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RULE 9.2 COMMUNICATION

Concerning the Cases of
Urcan and Others v. Turkey (23018/04)
Saime Özcan v. Turkey (22943/04)

Submitted by
HUMAN RIGHTS ASSOCIATION

29 December 2021

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Submission by the Human Rights Association pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, Additional Observations on the Implementation of *Urcan and Others v. Turkey* (23018/04) and *Saime Özcan v. Turkey* (22943/04) judgments.

- 1- The Human Rights Association ("İHD") is an independent and voluntary civil society organization. Established in 1986 to promote human rights and freedoms, İHD is the oldest and largest human rights organization in Turkey. İHD publishes special reports on a number of human rights issues including annual reports on human rights violations in Turkey. Further, İHD submits opinion reports at various levels before human rights mechanisms at the United Nations and the Council of Europe as well as submitting Rule 9.2 communications.¹
- 2- The aim of this submission is to present updated information to the Committee of Ministers about the persistent negligence of Turkish authorities to take complete and effective general measures concerning the case of *Urcan and Others v. Turkey*.

A. Background Information on the Case of *Urcan and Others v. Turkey*

- 3- We have reviewed the government's communication concerning the cases of *Urcan and Others v. Turkey* and *Saime Özcan v. Turkey*. We have ascertained that this communication did not bear the qualifications to meet the conditions set in the European Court of Human Rights' ("ECtHR") judgments delivered in both cases. According to us, a diverse set of judicial and administrative sanctions are imposed because of collective action, work stoppage/strike actions, press conferences and demonstrations held by members and executives of trade unions in line with decisions trade unions deliver. These sanctions emerge as the implementation of general or special criminal laws that are implemented in place of one another within the scope of judicial sanctions. Administrative sanctions, on the other hand, include taking disciplinary action at various levels, temporary suspension from public duty and dismissal from public duty. These sanctions will be explained in detail below.

B. Individual Measures

- 4- The Government has taken the necessary individual measures set forth in both judgments regarding the concerned individuals.

¹ www.ihd.org.tr/en/

C. General Measures

Regulations in Criminal Laws

- 5- Article 260 of the new Turkish Criminal Code No. 5237 ("TCC") replaced Article 236 of the former Turkish Criminal Code No. 765. Article 260 prescribes imprisonment for a term of 3 months to 1 year and grants judges the power of discretion with a provision that a penalty may not be necessarily imposed. This regulation, however, is not substantial enough to guarantee freedom of association referred to by the ECtHR in its judgments in the cases of *Urcan and Others v. Turkey* (23018/04), *Saime Özcan v. Turkey* (22943/04), *Satılmış and Others v. Turkey* (74611/01, 26876/02 and 27628/02), *Karaçay v. Turkey* (6615/03). The small number of investigations and court cases under Article 260 of the TCC in practice cannot explain the other investigations and court cases brought against public employees acting in line with decisions taken by trade unions. There are numerous individual and general criminal law articles that are used in place of one another in Turkey.
- 6- Trade unionists face investigations and court cases usually under Articles 216 or 115 of the TCC when there are statements that go against the official ideology of the state in their press releases, for instance, when these statements mention the Kurds or refer to rights violations committed in places where Kurds live, when they talk about peace against war, when they point to discriminatory practices against Kurds, Alevis, Armenians and other disadvantaged groups, and when they criticize hate speech by religious sect leaders.
- 7- Moreover, trade union executives and members face investigations and court cases under Article 314 § 2 of the TCC through the implementation of Articles 220 § 7 and 314 § 3 of the TCC and Article 2 § 2 of the Anti-Terrorism Code No. 3713 ("ATC") using the placards and slogans as excuses at collective actions and press conferences held by trade unions in order to condemn mass murders and to defend peace against war. Even union meetings held by various labour groups within trade unions are charged with being terrorist activities and court cases are brought under Article 314 § 2 of the TCC. These practices are quite common.
- 8- Investigations and court cases were brought against numerous public employees under Article 299 of the TCC for insulting the president at press conferences or demonstrations they attended and were handed down dismissal from public duty penalties as a result of the initiated administrative investigations.
- 9- Investigations and court cases are also brought under Article 7 § 2 of the ATC for making propaganda for an illegal organization.
- 10- The authorities constantly launch investigations and court cases for violating Law No. 2911 on Meetings and Demonstrations. When trade unions decide to stage work stoppage action, their members arrive at their workplaces, stop work and gather together before their place of work at noon and hold a press conference either before their place of work or in a public space after a short march. Investigations are thus initiated into trade union members usually for violating Law No. 2911 for gathering together and holding press conferences in this way followed by court cases.
- 11- Administrative fines are also imposed under Article 32 entitled "disorderly conduct," Article 36 entitled "noise," and Article 42 entitled "posting bills" of Misdemeanour Law No. 5326.
- 12- Particularly the vague definition of terrorism in the practice of the ATC in Turkey proves to be a major problem and İHD had communicated its points and recommendations in its opinion report on the new human rights action plan to the Ministry of Justice as well.²

Regulations on Public Employees' Labour Acts

² <https://ihd.org.tr/en/ihd-report-on-the-new-human-rights-action-plan/>

- 13- Article 51 of the Constitution of the Republic of Turkey (“Constitution”) prescribes the right to organize trade unions stating that the “scope, exceptions and limits of the rights of civil servants who do not have a worker status are prescribed by law in line with the characteristics of their services.” This law is Law No. 4688 on Public Employees and Trade Unions. Under Article 18 of this law, union activities can be undertaken within work hours with the permission of the employer. The condition of permission is thus set, which is a direct intervention into freedom of association.
- 14- Article 51 of the Constitution prescribes that public employees have the right to collective agreements. In cases of conflict, though, the decisions of the Public Servants Arbitration Board are final and have the force of a collective agreement which actually grants public employees the right to collective bargaining rather than collective agreement. Further, Article 54 of the Constitution does not regulate the right to strike action for public employees stating that only workers have the right to strike.
- 15- Provisions of international agreements concerning fundamental rights and freedoms duly put into effect under Article 90 of the Constitution are not complied with in Turkey. Constitutional rules prevail over these. Moreover, Constitutional provisions are far from securing the rights set in Article 11 of the European Convention on Human Rights (“ECHR”) with regards to public employees.
- 16- Article 129 of the Constitution also prescribes that public employees cannot be dismissed from their posts without being granted the right of defence.
- 17- The primary labour act for public employees in Turkey is Law No. 657 on Civil Servants. Article 26 of Law No. 657 entitled “ban on collective action and deeds” prohibits collective action and movements. Article 27 of the same law also prohibits delivering decisions for strike action, announcing strikes, making propaganda for strikes, and attempting to stage strikes.
- 18- The scope of Article 48 §§ a5 of Law No. 657 on dismissals from public duty does not comply with Articles 10 and 11 of the ECHR on freedoms of expression and association. Further, Law No. 7315 on Security Inquiries and Archival Research dated 7 April 2021 was introduced in spite of the fact that the Constitutional Court had annulled the provision on security inquiries (background checks) in the same article. It was regulated that individuals could be dismissed from their public posts in the event that they faced investigations and prosecution, which are against Articles 10 and 11 of the ECHR, within the scope of security investigations initiated into them even if they had started working in public office.
- 19- Article 125 § E of Law No. 657 on disciplinary action regulates dismissals from public office. However paragraphs a and b of E are not in line with Articles 10 and 11 of the ECHR either. Also Article 125 E § I, which was regulated by Article 75 of Decree Law No. 676 that was introduced during the state of emergency (“SoE”) and was then rendered permanent by Article 61 of Law No. 7070, is frequently imposed against public employees in Turkey where the definition of terrorism is obscure while being particularly utilized in investigations initiated into public employees who participate in protests and activities held by trade unions under Article 314 § 2 of the TCC with reference to Article 7 § 2 of the ATC and 2 § 2 of the ATC, Articles 220 § 7 and 314 § 3 of the TCC.
- 20- Provisional Article 35 was introduced to Decree Law No. 375, which regulates various financial and social rights of public employees, through article 26 of Law No. 7145 during the SoE. This article allows for dismissals from public office through the highest ranking official of the public institution a public employee works for just like during the SoE.³
- 21- According to Article 4 § B of Law No. 657, regulations were introduced in parallel with the provisions of Article 125 of Law No. 657 through Additional Article 6 of Rules implemented by the Cabinet decision No. 7/15754 dated 6 June 1978 concerning contracted public employees. These

³ <https://ihd.org.tr/en/regarding-law-no-7145-regulating-permanent-state-of-emergency/>

do not comply with Articles 10 and 11 of the ECHR and provide for the easy dismissal of public employees from their posts.

- 22- Under Article 142 of Law No. 657, public employees can be temporarily suspended from their posts.

D. Examples in practice

23- Declaration of State of Emergency and the Issue of Emergency Decree Laws

Although the coup d'état attempt of 15 July 2016 was quenched merely a day after on 16 July in Turkey, state of emergency ("SoE") was declared on 20 July 2016 which lasted non-stop for 2 years. Upon the declaration of SoE, President Erdoğan and the then Prime Minister of Turkey Yıldırım had often argued that an organization called FETÖ/PDY attempted to stage a coup in the country and this organization was within the state's structure while declaring that they would take harsh measures (which to us were against the ECHR and the Constitution) against public employees working for the state by saying that they "declared SoE to the state."⁴

Council of Europe Commissioner for Human Rights, Nils Muiznieks, issued his "Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey" on 7 October 2016 following a visit to Turkey between 27-29 September 2016 that incorporated quite serious criticism and warnings.⁵

The Parliamentary Assembly of the Council of Europe ("PACE") reopened political monitoring process in respect of Turkey with its resolution of 25 April 2017 and the process is still pending.⁶

One of the reports that offer the best balance sheet of human rights violations during the SoE in Turkey was drafted by the Human Rights Joint Platform ("HRJP").⁷ İHD's annual human rights violations report of 2018 also presents a short balance sheet of violations committed during the SoE in Turkey.⁸

According to the union rights violations report drafted by the Confederation of Public Employees' Trade Unions (Kamu Emekçileri Sendikaları Konfederasyonu – "KESK") and made public on 26 December 2019, 4,283 public employees were dismissed from their posts through SoE decree laws introduced during the SoE while 487 public employees were dismissed from their posts through decisions delivered by higher disciplinary boards of their respective institutions.⁹ Although the confederation and its affiliated trade unions have been active since 1989 and had no ties with the FETÖ/PDY that was charged with attempting to stage a coup, such attempt was rendered an opportunity and at least 4,770 public employees who were members of trade unions affiliated with the confederation were dismissed from their posts with no legal guarantees granted. Such state of affairs in fact reveals that the constitutional and legal guarantees in Turkey were shelved during the SoE and the practice was completely altered.

The International Trade Union Confederation's ("ITUC") Global Rights Index 2020 lists Turkey among the worst 10 countries for workers among 144 countries.¹⁰ Even this report reveals the serious setback in freedom of association in Turkey that is a part of union rights.

The problem of implementing criminal laws used in place of one another in Turkey has particularly deteriorated following the declaration of SoE on 20 July 2016. Council of Europe Venice Commission's Opinion No. 872/2016 of 13 March 2017 entitled "Opinion on the Measures

⁴ <https://www.gazeteduvar.com.tr/yazarlar/2020/03/26/herkesin-ohali-nasil-olur>

⁵ [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35)

⁶ https://www.coe.int/en/web/portal/home/-/asset_publisher/ke6Wf9n94238/content/parliamentary-assembly-reopens-monitoring-procedure-in-respect-of-turkey?_101_INSTANCE_ke6Wf9n94238_viewMode=view/

⁷ <https://ihop.org.tr/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>

⁸ <https://ihd.org.tr/en/ihd-2018-report-on-human-rights-violations-in-turkey/>

⁹ <https://kesk.org.tr/2019/12/26/sendikal-hak-ihalleri-raporumuzu-acikkladik/>

¹⁰ <https://www.ituc-csi.org/ituc-global-rights-index-2020?lang=en>

Provided in the Recent Emergency Decree Laws with respect to Freedom of the Media” is quite important in that the Commission stated that public prosecutors charging journalists, rights defenders, trade unionists and activists under Articles 314 or 220 of the TCC or under Article 7 of the ATC on the grounds of statements they issued, demonstrations they attended and articles they wrote was unlawful and the prosecutors did not seek legality in crime leading to gross victimization of persons concerned.¹¹ Such state of affairs is faced in union actions and activities as well.

24- The Problem of the SoE Commission

The Venice Commission paid a visit to Turkey after the declaration of the SoE and unlawful decisions were delivered and implemented through SoE decree laws. The Venice Commission’s “Opinion on Emergency Decree Laws Nos. 667-676 Adopted following the Failed Coup of 15 July 2016” was adopted at its 109th Plenary Session.¹² The commission recommended in its opinion that a special *ad hoc* body, which would be tasked with the examination of individual cases related to dismissals of public employees, be created before bringing cases before a court of law. Turkey then decided to establish the Inquiry Commission on the State of Emergency Measures through SoE Decree Law No. 685 on 2 January 2017, while the commission was established on 23 January 2017 and started to receive applications in July 2017. According to the latest announcement made by the commission on 28 October 2021,¹³ the number of applications submitted to the commission was 126,758 while it delivered a total of 118,415 decisions. Yet, the number of accepted applications was a mere total of 15,050 while 103,365 applications were rejected by the commission. Accordingly, it is seen that the rate of accepted applications was 14.56% while 85.44% of the applications were rejected. These figures indeed reveal the fact that the commission has not been effective in any way. Therefore, it is seen that a body in line with the recommendations of the Venice Commission has not been created.¹⁴ Moreover, this commission has been taking measures in a deterrent manner against freedom of association before the Confederation of Public Employees’ Trade Unions and its affiliated trade unions by still not delivering decisions about half of the above-mentioned 4,283 public employees who are confederation members.

- 25- Numerous public employees who had taken part in union actions and activities were subjected to disciplinary actions as a result of administrative investigations implemented through SoE decree laws during the SoE.¹⁵

Use of the concept “in junction with” in dismissals from public duty during the SoE and Post-SoE

The authorities set “*membership, allegiance or in junction with or connection with*¹⁶ *terrorist organizations or structures, formations or groups decided by the National Security Council to have been involved in activities against the national security of the State*” as grounds for removal from public service (dismissal) and relief from public duty (suspension). Convictions of those in superior administrative positions in public offices were taken as grounds for delivering such penalties. Thus, concepts like “in junction with” (*iltisak* -meaning combination, union) and “connection” (*irtibat* -meaning relationship, link) that were introduced to the Turkish legal system for the first time were taken as basis while about 135,000 public employees were dismissed from their posts for good without any material evidence whatsoever through lists made solely according

¹¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)007-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)007-e)

¹² [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

¹³ <https://soe.tccb.gov.tr>

¹⁴ For further information see Kerem Altıparmak, “Stillborn Child: State of Emergency Commission Established with the Decree Law No. 685.” <http://www.ankarabarsu.org.tr/siteler/ankarabarsu/tekmakale/2017-1/3.pdf>

¹⁵ <https://kesk.org.tr/2019/12/26/sendikal-hak-ihlalleri-raporumuz-acikladik/>

¹⁶ TR. Üyelik, mensubiyet, iltisak, irtibat, respectively.

to the public administration's and its executives' convictions. While the newly introduced concept "in junction with" was implemented through SoE decree laws and Law No. 7145 in Turkey, the ECtHR's lustration criteria were transgressed. Under the current circumstances where all kinds of criticism against the government as well as the struggle to protect rights and freedoms can easily be labeled as "terrorism," where the definition of "terror" and "support for terrorism" are interpreted in quite a wide manner, and where trust in judicial organs has seriously eroded, the regulation in question in Law No. 657 poses a major threat to all public employees, notably the executives and members of KESK and its affiliated trade unions, who work for union rights and freedoms.¹⁷

26- Violations against Academics for Peace

Academics for Peace announced a declaration called "We Will Not Be a Party to this Crime!" on 11 January 2016 criticizing gross human rights violations committed by the hand of the state during the curfews and demanding the formation of negotiation conditions for a permanent peace in the Kurdish issue. A long-term process of repression was initiated after the declaration in order to silence, intimidate, discredit and purge Academics for Peace from universities. During this process: 70 academics were taken into custody, 4 academics were placed in pre-trial detention, 406 academics were dismissed from their posts through emergency decree laws, 89 academics were laid off through other methods, 72 academics were forced to resign, 27 academics were forced to retirement, and criminal cases were brought against 822 academics before heavy penal courts under Article 7 § 2 of the ATC for "making propaganda for a terrorist organization."¹⁸ While the number of staff dismissed from universities' administrative and academic positions through SoE decree laws was 7,180, only 141 academics were reinstated to their posts. 406 Academics for Peace were among those dismissed academics¹⁹ and although the Constitutional Court ruled in its judgment in the case of *Zübeyde Füsün Üstel and Others* (Application No. 2018/17635) on 26 July 2019 that the declaration fell under freedom of expression, they have not been reinstated. Education and Science Workers' Union (Eğitim ve Bilim Emekçileri Sendikası –"Eğitim-Sen") also drafted a report on violations faced by universities during the SoE in Turkey.²⁰

27- Under additional provisional Article 35, amended to Decree Law No. 375 through Law No. 7145 after the end of the SoE, administrative sanctions about dismissal from public service were put into effect. Provisional Article 35 § B 9, amended to Decree Law No. 375 through Article 26 of Law No. 7145 dated 31 July 2018 that went into force after having been published in the *Official Gazette* No. 30495, prescribes "*Personnel employed in all types of cadres, positions and status including workers subject to Law No. 657 and other legislation shall be dismissed from public service upon the recommendation of the board formed by the concerned or affiliated minister and led by the highest ranking director of the concerned institution or body and upon the approval of the concerned minister*" which led to the dismissal of numerous public employees depriving them of their right to work. Numerous public employees who were union members were dismissed from public service based on the provisional Article 35 of Decree Law No. 375.²¹

28- The following is an instance where administrative fines were imposed on trade union members on the grounds that they distributed union leaflets or press releases as per the Misdemeanor Law: Yılmaz Yıldız, chair of the Niğde representative office of the Trade Union of Public Employees in Healthcare and Social Services (Sağlık ve Sosyal Hizmet Emekçileri Sendikası –"SES"),

¹⁷http://www.kesk.org.tr/wp-content/uploads/2019/06/87-NOLU-ILO-S%C3%96Z.UYG_%C4%B0L%C5%9EK.G%C3%96R%C3%9C%C5%9ELER%C4%B0M%C4%B0Z-24.05.19.pdf

¹⁸ https://tihvakademi.org/wp-content/uploads/2020/09/AfP_Current_Situation_August_2020.pdf

¹⁹ HRJP. Updated Situation Report- State of Emergency in Turkey. 11.01.2017, p. 29, http://www.ihop.org.tr/wp-content/uploads/2018/01/OHALdurumraporu_31122017.pdf

Also see Academics for Peace: <https://barisicinakademisyenler.net/node/314>

²⁰ <https://egitimsen.org.tr/wp-content/uploads/2018/11/OHAL-Sonras%C4%B1-%C3%9Cniversiteler-Raporu.pdf>

²¹ <https://kesk.org.tr/2019/12/26/sendikal-hak-ihalleri-raporumuzu-acikladik/>

Kamuran Yıldırım, chair of Mardin branch of the same union, and Mehmet Metin Çılgın, chair of Mardin Medical Chamber were handed down administrative fines due to their statements on 25 February 2005 and the issue was brought before the ECtHR. In spite of the ECtHR's violation judgment in the case of *Yılmaz Yıldız and Others v. Turkey* (4524/06), the same decision was handed down to the same person in the same city years later. Currently an individual application is pending for Yılmaz Yıldız before the Constitutional Court (Application No. 2016/12646). Even this case shows that ECtHR judgments are only implemented in terms of the demand for individual just satisfaction for the concerned person while they are not executed in other terms and are not regarded as precedents.

29- Dismissal of public employees because of their social media posts:

Education and Science Workers' Union's (Eğitim-Sen) Bartın branch member Ahmet Günerhan, who had been serving as the branch director at Bartın Provincial Directorate of National Education, was appointed as a teacher at Bartın Provincial Directorate of National Education by means of an order by the Directorate General of Human Resources at the Ministry of National Education on 17 February 2017 (No. 20988) on the grounds of his social media posts. A court case was then brought against the order, the lawsuit was rejected as well as the request for appeals. Similarly, Education and Science Workers' Union's Manisa branch member Mustafa Şen was involuntarily transferred to another place because of his social media posts while the lawsuit brought against such enforced transfer was rejected and an application was then lodged before the Constitutional Court as the ruling was finalized. Education and Science Workers' Union's Bartın branch executive Sedat Bora was subjected to an investigation on the grounds of his social media posts and was handed down 1/30 forfeiture of pay punishment under Article 125 § C of Law No. 657.

In criminal and administrative investigations initiated into public employees on the grounds of slogans shouted at press conferences or at demonstrations they attended, charges are usually either making propaganda for an illegal armed organization or insulting the president. For instance, a mining accident which claimed the lives of 301 workers happened in Manisa's Soma district on 13 May 2014 in Turkey. Press conferences were held in line with decisions delivered by trade unions all over Turkey to protest the authorities. These conferences were held again on the anniversary of the accident because the trial about the mining accident was pending and the public's interest and awareness was needed for the trial not to end up in impunity. A year after the accident commemorations were held in many places in Turkey. Specialist Dr. Bedi Özbay, a member of Trade Union of Public Employees in Healthcare and Social Services ("SES"), participated in the one of these events that was held in Yalova on 13 May 2015 before Uğur Mumcu Cultural Center to commemorate mine workers who had died in Soma. Slogans against the government and the president were shouted at this event. Dr. Bedi Özbay was subjected to criminal and administrative investigations because of these slogans. Dr. Özbay was initially acquitted in the criminal investigation but the court of first instance that heard the case convicted Dr. Özbay of insulting the president upon the quashing ruling of the Court of Cassation. Dr. Özbay was dismissed from public service through a decision delivered by the Higher Disciplinary Board of Union of Public Hospitals affiliated with the Ministry of Health. The Council of State, too, upheld the decision for dismissal from public duty. An individual application was lodged before the Constitutional Court which is pending. As is seen, a medical doctor and a member of the related trade union was convicted under Article 299 of the TCC because of a peaceful protest he attended and was then dismissed from public duty under Article 125 § E of Law No. 657. Further, Dr. Özbay was dismissed from public office through an emergency decree law as well. Thus, Dr. Özbay was not allowed to enjoy the guarantees enshrined in Articles 10 and 11 of the ECHR.

Blanket curfews have been in place since 16 August 2015 in Turkey. Following the death of civilians in residential areas where curfews were declared, the Confederation of Public Employees' Trade Unions (KESK) decided to hold collective action to protest the curfews. One

of those who took part in the collective action and press conference in line with the decision on 29 December 2015 was Kamuran Kılınç who was a nurse at Siirt State Hospital. Kamuran Kılınç was handed down a reprimand penalty for participating in this protest. Court cases brought for the annulment of this penalty were rejected while an individual application lodged before the Constitutional Court in 2018 is pending. Trade unions can hold collective action not only for employees' personal and financial rights but also for peace and democracy against war in order to raise awareness in the public as is stated in their charters. Numerous criminal and administrative investigations were launched into public employees who participated in these protests, particularly after the SoE declared on 20 July 2016, and many public employees were dismissed from public service on the grounds of the 29 December 2015 protest. Processes are pending about these individuals.

ISIS/DAESH committed two suicide bomber attacks on 10 October 2015 in Ankara before the central train station against people who got together for the peace rally organized by KESK, Confederation of Progressive Trade Unions of Turkey ("DİSK"), Turkish Medical Association ("TMA"), Union of Chambers of Turkish Engineers and Architects ("TMMOB") and other mass organizations. 104 people were killed, more than 400 were wounded in the attacks. KESK decided to hold collective action and press conferences all over Turkey on 12-13 October 2015 to protest the attacks. Trade union member Zikrettin Arpacık participated in a protest in line with this decision in Siirt's Kurtalan district. An administrative investigation was initiated into Zikrettin Arpacık and he was handed down forfeiture of pay penalty. Court cases brought for the annulment of this penalty were rejected. The Constitutional Court declared his individual application inadmissible in its judgment of 22 March 2021 (Application No. 2018/5906). Hundreds of public employees who had participated in protests staged for the 10 October 2015 Ankara Train Station massacre were subjected to criminal and administrative investigations, numerous people were punished. One of these persons is Salih Bayat, an executive for the local Batman branch of the Trade Union of Public Employees in Healthcare and Social Services ("SES"). Salih Bayat took part in a protest held in Batman on 12 October 2015 in line with the decision taken by his trade union. An administrative investigation was then initiated into him on the grounds of this protest. No criminal investigation was launched because of the protest. Salih Bayat was dismissed from public office a result of the administrative investigation. Salih Bayat's individual application before the Constitutional Court is pending (Application No. 2019/20776).

Public employees face criminal and administrative investigations on the grounds of press conferences they attend in line with decisions taken by their trade unions. One of these persons is Gönül Adıbelli, a former executive at the local Diyarbakır branch of SES affiliated with KESK and a current member of the central executive board of SES. Gönül Adıbelli attended a press conference held on 20 January 2019 in Diyarbakır. The goal of the conference was to draw public attention to indefinite and non-alternate hunger strikes in prisons in Turkey. The trade union for which Gönül Adıbelli was serving as an executive formed a monitoring coordination for hunger strikes with human rights organizations, met with officials from the Ministry of Justice at various times and the hunger strikes ended in May 2019 with the government taking on a positive role during the process. Yet, public employees who had participated in such democratic demonstrations still faced punishment. A court case was brought against Gönül Adıbelli and others for membership in an illegal armed organization (Article 314 § 2 of the TCC) and violating Law No. 2911 on Meetings and Demonstrations. Gönül Adıbelli was acquitted of the charge of membership in an illegal armed organization but was sentenced to 10 months' imprisonment for violating Law No. 2911 and the court suspended the imprisonment judgment. This is not a condition that makes one ineligible for public service but Gönül Adıbelli was first suspended from public duty under Article 142 of Law No. 657, then she was reinstated in 2021 but was dismissed from public service under the additional provisional Article 35 of Decree Law No. 375 after her written defence statement was taken. The court case brought for the annulment of this measure

is pending before Diyarbakır 4th Administrative Court. As is seen, there are now many TCC and special law provisions that are used in place of one another.

The fact that public employees face terrorism charges on the grounds of union meetings they attend is quite a common practice in Turkey. Numerous public employees who were members of KESK and DİSK had been sentenced under Article 314 § 2 of the TCC as a result of an operation by the gendarmerie in İzmir in 2009 and these sentences had been upheld by the Court of Cassation. The Constitutional Court's General Secretariat had ruled for retrial in its judgment in the case of *Abdulcelil Demir and Others* holding that the applicants' right to protest was violated. All public employees were acquitted in 2021 at the retrial but there are two different pending cases before Ankara 6th Heavy Penal Court brought in like manner. Within the scope of these cases, a total of 87 members and executives of trade unions affiliated with KESK are standing trial as per Article 314 § 2 of the TCC. These cases are pending in spite of the fact that the ECtHR ruled for violation of Article 5 § 1-4 of the ECHR in its judgment in the case of *İşçi and Others v. Turkey* that had been brought before the court in 2012 for unlawful detention. Such cases are persistently brought in a deterrent manner to prevent organizational activities of particularly KESK and its affiliated trade unions.

E. Observations on Turkey in the 2021 Report on the Application of International Labor Standards, Addendum to the 2020 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations²²

- 30- The report indicates, according to the observations of the International Trade Union Confederation ("ITUC"), that more than 11,000 members and representatives of KESK were suspended or dismissed from work on the grounds of their union activities while 89% of the applications lodged before the Inquiry Commission on the State of Emergency Measures for such dismissals were rejected. The report also puts forth that 1,628 members from the Education and Science Workers' Union (Eğitim-Sen) were dismissed from public service through decree laws during the SoE; only 12.7% of the files of these members were reviewed and among these only 79 were accepted while 126 applications were rejected; 1,178 members of Eğitim-Sen were still unemployed as of May 2020. While the committee noted the government's response that the rate of reinstatement for Eğitim-Sen members (38.5%) was much higher than that of the average rate (11.5%), it also expressed its concerns for about 75% unemployment rate among dismissed Eğitim-Sen members and asked for the government's response on this issue.
- 31- The committee also expressed its concerns for the lack of specific information about the number of related union members and officials along with incomplete information provided by the Inquiry Commission on the number of negative decisions delivered as well as the results of measures taken about union members and officials while noting the overall statistics and detailed information on the grounds for SoE communicated by the government.
- 32- The committee observed that hundreds of members of KESK and Eğitim-Sen, notably those in the education sector, alleged that their places of work had been changed involuntarily in 2016 (at least 122 transfers mostly for participation in union activities and events) and 2017 (1,267 transfers with 1,190 in the education sector). The committee, thus, asked the government to take the necessary measures to prevent involuntary transfers and demotions that prejudice the right to unionization and immediately eliminate discriminative measures prejudicial to the right to unionization if they were still in force.
- 33- The committee also noted Eğitim-Sen's observations alleging that hundreds of its (1,546 as of August 2017) members were dismissed from their teaching posts arbitrarily, with no evidence and due process of law whatsoever; while more than 300 of its members who were critical of the

²² ILO, Application of International Labor Standards 2021, International Labor Conference 109th Session, 2021.

government were dismissed from their academic posts at universities on the grounds of signing a declaration critical of the government.

F. Commitments about ECtHR Judgments in the Judicial Reform and Human Rights Action Plan and Examples in Practice

- 34-** President of the Constitutional Court, Zühtü Arslan, stated in an address on 23 September 2021: *“It is a well-known fact that the particular difficulty faced in the individual application system is the ever-increasing number of the pending applications. Any other country which adopts and successfully operates constitutional complaint procedure does not have applications as many as those received by Turkey. The annual number of constitutional complaints lodged with the Spanish and German Constitutional Courts, which is approximately five or six thousand, corresponds nearly to the number of cases lodged in a month with the Turkish Constitutional Court. Besides, the number of total individual applications lodged with the Court is higher than that of the cases brought before the European Court of Human Rights by 47 countries in total. [...] Finally, I would like to bring to your attention an issue regarding the effective execution of violation judgments. Every judgment where the Constitutional Court finds a violation is also establishment of an unconstitutionality. Therefore, it is incumbent on all relevant institutions and organizations of the State to eliminate the unconstitutionality, as well as to prevent the occurrence of further ones”*²³ pointing to how low trust in the judiciary was in Turkey and indicated that local courts did not duly implement judgments by the Constitutional Court and the ECtHR.
- 35-** Council of Europe Committee of Ministers decided to commence infringement proceedings against Turkey on 30 November 2021 at its 1419th session due to Turkey’s refusal to implement the ECtHR judgment delivered in the case of *Kavala v. Turkey* (28749/18).²⁴
- 36-** Council of Europe Committee of Ministers also granted time to the Turkish government until March 2022 for the implementation of the ECtHR judgment delivered in the case of *Selahattin Demirtaş v. Turkey* (No. 2) (14305/17) on 30 November 2021 at its 1419th session. Should the judgment be not executed by Turkey, infringement proceedings will be initiated.²⁵

G. Conclusion and Recommendations

- 1- Information provided by the government within the scope of the case under monitoring is incomplete and insufficient. The number of investigations and court cases, brought against the members and executives of trade unions under laws that are used in place of one another and against public employees and workers attending protests and events organized by unions, should be made available. The number of investigations and court cases brought under Articles 115, 216, 220 § 6-7, 299, 314 § 2-3 of the TCC, Article 7 § 2 of the ATC as well the number of those brought for violating Law No. 2911 and of administrative fines delivered under the Misdemeanour Law should be provided.
- 2- How many public employees who were dismissed from their public posts through SoE decree laws were members of trade unions? The number of trade union members who were dismissed because of investigations and court cases against them and the number of those who were dismissed through institutional conviction or intelligence information without any official investigation should be provided.
- 3- The number of trade union members and executives who were dismissed from public duty under the provisional Article 35 of Decree Law 375 should be made available.

²³ <https://www.anayasa.gov.tr/en/president/presidents-speeches/opening-address-project-on-supporting-the-effective-implementation-of-turkish-constitutional-court-judgments-in-the-field-of-fundamental-rights/>

²⁴ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a4a2c5

²⁵ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a48b0d

- 4- The case of *Urcan and Others v. Turkey* should be kept under monitoring due to the problem of vertical and horizontal implementation of ECtHR and Constitutional Court judgments in Turkey.
- 5- Turkey should be urged to introduce necessary legislative amendments. Article 260 of the TCC is not necessary in a democratic society. It should, thus, be annulled.
- 6- There are quite serious problems in practice pertaining to violations of Law No. 2911. Therefore, *Oya Ataman Group* judgments under close monitoring before the Committee of Ministers should be implemented.
- 7- Monitoring should be maintained until the time ECtHR case-law is implemented and the monitoring process against Turkey is ended about freedom of expression with regards to Articles 115 and 216 of the TCC and Article 7 § 2 of the ATC.
- 8- Article 299 of the TCC should be made to comply with Article 10 of the ECHR as has been underlined by the ECtHR in its judgment of 19 October 2021 in the case of *Vedat Şorli v. Turkey* (Application No. 42048/19).
- 9- Monitoring should be maintained about the application of Article 314 § 2 through Articles 220 § 6-7 and 314 § 3 as well as the direct application of Article 314 of the TCC until problems in practice are resolved as has been stated by the ECtHR in its judgment in the case of *Demirtaş v. Turkey*.
- 10- Turkey should be asked to rescind post-SoE legislative amendments that particularly facilitate dismissals from public office by using the concept of “in junction with” [iltisak].
- 11- Turkey should be urged to make its labour laws comply with Articles 10 and 11 of the ECHR.
- 12- Recommendations on Turkey by the ILO Committee of Experts should be taken into account and these recommendations should be followed-up.
- 13- Turkey should be urged to introduce legislative amendments for free collective bargaining and the enjoyment of public employees’ union rights to strike action and collective agreement.