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COMMUNICATION

In accordance with Rule 9(2) of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by Truth Justice Memory Center (Hafıza Merkezi), Human Rights Association (İnsan Hakları Derneği) and Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı) regarding KASA v. Turkey (Application No. [45902/99](#)) and ERDOĞAN AND OTHERS v. Turkey (Application No. [19807/92](#)) group of cases

I. INTRODUCTION

1. The Truth Justice Memory Center (Hakikat Adalet ve Hafıza Merkezi), Human Rights Association (İnsan Hakları Derneği, IHD), and Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı) hereby respectfully submit their observations and recommendations under Rule 9(2) of the “Rules of the Committee of Ministers for the supervision of the execution of judgements and of the terms of friendly settlements” (hereinafter, the “Rules”) regarding the legislative and judicial state of affairs in Turkey relevant for the execution of the judgements of the European Court of Human Rights (hereinafter, the “ECtHR”) in the *Kasa* group of cases and the *Erdoğan and others* group of cases that are currently being supervised by the Committee of Ministers (hereinafter, the “CoM”).
2. The Truth Justice Memory Center (hereinafter “Hafıza Merkezi”) is a non-profit, non-governmental organisation founded in 2011 and based in Istanbul, Turkey. It aims to end impunity for and to uncover the truth about gross violations of human rights. Enforced disappearances which took place in the 1990s in south-eastern Turkey has been one of the main focus areas of its work.¹
3. İnsan Hakları Derneği (hereinafter, “IHD”) is a non-governmental, independent, and voluntary body. The association, founded in 1986, is the oldest and largest human rights organisation in Turkey and its sole and specific goal is to promote “human rights and freedoms.” IHD issues special reports on various human rights issues, including annual reports on human rights violations in Turkey. IHD also submits shadow reports before committees at the United Nations and the Council of Europe.²

¹ For further information please visit, <https://hakikatadalethafiza.org/en/>.

² For further information please visit, <https://ihd.org.tr/en>.

4. Türkiye İnsan Hakları Vakfı (hereinafter, “HRFT”) is an independent human rights organisation having its main office in Ankara and five representative offices in Istanbul, Izmir, Diyarbakir, Cizre and Van. HRFT mainly provides rehabilitation and treatment for torture survivors since 1990, and also elaborates medical documentation whenever requested. HRFT also regularly monitors human rights violations in Turkey and publishes daily and annual human rights reports, as well as reports devoted to special violations and incidents.³

Case Summary

5. The CoM examines the *Kasa* and the *Erdoğan and others* group of cases under the enhanced procedure due to the complex nature of the matters it raises. Both groups of cases mainly concern the unjustified and excessive force used by members of the security forces (police and military) during military operations and lack of effective investigation or serious shortcomings in the criminal proceedings brought against members of the security forces.⁴
6. The co-signing organisations have already provided the CoM with updated information made available under Rule 9(2) of the Rules of CoM for the supervision of the execution of judgement and of the terms of friendly settlement.⁵ With this communication, the co-signing organisations intend to address the developments following previous submissions, taking into account the Government’s latest action plan dated 21 July 2022.

Executive Summary

7. The first section of this communication addresses the individual measures and provides the CoM with information regarding the execution process of *Cülaz and others v. Turkey* (Application No. 7524/06, 15 April 2014) and *Tekçi and others v. Turkey* (Application No. 13660/05, 10 December 2013) now examined under the *Erdoğan and Others* group of cases. Following a Constitutional Court judgment, the Nezir Tekçi case will be subject to retrial before domestic courts and requires special attention since it risks being time barred in 2025.
8. The second section of this communication provides the CoM updated information on the issues raised by the ECtHR in the *Kasa* and *Erdoğan and others* group of cases, and the adequacy of the steps made or envisaged by the Turkish authorities for the effective implementation of these judgements. The section also includes recent cases of right to life violations that fall under the scope of this group and gives information on the ongoing trials. The updated information provided regarding general measures do not include the concurrent issues already being examined under the *Ataman* group of cases and the *Batı and Others* groups of cases.
9. Despite ongoing recommendations by the CoM, no legislative amendments have been introduced and the breadth of the power to use force remains broad. Armoured vehicles continue to pose risk to life in urban areas. The use of weapons by security forces in the events of non-compliance with stop warnings and in the course of chase continues to cause right to life violations. Measures taken to prevent or minimise risk to life during operations in confined areas or in the vicinity of shooting exercise areas remain insufficient to protect right to life. The ongoing risk to life and

³ For further information please visit, <https://en.tihv.org.tr/en/>.

⁴ Concurrent issues related to the use of excessive force to disperse peaceful demonstrations are examined under the *Ataman* group of cases (Application No: [74552/01](#)) and the issues related to the general measures to ensure effective investigations into allegations concerning the unlawful use of force by law enforcement officers are examined under the *Batı and Others* groups of cases (Application No. [33097/96](#)).

⁵ See <https://hudoc.exec.coe.int/eng?i=004-37076>.

violations further indicate that the failure to prevent excessive and unlawful use of force stems from the impunity of security forces rather than insufficient training.

II. INDIVIDUAL MEASURES

10. The Government has reiterated the information provided in its previous action plan concerning individual cases examined under this group. While no new information is available concerning most cases, the co-signing organisations would like to highlight some patterns, which are also visible in the Government's submission. As evident in the information provided, the majority of cases are either time barred⁶, have resulted in acquittals and upheld by the Court of Cassation⁷, or remain pending with a permanent search warrant⁸ (*daimi arama kararı*). In practice, the investigations remain dormant after permanent search warrants are issued until the prescription periods expire. Investigating and prosecuting authorities do not take the necessary steps to remedy the shortcomings identified by the ECtHR and effectively wait until the cases become time barred and further action becomes impossible. It is therefore through the inaction of the state authorities that the cases become time barred, which effectively contributes to the virtual impunity of perpetrators.
11. As previously reported in our Rule 9.2 submission dated 28 July 2021, the trial concerning the enforced disappearance of six people in the Görümlü village in Şırnak, which was examined under *Cülaz and others v. Turkey* (Application No. 7524/06, 15 April 2014), ended with acquittals in 2018. The trial was not conducted in a manner complying with the ECtHR's violation judgement which identified shortcomings in the investigation stage.⁹
12. In the case concerning the enforced disappearance of Nezir Tekçi in the Yüksekova district, examined under *Tekçi and others v. Turkey* (Application No. 13660/05, 10 December 2013), the ECtHR had not only identified shortcomings in the investigation stage, but had also ruled that the circumstances surrounding the disappearance of Nezir Tekçi engaged state responsibility and that Turkey had violated Article 2 under its substantial limb. Nevertheless, all defendants in the trial were acquitted in 2015 on the grounds that they could not be proven guilty as charged.¹⁰ The appeal against this decision was rejected by the Court of Cassation. The Constitutional Court recently delivered a judgement pointing out the deficiencies in the proceedings, such as not obtaining the statement of implicated individuals and witnesses, and found a violation of the procedural limb of Article 2 (*Application of Asya Göres and Others*, no. 2018/15851). The Constitutional Court's judgement also requires the retrial of the case. The first hearing will be held on 17 July 2023. The co-signing organisations emphasise that the case will be time barred in 2025, hence requires an effective and diligent yet speedy assessment during retrial at the first instance level.

⁶ See *Erdoğan and Others v. Turkey* (no. 19807/92), *Şahismail Can and Others v. Turkey* (no. 23029/04), *İhsan Bilgin v. Turkey* (no. 40073/98), *Benzer and Others v. Turkey* (no. 23502/06), *Oruk v. Turkey* (no. 33647/04), *Ülüfer v. Turkey* (no. 23038/07), *Aydan v. Turkey* (no. 16281/10)

⁷ See *Cülaz and others v. Turkey* (nos. 7524/06 and 39046/10), *Atıman v. Turkey* (no. 62279/09),

⁸ See *Behçet Söğüt and Others v. Turkey* (no. 22931/09), *Abik v. Turkey* (no. 34783/07), *Güler and Tekdal v. Turkey* (no. 65815/10), *Gülbahar Özer and Others v. Turkey* (no. 44125/06)

⁹ See our previous Rule 9.2 submission (DH-DD(2021)783), paras. 9-18. Also see <https://www.failibelli.org/dava/mete-sayar-gorumlu-davasi/>.

¹⁰ For more information, see <https://www.failibelli.org/dava/nezir-tekci-davasi/>.

III. GENERAL MEASURES

13. In its latest decision on the *Erdoğan and others* and the *Kasa* groups, the CoM had asked the Government to “provide an action plan with concrete proposals for measures to address the Court’s findings in this group of cases”. The Government’s latest action plan dated 21 July 2022 repeats the previous action plan dated 30 June 2021, hence falling short of providing concrete proposals and measures to remedy the shortcomings identified by the CoM. The cited legislation and sample court decisions in the action plan lack up-to-date information which reflect ongoing issues and hence do not comply with the CoM’s interim resolution.

Regarding legislative framework with respect to the use of force including weapons

14. The unwarranted use of firearms continues to be a key problem. Although the CoM in its latest interim decision “urged the authorities to review all relevant legislation, including Article 16 of the Powers and Duties of the Police Act”, no legislative amendments have been introduced since the latest examination of this group by the CoM. As previously reported in our Rule 9.2. submission, the breadth of power under Article 16 of the Law on the Powers and Duties of the Police has increased the use of lethal force. This provision has also been reflected in the Law on the Organization, Duties and Powers of the Gendarmerie. Furthermore, the fact that the same breadth of power to use force granted to the police is awarded to neighbourhood watchmen continues to raise concerns about the arbitrary use of force.¹¹
15. The administrative authorisation requirement in excessive use of force cases not only remains an obstacle for effective investigations and prosecutions, it also significantly prolongs the proceedings. For instance, in the case of Helin Hasret Şen, who was shot to death by an armoured vehicle in Diyarbakır’s Sur district while going to the bakery with her mother in 2015, the proceedings came to a halt on 23 November 2020 and only resumed on 1 February 2022 after the Diyarbakır Governorship granted the authorisation. The proceedings, which had started more than four years after the killing of Şen, were further delayed by more than a year due to the authorisation requirement.¹²

Regarding measures taken to prevent excessive use of force and to reduce any risk to life to the extent possible concerning police or military operations

16. The co-signing organisations maintain that risk to life during police or military operations continues to be an entrenched problem and that implicated law enforcement officers are granted virtual impunity. Investigations concerning violations of the right to life lack the necessary due diligence and remain ineffective, repeating the patterns of deficiencies identified in the ECtHR judgments concerning right to life violations in the 1990s.
17. In previous Rule 9.2 submissions in 2021, the co-signing organisations had highlighted the unjustified and excessive use of force by the security forces during the curfews in 2015-2016 in south-eastern Turkey.¹³ The serious human rights violations which occurred at the time were

¹¹ See Article 9 of the Law on Neighbourhood Watchmen (no. 7245) with a reference to Article 16 of the Law on the Powers and Duties of the Police.

¹² For more information, see <https://www.failibelli.org/dava/helin-hasret-sen-davasi>.

¹³ See Rule 9.2 submissions for the 1398th meeting (March 2021) (DH) and the 1411th meeting (September 2021) (DH).

documented and noted with concern by domestic as well as international human rights actors.¹⁴ Nevertheless, security forces on duty during the operations have not been prosecuted. The case concerning the killing of Helin Hasret Şen is the only case pending.

18. During the curfews imposed in 2015-2016, individual applications were submitted to the ECtHR where the applicants highlighted in particular that no measures were taken during the operations to avoid or minimise the loss of civilian life and no medical assistance was provided to the wounded, including the applicants' close relatives. The applicants also argued that the investigations initiated were conducted in a manner which did not comply with the standards set forth by the Convention and the jurisprudence of the ECtHR, and were concluded with a decision of non-prosecution, later upheld by a magistrate's court, which led to the virtual impunity of law enforcement officers involved in the operations. The applicants argued that the Constitutional Court no longer provided an effective remedy. While first granting interim measures in some applications, the ECtHR at the later stage declared these applications inadmissible for non-exhaustion of domestic remedies.¹⁵
19. In a group of cases¹⁶ concerning the rights violations during these military operations, the Constitutional Court found no violation of the right to life under its substantial or procedural limbs.¹⁷ In reaching such a conclusion, the Constitutional Court took all evidence and arguments set forth by the Government at face value and did not contest their reliability. Despite clear deficiencies in the investigation process, also noted by the Human Rights Commissioner in his third-party intervention¹⁸, the Constitutional Court justified the procedural shortcomings on the basis of the ongoing conflict. Significant shortcomings such as the absence of the prosecutor while collecting evidence and conducting autopsies, the removal of clothes from the bodies of the deceased, and the removal of the rubbles with heavy construction machinery potentially destroying important evidence were justified due to security concerns and their impact on the investigation was not discussed. Regarding the fact that the prosecutor did not obtain the statements of implicated security forces, the Constitutional Court considered that this was not an "automatic requirement" for effective investigations.¹⁹
20. The applicants' submission concerning the violations of the right to life due to lack of medical assistance, among other submissions, was also declared inadmissible on the grounds that the application concerned combatants injured during the conflict. Despite serious risk to life, high number of civilian casualties and damage to residential areas during the operations, as well as ineffective investigations into the violations, the Constitutional Court's judgement gave a stamp of approval to the actions of security forces and the inaction of judicial authorities.

¹⁴ See, among others, Council of Europe Commissioner for Human Rights, Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey, CommDH(2016)39, 2 December 2016; Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in South-East Turkey July 2015 to December 2016, February 2017; Council of Europe Commissioner for Human Rights, Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)13, 25 April 2017.

¹⁵ See *Elçi v. Turkey* (dec.), no. 63129/15, 29 January 2019; *Ahmet Tunç and Others v. Turkey* (dec.), nos. 4133/16 and 31542/16, 29 January 2019; *Aydın and others v. Turkey* (dec.), nos. 63130/15 and others, 12 March 2019.

¹⁶ Please note that this decision joins the applications concerning the death of Mehmet Tunç, Asya Yüksel, Yasemin Çıkmaz, Serdar Özbek, B.K., and M.B. and remains to be the only decision rendered by the Constitutional Court concerning the right to life violations during the curfews. Other applications related to violations from the same period are currently pending before the Constitutional Court. See *Application of Gazal Kolanç and Others*, no. 2017/37897.

¹⁷ *Application of Gazal Kolanç and Others*, no. 2017/37897.

¹⁸ See Council of Europe Commissioner for Human Rights, Third party intervention by the Council of Europe Commissioner for Human Rights, CommDH(2017)13, 25 April 2017, para. 25-33.

¹⁹ *Application of Gazal Kolanç and Others*, no. 2017/37897, paras. 373-383.

21. Armoured vehicles operating in urban zones continue to pose risk to life. In 2021, 4 people (including 3 children) died after being hit by an armoured vehicle. In 2022, at least 3 people died and 2 people (including one child) were injured after being hit by armoured vehicles or vehicles operated by law enforcement officers.²⁰ Although parliamentary questions have been raised, the relevant ministers failed to provide substantive answers.²¹
22. The presence of armoured vehicles in urban traffic as an extension of police and military operations in urban areas is disregarded in the legislation and in judicial practice. The same legislation applicable to ordinary road accidents (Road Traffic Law, “*Karayolları Trafik Kanunu*”) also applies to fatal collisions caused by armoured vehicles, thereby normalising the presence of such heavy vehicles in urban areas and reducing grave right to life violations caused by security forces to mere road accidents. Moreover, the judicial proceedings concerning civilian deaths caused by armoured vehicles continue to be conducted in a manner that reinforces impunity. Few, if any, armoured vehicle drivers are held criminally liable.
23. For instance, in the case of Efe Tektekin, who died after being hit by an armoured vehicle in Diyarbakır, the vehicle’s driver was acquitted on 29 March 2022 despite the findings in the Council of Forensic Medicine report submitting that the driver had failed to show the required attention and the Prosecutor’s opinion that the driver must be found guilty of murder by negligence.²² An appeal against this decision is pending.
24. The case concerning Mihraç Miroğlu who died after being hit by an armoured vehicle in Şırnak on 3 September 2021 is also pending. Most recently, the report of the Council of Forensic Medicine argued that Mihraç Miroğlu, who was seven years old at the time, was primarily responsible for his death and that the driver of the armoured vehicle had no liability.²³
25. In the case of Cihan Can, the accident report prepared by the traffic police on site, an expert report and a report from the traffic division of the Council of Forensic Medicine all indicated that the armoured vehicle driver bore primary responsibility. Nevertheless, an additional report was called for by the court. The report from the extended expert council from the Council of Forensic Medicine also confirmed previous findings.²⁴ The case remains pending before the first instance court.
26. In addition, the co-signing organisations would like to indicate that village guards continue to be involved in the unlawful use of force. These guards were introduced as part of the policy for a “total fight against terrorism” in 1985 and were village residents across southern Turkey who

²⁰ See statement by co-signing organisations HRFT and IHD, “Verilerle 2022 Yılında Türkiye’de İnsan Hakları İhlalleri”, 10 December 2021, <https://tihv.org.tr/wp-content/uploads/2022/12/10_Aralik_2022_IHD_TIHV_Veriler.pdf>.

²¹ For instance, see the Ministry of Interior’s answer to Parliamentary Question no. 7/58495: “Law enforcement officers perform their duties adhering to the authority given to them by the laws for the purpose of ensuring and maintaining the public order and security, and in compliance with the principle of the rule of law, and fulfil the necessary actions within the knowledge and instructions of the judicial authorities. Legal and administrative action is immediately initiated against personnel who are alleged to have violated the legislation, orders and instructions.” Access via <https://www.tbmm.gov.tr/d27/7/7-58495sgc.pdf>.

²² For an overview of the case of Efe Tektekin on *Faili Belli (Perpetrator Not Unknown)*, see <https://www.failibelli.org/dava/efe-tektekin-davasi/>.

²³ “Zırhlı aracın çarptığı 7 yaşındaki Miraç ‘asli kusurlu’ymuş”, Jinha, 13 January 2023, <<https://jinhaagency1.com/tr/hukuk/ea-37586?page=1>>.

²⁴ For an overview of the case of Cihan Can on *Faili Belli (Perpetrator Not Unknown)*, see <https://www.failibelli.org/dava/cihan-can-davasi/>.

were armed by the state.²⁵ Over the years, many were implicated in human rights violations²⁶ and some were put on trial for their involvement in crimes committed in the 1990s.²⁷ According to data collected by the IHD, 2 people were killed and 1 person was injured as a result of use of force by village guards in 2022.

Regarding measures taken to prevent excessive use of weapons in the events of non-compliance with stop warnings and in the course of chase

27. Despite the Government's claims, the measures mentioned in the action plan fail to prevent excessive use of weapons in the event of non-compliance with stop warnings and in the course of chase. This is evident in the data collected by the co-signing organisations. As of 8 December 2022, 19 people (including two children) died and 25 people (including 12 refugees) were injured as a result of use of force for non-compliance with stop warnings or in the course of chase in 2022.²⁸ 9 people (including one child and 4 foreigners/refugees) had died and 23 people (including 2 children and 13 foreigners/refugees) had been injured in 2021 as a result of random firing by law enforcement officers or for alleged non-compliance with stop warnings.²⁹
28. In July 2022, a van carrying refugees was shot at for allegedly not complying with a stop warning in Van. A child died in the incident and several refugees were injured.³⁰ In Mardin, Adem Kara died after being shot for allegedly not complying with a stop warning and running away from law enforcement officers. The Mardin Governorship stated that the police officer had tripped over the stone pavement while chasing Kara and the gun went off.³¹ According to IHD's Mardin branch, Kara was shot at after being apprehended by the police.³²
29. In addition, Hafiza Merkezi has been conducting trial monitoring for cases concerning right to life violations in the events of non-compliance with stop warnings and in the course of chase. The data collected through trial monitoring reveals that the culture of impunity prevails and that perpetrators either receive no punishment or get reduced sentences.³³ Whether the use of force was absolutely necessary is not taken into account during the proceedings. Several examples can be provided.
30. 20-year-old Ali El Hemdan was shot to death in Adana near a police checkpoint during the Covid-19 lockdowns in force in April 2020. In December 2021, the police officer who shot

²⁵ Also see previous Rule 9.2 submission (DH-DD(2021)146, para. 59.

²⁶ According to the data collected by the IHD concerning the human rights violations committed by village guards between 1990-2009, the village guards were involved in the burning of villages in 38 incidents, 14 forced evictions in villages. 562 people were tortured or subjected to ill treatment and there were 294 armed attacks committed by village guards. According to data provided by the Ministry of Interior, 5139 guards committed crimes between 1985-2006 and 853 guards were arrested as a result. This number included 964 crimes against property, 1341 crimes against persons, 443 incidents of smuggling, and the rest concerned crimes related to counter terrorism. 264 village guards were convicted as a result. Please see report prepared by the IHD, <https://www.ihd.org.tr/images/pdf/ocak_1990_mart_2009_koy_koruculari_ozel_raporu.pdf>.

²⁷ For instance, see the Main JİTEM trial on *Faili Belli (Perpetrator Not Unknown)* where several village guards were tried, <<https://www.failibelli.org/dava/musa-anter-ve-jitem-ana-davasi-2/>>.

²⁸ <https://tihv.org.tr/wp-content/uploads/2022/12/10_Aralik_2022_IHD_TIHV_Veriler.pdf>.

²⁹ HRFT's 2021 Report, p. 32-35, <<https://tihv.org.tr/wp-content/uploads/2022/11/TiH-RAPOR-2021.pdf>>.

³⁰ "One refugee killed, 12 others injured in gendarmerie shooting in eastern Van", Duvar English, 4 July 2022, <<https://www.duvarenglish.com/one-refugee-killed-12-others-injured-in-gendarmerie-shooting-in-turkeys-eastern-van-news-60995>>.

³¹ Press statement by Governorship of Mardin, 3 September 2022, <<http://www.mardin.gov.tr/03092022-basin-aciklamasi>>.

³² "İHD'den Adem Kara raporu: 'Yargısız infaz'", Bianet, 9 September 2022, <<https://m.bianet.org/bianet/insan-haklari/266941-ihd-den-adem-kara-raporu-yargisiz-infaz>>.

³³ For example, see the case of Barış Kerem and Oğuzhan Erkul, which was previously reported in our Rule 9.2 submission (DH-DD(2021)783) in 2021. The case became final after the Court of Appeal upheld the decision.

Hemdan was convicted with intentional murder and sentenced to life imprisonment, but his sentence was reduced to 25 years of imprisonment. The police officer's past behaviour, as well as his actions after the incident, and the effect of the sentence on his future were criteria taken into account in reducing the sentence. The presiding judge submitted a dissenting opinion against the reduction of the sentence.³⁴

31. In the case of Recep Hantaş, who was shot to death for allegedly not complying with a stop warning, the prosecutor demanded the police officer be punished for killing with eventual intent. The reports prepared by the relevant department of the Council of Forensic Medicine and the National Criminal Bureau which examined the CCTV recordings also indicated that Hantaş was shot to death by the police officers. During the trial, Hantaş's friend, who was also injured during the incident, expressed that he was threatened by police officers and hence his initial statement taken by the police was false. Nevertheless, the police officer was acquitted on 21 June 2022 on the grounds that the available evidence did not establish the defendant's guilt.³⁵ An appeal against this decision is pending before the Diyarbakır Regional Court of Appeal (1st Criminal Chamber, 2022/1734 E.).
32. 20-year-old Erhan Görür was shot to death in Van near the Turkey-Iran border for allegedly not complying with a stop warning. Görür and his friend, who was injured during the incident, were smuggling cigarettes across the border. One gendarmerie officer was charged with negligent killing and justified firing the shots arguing that the area where the incident took place was "supporting terrorism" (*teröre müzahir*). Görür's friend testified that they did not hear any warnings prior to the shots. The court overruled a request to investigate whether any terror incidents occurred in the area on the grounds that the area was a military zone. On 18 April 2023, the Van 5th Assize Court sentenced the defendant to 6 years 8 months in prison for killing with conscious negligence.³⁶
33. In the case of Kemal Kurkut, the police officer who had fired the shot was acquitted for lack of evidence in 2020 but the decision was overturned by the Regional Court of Appeal on the basis of its reasoning. On 17 January 2023, the Diyarbakır 7th Assize Court held, in line with the appeal decision, that there were no grounds for punishment as the killing of Kurkut remained within the scope of the authorised use of force for law enforcement officers.³⁷ Moreover, the disciplinary sanction that the police officer received was lifted by the Regional Court of Appeal on the grounds that the officer's actions were within his authority to use force to prevent Kurkut from harming himself or others and that there was no evidence to indicate that he did not show the required attention. The fact that Kurkut could have been stopped without resorting to any lethal force was not taken into account. While the death of Kurkut went unpunished, journalist Abdurrahman Gök who photographed the shooting of Kurkut was subjected to judicial harassment and sentenced to 1 year 6 months and 22 days in prison for "terrorist organisation

³⁴ This case was previously reported to the CoM in our Rule 9.2 submission DH-DD(2021)146 (see para. 47). For an overview of the case of Ali El Hemdan on *Faili Belli (Perpetrator Not Unknown)*, also see <https://www.failibelli.org/dava/ali-el-hemdan-davasi/>.

³⁵ For an overview of the case of Recep Hantaş on *Faili Belli (Perpetrator Not Unknown)*, see <https://www.failibelli.org/dava/recep-hantas-davasi/>.

³⁶ For an overview of the case of Erhan Görür on *Faili Belli (Perpetrator Not Unknown)*, see <https://www.failibelli.org/dava/erhan-gorur-davasi/#dava-ozeti>.

³⁷ For an overview of the case of Kemal Kurkut on *Faili Belli (Perpetrator Not Unknown)*, see <https://www.failibelli.org/dava/kemal-kurkut-davasi/#dava-ozeti>.

propaganda”. Gök’s appeal against this judgement was rejected by the Regional Court of Appeal.³⁸

34. In December 2022, in the case of Çetin Kaya who was shot in Istanbul after being apprehended in handcuffs for allegedly not complying with a stop warning, the police officer was sentenced to life imprisonment for intentional killing, but his sentence was reduced to 25 years for “good conduct”³⁹- similar to the reduction of the defendant’s sentence in the Ali El-Hemdan case.
35. These examples from judicial proceedings not only give an overview of the type of defences used by security forces to justify excessive and unlawful use of force but also demonstrate the judiciary’s tendency towards lenient sentences and acquittals, leading to the impunity of security forces.

Regarding measures taken to prevent excessive use of force and to reduce any risk to life to the extent possible in operations in the confined areas

36. In its latest action plan, the Government reiterated that “security forces have improved their practice in these operations”, that they receive in-service training, use non-lethal weapons and ensure the presence of medical services during operations. Nevertheless, operations in confined areas continue to pose a risk to life.
37. On 20 June 2022, video footage showed special forces randomly opening fire into the air with heavy guns in the Başkale district of Van.⁴⁰ The press statement by the Van Governorship stated that the video footage was “reflected differently” on social media and that the gendarmerie forces arrived at the hamlet to take a suspect into custody and fired shots in the air to disperse the crowd who threw rocks at their vehicles.⁴¹ No assessment was made as to whether such use of firearms was necessary or proportionate in this case, nor is there any known investigation initiated into the actions of the implicated security forces.

Regarding measures taken to protect the persons who are living in the vicinity of the military shooting exercise areas

38. The injuries and deaths caused by unexploded equipment and ordnance especially in the south-east of Turkey continue to be a problem, mainly impacting women, children and shepherds in the region. In its latest interim decision concerning this group, the CoM invited the authorities to provide information on the explosions of military equipment in the vicinity of military zones, including information on investigations into these incidents and measures taken to prevent similar incidents.
39. The action plan submitted by the Government suggests that 3 people died and 1 person was injured in the last five years due to incidents related to the explosion of mines or ordnance. These numbers do not match the data collected by the co-signing organisations or incidents reported in

³⁸ Appeals court upholds journalist's conviction for photographing student's killing by police, Bianet, 12 January 2023, <<https://m.bianet.org/english/law/272725-appeals-court-upholds-journalist-s-conviction-for-photographing-student-s-killing-by-p-olice>>.

³⁹ “Police officer receives 25-year prison sentence for killing film worker”, Bianet, 29 December 2022, <<https://m.bianet.org/english/law/272108-police-officer-receives-25-year-prison-sentence-for-killing-film-worker>>.

⁴⁰ “Citizen detained under excessive force and fire”, Bianet, 21 June 2022, <<https://bianet.org/english/politics/263605-citizen-detained-under-excessive-force-and-fire>>.

⁴¹ Press statement by the Governorship of Van, 21 June 2022, <<http://www.van.gov.tr/van-valiligi-basin-aciklamasi8>>.

the press. In 2022 alone, at least 1 child has died and 7 people (including 3 children) have been injured alone due to unexploded equipment, ordnance or mines according to data collected by HRFT and IHD. As documented by HRFT, 6 people (including 2 children) have died and 5 people (including 1 child) have been injured in 2021 alone.⁴²

40. On 24 March 2022, 16-year-old Muharrem Aksem was found dead in an area in Urfa used for shooting practice by special police forces.⁴³ The Urfa branch of IHD reported that many ammunition pieces were found in the area, no warning was made prior to the practice, no preventative measures were taken to mark the area or to prevent people from accessing it, thereby violating the Shooting Regulation in force. The investigation into the incident is pending.

Unacknowledged detention in the absence of sufficient safeguards and enforced disappearances

41. While the Government has argued that “measures aimed at preventing similar violations under this heading have been taken within the framework of the *Aksoy* (21987/93) group of cases. The Committee of Ministers decided to close this group of cases in March 2019”, it must be noted that the closure of the *Aksoy* group does not prejudice the CoM’s supervision of “general measures related to the accountability of members of the security forces” and “the remaining issues concerning the overall conduct of police and gendarmerie operations” under groups pending implementation.⁴⁴
42. In the Rule 9.2 submission under the group *Batu and others*, the co-signing organisations had highlighted how procedural safeguards in custody were undermined and that unacknowledged/unofficial detentions remained an issue.⁴⁵ The co-signing organisations would like to reiterate this point as a pending issue which is also under the supervision of the CoM under the present group.

Trainings offered to law enforcement officers and security forces

43. While the Government notes that security forces receive pre- and in-service training to reduce risk to life in operations, the ongoing issues related to right to life violations caused by the use of force indicate that the training offered to security forces is highly insufficient. The content offered in these training remains unclear and civil society organisations, such as the co-signing organisations, which report cases and analyse data from the field are not invited to take part in the development of any training material. Moreover, the number of new cases implicating defendants who have participated in such training testifies to the fact that training alone cannot resolve the ongoing issues. The co-signing organisations maintain that the failure to prevent excessive use of force results from the impunity of security forces, who defend their actions on counter-terrorism grounds and receive reduced sentences for “good conduct”.⁴⁶

⁴² See HRFT’s 2021 report, p. 36, <<https://tihv.org.tr/wp-content/uploads/2022/11/TiH-RAPOR-2021.pdf>>.

⁴³ “Found dead in a shooting range of police, Aksem had 12 metal pieces in his body”, Bianet, 29 March 2022, <<https://m.bianet.org/english/human-rights/259746-found-dead-in-a-shooting-range-of-police-aksem-had-12-metal-pieces-in-his-body>>.

⁴⁴ See Resolution CM/ResDH(2019)51.

⁴⁵ See Rule 9.2 submission DH-DD(2022)829, para. 20-21.

⁴⁶ See also Rule 9.2 submissions for the 1411th meeting (September 2021) (DH).

CONCLUSION AND RECOMMENDATIONS

The co-signing organisations maintain that the unjustified and excessive use of force is a key problem in Turkey. The broad powers to use force combined with the administrative authorisation requirement and the judiciary's reluctance to prosecute crimes committed by security forces leads to impunity, which remains a long-standing and entrenched problem.

Despite clear recommendations from the CoM, no legislative amendment has been introduced to limit the breadth of powers awarded to security forces. Courts, including the Constitutional Court at the highest level, fail to assess whether the use of force was absolutely necessary and few, if any, defendants are found criminally liable, hence receiving a judicial stamp of approval to the actions of the security forces.

For the reasons above and addressed in the Rule 9(2) Communications dated 25 January 2021 and 28 July 2021, the co-signing organisations respectfully recommend that the CoM continues to examine the execution of the judgments in the *Kasa* group of cases and the *Erdoğan and others* group of cases under enhanced supervision and schedule the *Kasa* and the *Erdoğan and others* groups of cases on the agenda of the upcoming CM-DH meeting in September 2023.

Noting that cases under these groups have been pending implementation for nearly twenty years, the seriousness of the violations concerned in these groups, and the ongoing recurrence of similar cases, the co-signing organisations also kindly recommend the CoM to consider instructing the Secretariat to prepare a draft interim resolution in this case and to call on Turkey to:

- (i) conduct effective, diligent and speedy proceedings at the case concerning the death of Nezir Tekçi, considering that the case will be time barred in 2025;
- (ii) remove the legislative obstacles in relation to the right to retrial in case of acquittals and amend Article 314 of the Code of Criminal Procedures concerning the right to a retrial in order to provide for a right to a retrial based on a violation judgement of the ECtHR, allowing for retrial against the interests of the accused or the convicted;
- (iii) ensure that the Article 16 of the Law on the Powers and Duties of the Police (and the identical provisions under other legislation) is compatible with relevant international standards that provide that lethal force be used only as a last resort when absolutely necessary to protect life;
- (iv) repeal the power to use firearms under the Law on the Neighbourhood Watchmen;
- (v) repeal the establishment of the “Reinforcement Ready Forces Directorate” in Ankara and Istanbul, and the amendment to the Regulation of Moveable Properties of the Turkish Armed Forces, the Turkish National Police Department, and the National Intelligence Agency, which restricts freedom of expression and peaceful assembly⁴⁷;

⁴⁷ See previous Rule 9(2) submission DH-DD(2021)146, para. 37.

(vi) ensure that in investigations with respect to the cases of unjustified and excessive force used by members of the of security forces (police and military) the general principles set forth by the ECtHR's case-law are observed by the authorities;

(vii) abolish the amendments to the Provincial Administration Law by Law No. 6722 adopted on 23 June 2016 that requires to seek authorization from the relevant ministries before launching investigations into the acts of public officials carried out during counter-terrorism operations;

(viii) collect and distribute data on the investigations and prosecutions in particular on the use of stop and search powers and resort to use of force by the law enforcement officers and the neighbourhood watchmen transparently;

(ix) in light of the World Medical Association Statement on Riot Control Agents adopted on 14-17 October 2015, due to significant difficulties and risks to health and life associated with the use of chemical riot control agents, such as pepper spray and teargas, recommend to refrain from using such chemical riot control agents in any circumstances, absolutely prohibit their use to oppress non-violent peaceful demonstrations, strictly monitor when security forces use such chemical agents and distribute transparent data on this matter;

(x) make pre- and in-service training material provided to law enforcement officers available to the public, develop relevant training material in consultation with non-governmental organisations, and conduct trainings with the participation of non-governmental organisations;

(xi) abolish the statute of limitations not only for torture, but also for other crimes committed by state agents, notably extrajudicial killings and enforced disappearances.

Finally, Turkey should sign the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the UN on 20 December 2006 and entered into force on 23 December 2010.