly amounted to crimes against humanity.

b. Freedom House 2024 Report[29]

Freedom House's report "Free Them All 2024, Visible and Invisible Bars", published in 2024, states that the independence of the judiciary in Türkiye 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 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 being publicly labelled as "FETÖ" supporters, and they may be re-arrested due to ongoing investigations against them.

c. **Memorandum by Dunja Mijatovic, Council of Europe Commissioner for Human Rights, on Human Rights Violations in Türkiye, 5 March 2024[30]**

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.

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

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

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.".

IV. INVESTIGATIONS AND DETENTIONS OF MEMBERS OF THE GÜLEN MOVEMENT CARRIED OUT ON THE GROUNDS OF 'RESTRUCTURING' IN TÜRKİYE

According to the information given by the Minister of Interior, Ali Yerlikaya, on June 13, 2024, **5543 operation** was carried out against the members of Hizmet/Gulen Movement, and **8892 people were detained** between **June 4, 2023, and June 3, 2024**.[31]

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".[32]

a. Operations Under The Name Of "Restructuring"

In Türkiye, the ECtHR's Yalçınkaya judgment has not been respected, and despite this judgment, and even as if this judgment had never been issued, investigations are being reopened against individuals who were previously investigated and prosecuted for the same reasons, this time under the name of "restructuring". These investigations are justified by activities such as helping the relatives of detainees and convicts, finding jobs for those who have been dismissed from their jobs by emergency decrees, opening student houses, organizing motivational meetings to prevent breakaways from the "organization". However, even though these operations are carried out within the scope of an armed organization, no action plan, study or strategy document or evidence or any weapons, which are essential

31 https://x.com/AliYerlikaya/status/1801229970003329297
32 https://x.com/AliYerlikaya/status/1790280001750712556

elements for an armed organization, have been seized so far. Although it is stated that these operations were carried out in order to decipher the structure of a new armed organization, it is not possible to speak of such an organization and structure. Because all of the activities shown as evidence of restructuring are lawful acts, and even if they are carried out with the instructions of an organization, they cannot be considered within the scope of any crime.

Moreover, if the action is a crime, the organizational instruction has a value, but if the action does not correspond to any crime, it does not constitute a basis for any punishment. According to the practice of the Court of Cassation, signing a petition organized upon the call of an armed organization,[33] closing shutters upon the call of an organization,[34] visiting members of an organization in prison and meeting their needs are not organizational activities,[35] nor are aids given to people who have been dismissed with a Decree Law or who have just been released from prison for purely humanitarian purposes, for charity or as a requirement of kinship/neighborly relations.[36]

Moreover, there are many non-governmental organizations whose founding purpose is to provide material/spiritual aid to convicts and detainees in prison. The Association for Solidarity with the Families of Prisoners and Detainees (TAYAD) and the Civil Society in the Penal System (CISST) are just two of these organizations. Again, the number of associations established to help those in need is higher than estimated. In Ankara alone, the number of associations established to "help those in need" is 319.[37]

Again, as the ECtHR has held, starting with the Ragıp Zarakolu judgment and most recently in the Yalçınkaya judgment, arrests and convictions for legal and routine activities and the exercise of rights enshrined in the Constitution and ECHR are unlawful.

Likewise, the contrary situation and the criminalization of non-criminal acts would render the 2003 amendment to the Anti-Terror Law (ATL) meaningless. This is because the "act" (action/movement) part of the definition of terrorism in the Anti-Terror Law was also amended by Law No. 4928 in 2003. The phrase "all kinds of acts 'in the original text of the Anti-Terror Law was changed to 'all kinds of criminal acts". Since the concept of a terrorist organization depends on the definition of terrorism, this change is also reflected on terrorist organizations as a mandatory element. In order for an organization to be considered a terrorist organization, it must commitan "act constituting a crime" regulated in the Turkish Penal Code or other special laws that contain criminal provisions. If an organization, even if its aim is terrorism, has committed acts that require misdemeanor or administrative punishment, that organization

33 Decision of the 9th Criminal Chamber of the Court of Cassation No. 13/5/2009 T., 2009/2603 E., 2009/5679 K.

34 Decision of the Criminal General Assembly of the Court of Cassation No. 02/5/1994 T., 1994/2-105 E., 1994/131 K.

35 30/4/2002 T., 2002/9-102 E., 2002/236 K. numbered decision of the Criminal General Assembly of the Court of Cassation

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

37 https://www.siviltoplum.gov.tr/illere-ve-faaliyet-alanlarina-gore-dernekler

cannot be considered a terrorist organization, as these acts are not crimes and cannot be considered terrorist acts. Therefore, in order for an organization to be considered a terrorist organization, it must commit an "act of terrorism ', and for this act to be considered an act of terrorism, it must be regulated as a 'crime" in the legislation, and this crime can be any crime regulated in the legislation. This is because there is no limitation in the Anti-Terror Law with the phrase "all kinds of criminal acts".

This element, which is not mandatory for criminal organizations, in a way, determines the boundary between terrorist organizations and criminal organizations. The "intent to commit a crime" is a common element forcriminal organizations, terrorist organizations and armed organizations. According to Article 220 of the TPC, an organization does not have to commit a crime in order to be considered a "criminal organization" and it is sufficient to have the purpose of committing a crime. However, after the 2003 amendment to the Anti-Terror Law, in order for an organization to be considered a "terrorist organization ', it must commit a 'crime " in addition to its criminal purpose. Since armed organizations are also terrorist organizations, the commission of a purposeful "crime" is a mandatory element of an armed organization. Organizations that have not committed a crime cannot be considered terrorist organizations or armed organizations. The Court of Cassation also requires an armed organization to commit a slightly more serious crime than terrorist organizations in proportion to its gravity.

After the 2003 amendment, terrorist organizations are organizations that commit criminal acts by using force and violence; by applying one of the methods of pressure, intimidation, fear, intimidation, intimidation or threat, in other words, organizations that commit crimes. According to Articles 1 and 7/1 of the Anti-Terror Law, in order for an organization to be considered a "terrorist organization ', it must 'commit a crime" and "use force and violence". The commission of a crime and the use of force and violence are mandatory elements that must "coexist" in terrorist organizations and the existence of only one of them is not sufficient.

In the light of these explanations; in none of the matters accepted as restructuring activities, let alone being members of an armed/unarmed organization, there are no acts that constitute a "crime" reflected to the outside world. Furthermore, if coordinated operations are carried out all over the country with the allegation that there is such an organization and these individuals are charged with membership of an organization, even if they do not have any evidence, the Court of Cassation should decide on the nature of the new formation in a main/overarching case. However, it would be a fantasy to expect such a decision from the Court of Cassation, which, without even waiting for the outcome of the main cases (General Staff roof and Akıncı base) related to the grave acts committed on July 15th, has unprecedentedly accepted the Gülen Movement as an armed organization by incorporating the events of July 15th into a case that started a year before July 15th and was opened within the scope of misconduct in office.

In short, the so-called restructuring investigations, far from being legal, are a continuation of the "witch hunt 'and 'demonization" of a certain group of people that began with the July 15 process. The judiciary, which even explained the weapons element in the events of July 15 with the weapons of the police and soldiers because it knew that the structure, which it considers to be an armed organization, did not have any weapons, is now, 8 years after these events and despite all the operations and efforts, reopening organization investigations against people who were not involved in acts of force and violence and who did not have weapons because of their lawful behavior, and these people are being turned into "civilian dead " with almost a systematic effort.

According to the Constitution and the law, a crime has two elements, material and moral, and the existence of these elements must be established beyond doubt. After July 15th, after the Court of Cassation's acceptance of the material element of an armed organization without the fulfillment of its conditions, and without investigating the moral element of the crime, which is the knowledge and desire of the ultimate goal of the organization, people are punished with pyramids and similar meaningless categories. It is precisely for these reasons that the Grand Chamber of the ECtHR delivered the most severe and comprehensive judgment in its 63-year history against Turkey in the Yalçınkaya application. However, as of the current situation, the Yalçınkaya judgment has not been implemented in any way, and people are being subjected to investigations and prosecutions for the second or third time, this time under the name of "restructuring", with the same issues that were used as justification for this judgment and again without showing the elements of the crime.

b. Mass Detentions in the "Kıskaç" Operations

In the investigations against the members of the Gülen Movement, which were carried out simultaneously in many cities under the name of "Kıskaç"[38], many people were arrested in police raids. The figures are as follows:

- Kıskaç 1 – 611 people, October 24, 2023[39]
- Kıskaç 2 – No Information obtained[40]
- Kıskaç 3 – 38 people, January 10, 2024[41]
- Kıskaç 4 – 32 people, January 17, 2024[42]
- Kıskaç 5 – 27 people, January 23, 2024[43]
- Kıskaç 6 – 42 people, February 15, 2024[44]

38 "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.
39 https://x.com/AliYerlikaya/status/1716736507128500236
40 https://x.com/cemkucuk55/status/1744950846016589824
41 https://x.com/ajans_muhbir/status/1747511266413871108
42 https://x.com/AliYerlikaya/status/1749793685527498788
43 https://x.com/ahaber/status/1758019560064663940
44 https://x.com/AliYerlikaya/status/1760168600764285016

- Kıskaç 7 – 67 people, Februray 21, 2024[45]
- Kıskaç 8 – 61 people, February 23, 2024[46]
- Kıskaç 9 – 47 people, February 29, 2024[47]
- Kıskaç 10 – 91 people, March 9, 2024[48]
- Kıskaç 11 – 70 people, March 29, 2024[49]
- Kıskaç 12 – 60 people, April 18, 2024[50]
- Kıskaç 13 – 13 people, April 24, 2024[51]
- Kıskaç 14 – 36 people, May 2, 2024[52]
- Kıskaç 15 – 544 people, May 14, 2024[53]
- Kıskaç 16 – 46 people, May 21, 2024[54]
- Kıskaç 17 – 45 people, May 24, 2024[55]
- Kıskaç 18 – 90 people, May 30, 2024[56]
- Kıskaç 19 – 72 people, June 6, 2024[57]
- Kıskaç 20 – 108 people, July 4, 2024[58]
- Kıskaç 21 – 10 people, July 14, 2024[59]
- Kıskaç 22 – 74 people, July 15, 2024[60]
- Kıskaç 23 – 73 people, July 22, 2024[61]
- Kıskaç 24 – 55 people, August 1, 2024[62]
- Kıskaç 25 - 20 people, August 28, 2024[63]
- Kıskaç 26 – 34 people, September 5, 2024[64]
- Kıskaç 27 – 39 people, September 14, 2024[65]
- Kıskaç 28 – 17 people, September 17, 2024[66]

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45 https://x.com/AliYerlikaya/status/1760960324751003968
46 https://x.com/AliYerlikaya/status/1760960324751003968
47 https://x.com/AliYerlikaya/status/1763122934724296810
48 https://x.com/AliYerlikaya/status/1766366192044822741
49 https://x.com/AliYerlikaya/status/1773583116352766162
50 https://x.com/AliYerlikaya/status/1780858768399401340
51 https://x.com/AliYerlikaya/status/1783029575976394804
52 https://x.com/AliYerlikaya/status/1786065898538684807
53 https://x.com/AliYerlikaya/status/1790280001750712556
54 https://x.com/AliYerlikaya/status/1792834190817231138
55 https://x.com/sabah/status/1793880859365474598
56 https://x.com/AliYerlikaya/status/1796044090628350145
57 https://x.com/AliYerlikaya/status/1798580531367457018
58 https://x.com/AliYerlikaya/status/1808870614725234789
59 https://x.com/AliYerlikaya/status/1812449782964584925
60 https://x.com/takvim/status/1812810592236732698
61 https://x.com/AliYerlikaya/status/1815393265887174858
62 https://x.com/AliYerlikaya/status/1818872268908355834
63 https://x.com/AliYerlikaya/status/1828654865213759900
64 https://x.com/AkdenizGercek/status/1831605090366713985
65 https://x.com/724gundemcom/status/1834839125666459819
66 https://x.com/anadoluajansi/status/1836027323784548861

The total number of detained people, according to the official statements of Minister of Interirior is **2422**. However, as mentioned in the report released by the Ministery of Foreign Affairs, there is no verifiable data available concerning the current situation of investigations against Gülenists.[67] For this reason, nongovernmental organisations, like Solidarity with Others, a non-governmental organization established in Brussels with the aim of defending and promoting human rights in Turkey, released weekly reports on human right violations in Türkiye. According to the latest report issued by **Solidarity with Others**, **the number of detentions in Kıskaç Operations against Gülen Movement in 2024, as of September, is 3110**.[68] Nevertheles, the exact numbers of detained people can still not be revealed in the climate of fear and censorship created by the Erdoğan regime in Turkey. This figure alone, however, compared to the number of detentions against the Gülen Movement in 2023 (3055 detention), shows that there is no decrease in intensity of the investigations in contrast to the Ministry of Foreign Affirs report.

The accusations against the people detained in these investigations, on the other hand, are routine legal activities, free from the force and violence required for membership in a terrorist organization. It was determined in the **Yalçınkaya vs Türkiye** decision of the ECHR Grand Chamber that these activities are not crimes.

Considering that this is the **28th of the Kıskaç operations**, it is seen that the massive and unlawful detentions against the Hizmet/Gülen movement have become commonplace and have lost their noticeabilities among not only local but also international public opinion. Regarding the **Turkish Penal Code 77/1-d**[69] and the opinion rendered 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 Türkiye have now turned into an ethnic cleansing.

The 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

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67 https://www.government.nl/documents/reports/2023/08/31/general-country-of-origin-information-report-on-turkiye-august-2023

68 https://www.solidaritywithothers.com/post/turkey-rights-monitor-issue-222

69 Turkis 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

manifestations of violence against people, including women and young girls, perpetrated by state organs, but have also reached the level of crimes against humanity.

c. Mass Detentions Against Women, Children and Students

With regard to the operations against the member of the Hizmet movement listed above, it can be seen that the freedom and security of people, school children and even primary school students, whose relatives have been dismissed from their jobs or detained and arrested because of their legal and routine activities in accordance with the ECHR decisions are also at risk.

For people who have been isolated from society and subjected to civilian death, it is considered as a criminal offence for their children to take lessons from someone else to prepare for exams, or even to be in the same environment. **Children as young as primary school age were subjected to months of physical surveillance** in the courses they attended, as if they were terrorists, and everything they did was recorded. In this situation, hundreds of thousands of individuals and family members live with the psychological anxiety of being visited by the police every morning. Because, especially regarding the investigations against the members of the Hizmet Movement examined above, it is not necessary to have committed an act of violence and violence, which are essential elements of terrorism, to be arrested and punished for membership of a terrorist organisation. Being a relative of a Gulen-linked person who has been imprisoned or illegally dismissed from his job, or even receiving help from him, is enough to be accused of a criminal offence.

d. "Teenage Girls" Case (Kız Çocuklar Davası)

On May 6, 2024, as a punchy example, **38 persons were arrested** as part of an investigation conducted by the Istanbul Chief Public Prosecutor's Office, and 29 of these were detained. The accusations were providing educational coaching to children whose parents are imprisoned, thereby supporting the families.[71] 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 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***".[72]

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

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

In the operation[73] , 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."*
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".*

73 https://x.com/gergerlioglueng/status/1788305041297641486

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.[74] 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**:**[75]

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.*

The trial started on September 23, 2024, at the Istanbul 24th High Criminal Court. Testimonies of the defendants were taken on 23, 24 and 25 September. On Thursday 26 September, 15 girls aged between 13 and 17 who were forcibly taken to the police station are expected to be brought in by the police to testify. Some of the teenage girls were questined in the hearing why did they stay and study together.[76]

On the first day of the hearing, the presiding judge questioned the children about their studies, the Iftar programme, bowling and a meeting at a shopping centre, based on information from social media. Ömer Faruk Gergerlioğlu, an MP who attended the hearing on the first day, criticised the questions asked and the attitude of the court. On the second day of the hearing, MP Ömer Faruk Gergerlioğlu, who was sitting in the courtroom as a spectator when the hearing started, was forcibly removed from the courtroom by the police. It was announced that the presiding judge made this decision after being criticised on social media.

The case of the Girls, which has been ignored by the Turkish public, is closely followed by some international human rights organizations and representatives of foreign countries. One

74 https://x.com/Hurriyet/status/1796217509118615887
75 https://kronos36.news/tr/29-tutuklama-parkinson-hastasi-anne-kiziyla-birlikte-hapse-gonderildi/
76 https://stockholmcf.org/turkish-judge-asks-minors-why-they-studied-together-in-surreal-terror-trial/

of these representatives, Prof. Dr. Antonio Stango, President of the Italian Federation for Human Rights, told journalists following the case that he had not seen any evidence or questions about the alleged crime.[77]

Nevertheless, on September 27, 2024, the court ruled for the continuation of detention of 8 defendants, including Aysu BAYRAM, a housewife who received a liver transplant.[78]

e. Detention of University Students

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 Gülen/Service 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 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**.[79]

On **May 30, 2024,** Esengül ARSLAN was detained with **90 people** in police raids (Kıskaç 18).[80] E**sengül ARSLAN (23),** is **a 3rd year student at Istanbul University, Cerrahpaşa Florence Nightingale Faculty of Nursing**, and had to move to Istanbul after the catastrophic earthquake occurred on the 6th of February 2023 in Hatay. ARSLAN was detained in Istanbul within the scope of the Gülen Movement investigations because **the pocket money sent by her brother abroad was considered as "terror financing"**.[81]

These allegations have no legal basis and that the points stated in the ECtHR's Yalçınkaya judgement have been ignored. The statement that 'no organisational documents and criminal

77 https://kronos37.news/kiz-cocuklari-davasini-izleyen-italyan-insan-haklari-federasyonu-baskani-stango-davayi-italyan-parlamentosunda-gundeme-getirecegim/

78 https://x.com/drgokhangunes/status/1839667176782921980; https://x.com/iahrageneva/status/1839675405126574096

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

80 https://x.com/AliYerlikaya/status/1796044090628350145

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

asset were found' in the operation is almost an admission of how unlawful the allegations against university students are.[82]

V. THE CONTRIBUTION OF THE PRESIDENCY OF RELIGIOUS AFFAIRS TO HATE SPEECH

The Presidency of Religious Affairs (DIB), one of the institutions that spread hate speech in Türkiye, has continuously and systematically targeted the Gülen Movement with hate speech in its Friday sermons, fatwas, symposiums, publications and all other activities. The central and provincial organizations of the Presidency of Religious Affairs have been conducting a systematic smear campaign against the Gülen Movement, especially through hate sermons read every year on the anniversaries of July 15. The DIB has portrayed the Gülen Movement and its members as a non-religious or apostate group. They have not hesitated to label them as *"non-religious, hypocritical, seditious, den of mischief, traitor, exploiter, treacherous network, coup plotter etc. terrorist organization"* in the mosque sermons of millions of people.[83]

On the other hand, the Presidency of Religious Affairs has caused the most fundamental rights of people to be usurped with the fatwas it has issued during this process. In this context, with its fatwas stating that *"... It is permissible for individuals or the state to usurp the property of others in case of need..."*, it has caused the assets of the Gülen Movement and its members to be plundered, unlawfully seized and eventually distributed to other religious communities and sects that have become an element of the Erdoğan Regime. In particular, the assets of giant companies such as Boydak, Dumankaya, Akfel, Kaynak, Koza İpek or Naksan, which own some of Türkiye's largest companies, have been seized by the TMFS in the amount of billions of liras and later transferred to regime supporters through the sales method.

On the other hand, DIB's foreign organizations have become centers that keep tabs on members of the Gülen Movement in the countries they are located. At this point, the Dutch House of Representatives Investigation Commission, similar in Norway and Germany, questioned the Dutch Religious Foundation, which kept tabs on the Gülen Movement after the July 15 coup attempt and sent them to Türkiye.

Within the scope of hate speech studies carried out by the Presidency of Religious Affairs, signs and banners prohibiting members of the Gülen Movement from entering mosques in Türkiye and abroad, despite them being official institutions of the state, have been placed on and in front of mosque doors. These examples clearly demonstrate the contribution of the DIB to the spread of hate speech.

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82 https://www.habervitrini.com/feto-guncel-ogrenci-yapilanmasi-operasyonu/1120441

83 https://diyanet.gov.tr/es-es/Institucional/Detalle/29669/cuma-hutbesi-15-temmuz-ve-birlik-ruhu

VI. TRANSNATIONAL REPRESSION

a. 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 Gülen Movement. According to the latest report released by **Human Rights Watch on February 22, 2024**, there are 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.

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.[84]

b. The List of Wanted for Terrorism

The Ministry of Interior updates the list of those wanted on terrorism charges regularly and publishes it on the Ministry's website http://www.terorarananlar.pol.tr/tarananlar. The list includes Can Dündar and many other journalists, human rights activists and lawyers. The list contains a total of **971 people** accused of being members of 19 different terrorist organisations. However, when the numbers are analysed, it can be seen that the majority of the list consists of names allegedly linked to the Gülen movement.[85]

Basri DOĞAN, a Dutch Journalist of Turkish origin at the Municipality of Amsterdam and an honouree of Royal Order for his work for the benefit of the community[86], was put on the List of Wanted for Terrorism after he received his Royal Order.[87] Basri DOĞAN has lived in the Netherlands for more than 30 years and has made a great contribution to the Dutch community, but he is considered by his critics to be a member of a so-called armed terrorist organisation.

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

85 http://www.terorarananlar.pol.tr/tarananlar

86 https://x.com/BasriDogan68/status/1253671804562014208; https://www-tr724-com.cdn.ampproject.org/c/www.tr724.com/hollanda-kraliyet-nisani-bu-yil-gazeteci-basri-doganaverildi/amp?fbclid=IwY2xjawFnGtZleHRuA2FlbQIxMAABHY2wOBqs31VaXULrKsPcJ8l3mKUKx9ndAOvHovn1l0vRkXoBQHhPU1FfGQ_aem_hZ_Y9LQYTr-62WCP3O6NHQ

87 https://www.terorarananlar.pol.tr/tarananlar#gri

In addition, a reward is offered for those whose names appear on the above-mentioned list of those wanted for terrorism, and people of Turkish origin living abroad are encouraged to inform on members of the Hizmet movement.

According to confidential documents obtained by Nordic Monitor, a 35-year-old man named M.A, a Turkish citizen who resides in Rotterdam, phoned the consulate in the same city to inform officials of the location of a 78-year-old man who is wanted by Turkey on fabricated charges of terrorism. The victim, identified as N.B., is affiliated with the Gülen movement, has also been in the crosshairs of the Erdoğan government, which offered a reward for information that leads to his capture.[88]

The persons named in these lists and other unidentified persons for whom such reports or denouncements have been prepared have applied for asylum on the grounds that they are members of the Gülen Movement. These two examples are strong evidence that people who apply for asylum based on their alleged membership of the Gülen movement, may face forced abductions or imprisonment if they return to Turkey.

c. Judicial and Intelligence Actions Against Individuals Abroad taken by the Turkish Government under the name of 'Terrorist Organisation's Restructuring Abroad'

Both judicial and intelligence work is ongoing by the Turkish Government under the name of 'Terrorist Organisation's Restructuring Abroad' against individuals who have somehow left Turkey and settled in other countries. For example, the report, issued for **68 persons**, were sent to the judicial authorities to be used against them upon their return to Turkey.[89] It was reported in the letter that "***the* table** (consists of names, place of birth, former profeciency, and the accusations) ***prepared according to the information content obtained as a result of the studies conducted to identify and decipher the countries where FETO-affiliated 68 individuals are/may be located****, as well as the letter with the relevant number received from the Affiliated (V) institution within the scope of Law of Police Powers Article 7 (being of an intelligence nature, therefore not having the nature of legal evidence and cannot constitute grounds for judicial or administrative proceedings unless proven externally), has been sent as an attachment to be evaluated in the studies and added to the relevant files."*

In another striking example for pursuing Turkish nationals abroad allegedly affiliated with the Gülen Movement was revealed, Ministry of Interrior, Turkish National Police tried to collect information **about 441 individuals who were settled in different western countries** like Greece, Germany, Luxemburg, France, The Netherlands, Norway, Sweden, Belgium, The UK,

88 https://nordicmonitor.com/2023/03/a-turk-informed-about-erdogan-critic-in-the-netherlands-to-claim-bounty-from-turkey/

89 The Letter issued by Ministry of Interrior, Turkish National Police on **10/10/2019**, No:45599763,56583,(63044)14066-391

the US and Canada to be used against those who are not under investigation: "*I request the Provincial Police Departments that have information about the legal proceedings to inform our Department in case of any developments regarding the issue, and the* ***Ankara Police Department to carry out the necessary work in accordance with the instructions of the judicial authorities regarding the individuals who do not have any legal proceedings recorded regarding the intelligence information in question, and to inform our Counter-Terrorism Department of the results.***"[90]

The cases of some of the persons on the list are still pending before the Court of Cassation, the Court of Appeal or the Court of First Instance, while the cases of some of the persons on the list are still under investigation. There is also people who are not under investigation in the list. It should be noted that these lists have been drawn up in the absence of any decision by the competent judicial authority. Given that the European Court of Human Rights (ECHR) has ruled in favour of a number of judges and prosecutors for violations of the presumption of innocence, it is clear that this list is a violation of the presumption of innocence and the right to a fair trial. Similarly, the unlawful open and public dissemination of personal information on the internet violates the right not to be defamed, the right to respect for physical and moral integrity, the right to respect for private and family life, and the right to respect for human dignity, which requires that individuals not be subjected to degrading treatment.[91]

As can be seen from these documents and information, even individuals abroad are monitored through intelligence methods and information about them is archived. Likewise, individuals and their family members in Turkey who have been subjected to investigations and prosecutions before are constantly monitored and subjected to investigations and prosecutions again under the name of "*restructuring*" and this practice has now become a routine judicial practice.

VII. NON-BIS IN IDEM

In Türkiye, where anti-democratic and arbitrary practices have reached their peak with the recent developments, **and even the daily life routines of the members can easily be considered as criminal offence**, there is no sanctuary in the country, where the members of the Hizmet 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. Government's avowed resistance to the recognition and the implementation of the ECtHR's Yalçınkaya judgement, and the recent operations carried out against the members or the supporters of the Hizmet Movement, leave no room for doubt

90 The Letter issued by Ministry of Interrior, Turkish National Police on **02/10/2023**/E-45599763-63044-2023092916532293312

91 https://www.drgokhangunes.com/makale/1209/

that there has been no shift from the Government's initial (annihilation) policy against the Movement.

According to the report released by the **Finnish Immigration Office** mentioned above, even if a person has been convicted for "membership in a terrorist organisation" and served their sentence, it is possible that the person will be prosecuted again for this same crime. The report also states, based on the information given by legal experts and researchers on Gulen Movement, that there are several cases where individuals who had initially received a decision of non-prosecution in cases concerning "membership in a terrorist organisation" but were later prosecuted and convicted to prison for this same crime in the context of the so-called "payphone investigations. According to some souces, the Turkish authorities use **surveillance measures** against those individuals connected to the Gülen movement who have served their sentence and been released from prison. (1.2.2)[92]

In many cases, people who were connected to the Gülen movement who have served their sentence and been released from prison are not allowed arbitrarily to have their passports. Many people whose relatives are abroad had to flee Turkey illegally and some of them were captured on the route. Almost all of the captured members of the Gülen movement on the flee route are arrested as their behaviour is seen as strong evidence of being a member of an armed terrorist organisation. Morover, there are several examples of cases those who have already served their prison sentences are re-investigated.[93]

VIII. CASE LAW ON TÜRKİYE'S STATUS AS A "SAFE COUNTRY FOR THE GÜLEN MOVEMENT"

a. Background of the Country Policy Change on the Member of Gülen Movement

In February 2019, the Dutch Council of State (Raad van State) ruled that "supporters of the Gülen Movement in Turkey bear a real risk of being subjected to treatment in violation of Article 3 of the ECHR during arrest and detention" and due to the persecutions and this decision, members of the Hizmet 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

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96 https://migri.fi/documents/5202425/5914056/FIS_Türkiye_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+(2).pdf/a14fa35f-a65a-9339-e331-fec99e9cd8c3/FIS_Türkiye_Individuals+associated+with+the+G%C3%BClen+movement_June_2024+(2).pdf?t=1723630918594

97 The documents will be enclosed to this letter.

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.

b. The Report Published by the Dutch Ministry of Foreign Affairs in August 2023

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.

c. Case Law on the Rejections of the Asylum Applications

i. ECLI:NL: RBDHA: 2024: 13599 - District Court of The Hague, 15-08-2024 / NL 24.27322[94]

At the hearing, the the Minister of Asylum and Migration (defendant) explained the new policy and stated that two changes had been made to the policy, on December 1, 2023, which specifically concerns Gülen followers and on July 1, 2024, which concerns the abolition of the group policy in general. The defendant has referred to the letters to parliament and country information regarding these policy changes. In the letter to parliament of November 28, 2023, which concerns the policy change regarding Gülen followers, the following passage in the policy has been declared void: ' With regard to (attributed)In addition, if no minor indications have been found, the IND will assess the risks of return in light of the diffuse and poor situation characterised by arbitrariness towards (attributed) Gülen followers/Gülen supporters on the side of the Turkish authorities.' The defendant based this change of policy, among other things, on the official report from which, according to the defendant, it appears that with regard to the criminal prosecution of Gülen supporters has decreased in intensity

98 https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2024:13599

and the arbitrariness that previously played a prominent role in the criminal prosecution of Gülenists is no longer present to the same extent.

However, District Court of The Hague ruled that,

"… the claimant was right to point out that the defendant selectively drew on the country information when it comes to the policy change of 1 December 2023 and that **the defendant must provide further reasons why the intensity of the persecution of Gülenists has decreased.** The official report contains the following passages, among others: ' **It was difficult to find verifiable information about the situation of (alleged) Gülenists in Turkey, because their movement was banned in this country**. (...) **However, in Turkey people did not openly admit their affiliation with the Gülen movement. Therefore, information about the situation of (alleged) Gülenists remained scarce, fragmented and anecdotal in nature.** ' During the previous two reporting periods, arrests of (alleged) Gülenists on a large or small scale took place regularly. This situation remained the same in the current reporting period. 'The official report also contains the following passage, on which, among other things, the policy change of 1 December 2023 appears to be based: ' **When asked, sources indicated that the persecution of (alleged) Gülenists had decreased in intensity in the current reporting period compared to the period immediately after the failed coup in July 2016**. '. However, the last sentence of the same paragraph states the following: ' **The sources could not substantiate the alleged decrease in intensity with concrete data. This is because little verifiable information was available about the current situation of Gülenists (...).**' The cited passages therefore do not seem to clearly show that the intensity of **the persecution of Gülenists has actually decreased, partly because information about this is difficult to find**. **As a result, it is not clear what the policy change of 1 December 2023 is based on. The defendant must provide further reasons for this**. The court is of the opinion that this leads to a lack of due care in the decision-making process. This is one of the reasons why the defect identified under legal consideration 6 cannot be ignored."

ii. ECLI: NL: RBDHA: 2024: 15371 - The Hague District Court, 16-07-2024 / NL24.1971[95]

The claimant moved from the countryside in eastern Turkey to Sakarya and, like his two brothers, received a year of education from the Gülen movement. From 2008 to 2016, the claimant attended a military academy. After the failed coup on 15 July 2016, the claimant was expelled from the military academy by decree 669.

In 2018, a brother of the claimant, [name 1], was sentenced to 8 years and 9 months in prison for ties with the Gülen movement. Another brother, [name 2], was also sentenced to 15 years in prison for the same reason in 2019. This brother fled to the Netherlands and had a residence permit. Furthermore, friends of the claimant who were also military students are in prison:

99 https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBDHA:2024:15371

they are [name 3], [name 4] and [name 5]. The claimant's friend [name 4] was arrested by the police in 2021 and mentioned the claimant's name in an interrogation. He told the police that he and the claimant had called the telephone of the claimant's brother [name 2]. [name 4] was sentenced to a prison term of one year and seven months. The claimant left Turkey on 1 August 2022 and fears that he will be prosecuted as an alleged Gülen supporter.

The Minister of Asylum and Migration considered the relevant elements credible. The contested decision stated that the applicant is not a refugee or at risk of serious harm, because he has not made it plausible that there are limited indications that he would be at risk of persecution if he returned to Turkey due to his alleged involvement in the Gülen movement. **The Minister considers the applicant's dismissal from the academy in 2016, the conviction of his two brothers and of his friends who were also military students, as well as the fact that [name 4] mentioned the applicant's name in a police interrogation to be insufficient for this purpose.** It should be noted that recent country information shows **that the prosecution of Gülen followers is decreasing in intensity,** that no direct connection has been found between the problems of the brothers and the claimant's friends and those of the claimant, that the claimant was not charged by the authorities after 2016, not even after the interrogation of his friend [name 4], and that the claimant left Turkey legally.

However, The Hague District Court ruled that,

"**The latest general official report on Turkey shows that arrests of suspected perpetrators are still taking place there regularly, on an (almost) daily basis, on both a small and larger scale (against) Gülen followers.** For this reason**, this group has been designated as a risk group, so that only minor indications are needed to assume a well-founded fear of persecution**. The court is of the opinion that the minister has not sufficiently explained why the statements considered credible under 8 above cannot be regarded as such minor indications. In this regard, the court considers it important that, as is also apparent from the submitted minute of 21 July 2021 and the termination of the claimant's education by decree 669, military students are one of the groups that is attributed with involvement in the Gülen movement. To the extent that the minister argued at the hearing that **the threat had decreased specifically for that group, the court sees no basis for this in the last official report**. Furthermore, the fact that the claimant's brothers were not military students, but army officers does not alter the fact that they are direct relatives of the claimant and have been sentenced to severe sentences for involvement in the The Gülen movement. **As regards the interrogation of [name 4], the fact that [name 4] did not directly accuse the plaintiff in this Gülen supporter, nor that this interrogation is not relevant to the assessment of whether there are minor indications.** In this interrogation, [name 4] stated that the claimant had used the telephone registered in the name of his brother [name 2], which means that a connection has been established between the claimant and this (convicted) brother."

The court also stated that,

"… the Minister has therefore insufficiently explained why all the facts considered credible, viewed in conjunction, are insufficient to be regarded as minor indications that make it plausible that the claimant, as a (suspected) Gülen supporter, has a well-founded fear of persecution if he returns to Turkey. **The court considers it insufficient in this case that it has not been demonstrated that an investigation has been initiated, that the claimant remained in Turkey for some time after the interrogation of [name 4] and that he left legally.** The reference to the letter of 28 November 2023 also does not lead to a different judgment, as this is only relevant to the situation in which it has been established that there are no minor indications."

IX. CONCLUSION

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

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

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

The ECtHR found, in Yalçınkaya Judgment, 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.

In short, although 8 years have passed since the controversial coup attempt, and 1 year since Yalçınkaya v. Türkiye Judgment, it can be easily claimed that nothing has changed in the treatment of members of the Hizmet 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 can be seen from the concrete examples above, it is very likely that most members of Hizmet Movement or young people and children who come to the Netherlands seeking asylum and whose applications are rejected, due to the fact that there is no investigation against them or that the threat had decreased specifically for the members of Gülen Movement, will be arrested for those asylum applications alone if they are sent back to Türkiye. **As mentioned in the judment given by Den Haag District Court, Gülen supporters have a well-founded fear of persecution if they return to Turkey as they are all considered suspects because of the Turkish judicial practice against the members of Gülen Movement even though they are not currently under investigation.**

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

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

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

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