

## MONITORING REPORT

The execution of judgments regarding  
Enforced Disappearance Cases  
of the  
***AKSOY GROUP***  
(and  
*Bati and Others,*  
*Erdoğan and Others,*  
*and Kasa Groups*)

15 January 2016

**Joint report and recommendations of the Truth Justice Memory Center (*Hafıza Merkezi*) and the European Center for Constitutional and Human Rights (ECCHR) regarding the execution of judgments of the European Court of Human Rights on enforced disappearances by members of the security forces in Turkey**

(Under Rule 9 (2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements)

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## Introduction

1. This report sets out the joint recommendations of the Truth Justice Memory Center (hereinafter *Hafıza Merkezi*) and the European Center for Constitutional and Human Rights (hereinafter *ECCHR*) regarding the execution of the judgments of the European Court of Human Rights (hereinafter ECtHR) in enforced disappearances cases listed at Annex 1, concluded against Turkey.<sup>1</sup>
2. The Truth Justice Memory Center (*Hafıza Merkezi*) is an independent human rights organization based in Istanbul, Turkey, that aims to uncover and document the truth concerning gross violations of human rights that have taken place in the past, strengthen collective memory about these violations, and support survivors in their pursuit of justice.
3. The European Center for Constitutional and Human Rights (*ECCHR*) is an independent, non-profit legal organization based in Berlin, Germany that enforces human rights by holding state and non-state actors responsible for egregious abuses through innovative strategic litigation. *ECCHR* focuses on cases that have the greatest likelihood of creating legal precedents in order to advance human rights around the world.
4. The judgments mentioned in this report concern a specific grave human rights violation, namely the enforced disappearance of persons, and particularly reveal the failure of Turkey to effectively investigate this crime. The violations took place generally within the framework of anti-terrorist operations carried out by security forces of Turkey in the south-east of the country. Under the European Convention of Human Rights, enforced disappearances include particularly violations of Articles 2, 3, 5 and 13 and in specific circumstances of further Articles.
5. This submission will provide the Committee of Ministers (hereinafter CM) with information current as of December 2015 regarding general measures as adopted by the CM. In general, *Hafıza Merkezi* and the *ECCHR* assert that regarding the cases examined and mentioned in this report, Turkey has not taken any or only insufficient steps necessary to comply with ECtHR judgments, apart from payment of due compensation, with regards to enforced disappearances in particular and to grave human rights violations of state agents in general.
6. *Hafıza Merkezi* and the *ECCHR* are submitting these recommendations to the CM in accordance with Rule 9 (2) of the CM's Rules, for considerations of the CM in its upcoming meetings.

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<sup>1</sup> See Annex 1.

## A. Background and Methodology of the Report

7. During the armed conflict which ensued in 1984 between the Kurdistan Workers' Party (*Partiya Karkerên Kurdistan – PKK*) and the Turkish Army, reaching a peak in the early 1990s, security forces committed a variety of human rights violations. These included the destruction of property, forced displacement, torture and ill-treatment, extra-judicial, arbitrary and summary killings as well as enforced disappearances against civilians as the result of security strategies determined by the National Security Council (*Milli Güvenlik Kurulu - MGK*). Turkey witnessed a few enforced disappearances committed by security forces before and after the 1980 Military Coup against dissidents, but during the 1990s enforced disappearances became a pattern of human rights violations against Kurdish civilians in the context of the armed conflict.
8. In the last decade, Turkey has made some legal and institutional changes regarding fundamental rights and freedoms within the framework of the accession process to the European Union (EU). Nevertheless, legal, administrative, and institutional arrangements which have also been adopted with an aim to give effect to the judgment of the ECtHR, have served merely as a “band-aid” on prevailing impunity problems, rather than having a real impact on the ongoing investigative, prosecutorial and judicial practice. Given the ingrained practice and attitudes of authorities which ensure the impunity of state agents responsible for human rights violations, the mere formal adoption of legislative measures proved to be inadequate and inefficient, to a point where there is a huge accountability gap in parts due to this divergence between „newly introduced“ legislation and its actual application. The lack of political will to hold state agents accountable, especially within the context of politically sensitive conflicts such as the one between security forces of Turkey and the PKK is the other significant reason of impunity.
9. Therefore, problems arising directly from the lack of appropriate legal measures, the attitude and practice of actors within the criminal justice system, and the lack of a state tradition to comply with the rule of law are among the main reasons of the problem of non-compliance with the ECtHR judgments in Turkey. Turkey recognised the right to individual application to the ECtHR in 1987, the same year the emergency rule came into force, and a considerable number of the relatives of disappeared persons applied to the ECtHR by claiming - in addition to Article 3, 5 and 13 - the violation of Article 2 of the Convention. In the majority of judgments concerning enforced disappearances, the ECtHR found Turkey in violation of both the substantive and procedural aspects of Article 2, and in violation of Article 3 and Article 13.
10. Undoubtedly, the entrenched causes of impunity have aggravated the execution of the ECtHR judgments as well as the supervision of the execution process by the CM. Furthermore, the legal system of Turkey lacks comprehensible data concerning proceedings into alleged human rights violations committed by security forces.

11. In this regard, notifications by applicants, their representatives and NGOs become important in providing an alternative perspective to the CM regarding the relevant law and implementation processes and most importantly to the actual situation of the cases in Turkey. Limited collection of data and the lack of transparency and central research options within the judiciary affect the reporting processes of legal proceedings following the judgments of the ECtHR. Despite all difficulties and obstacles, after the twin-track new procedure for the execution of judgments has come into effect, some NGOs from Turkey have submitted comprehensive monitoring reports to the CM on various issues.<sup>2</sup>
12. Execution processes of the majority of judgments with regard to enforced disappearance cases have been supervised by the CM under the *Aksoy Group* of cases by standard procedure (42 out of 175 cases). A few more recent cases have been supervised under the *Bati and Others Group* (2 out of 68 cases), *Erdoğan and Others Group* (6 out of 9 cases), and *Kasa Group* (1 out of 7 cases) of cases by enhanced procedure.<sup>3</sup> In 2007 the Secretariat of the Department for the Execution of Judgments recommended the CM to close the issue of effective and adequate investigations regarding *Aksoy Group* of cases, on the ground that the circulars adopted by the authorities of Turkey were deemed satisfying to guarantee efficient and adequate investigations regarding human rights violations committed by security forces of Turkey.<sup>4</sup> The CM decided to close the issue in 2008.<sup>5</sup>
13. These judicial developments and political processes and communications notwithstanding, as of December 2015, the review of legal files of around 300 enforcedly disappeared persons by *Hafıza Merkezi* has revealed that "the investigating prosecutors" offices, in breach of the law, implemented very few or none of the procedures/mechanisms provided in criminal procedures and disregarded the rights of the victims. 69 percent of the investigations still remain ongoing and are protracted, and a large portion of the investigations into the crimes committed in the 1990s by state agents are either barred by the statute of limitations or under such a risk."<sup>6</sup> Despite these facts, the Government of Turkey repeatedly demanded that the CM should transfer the enforced disappearance judgments whose execution processes have been supervised under the other groups by enhanced supervision to the *Aksoy Group*

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<sup>2</sup> See the monitoring reports submitted by the Human Rights Joint Platform (İnsan Hakları Ortak Platformu - İHOP) in the context of the project "Enhancing human rights defenders" capacity in monitoring the implementation of judgments of the European Court of Human Rights in Turkey", available at: <<http://www.aihmiz.org.tr/?q=en/>> (last visited 30.12.2015)

<sup>3</sup> See Appendix 1

<sup>4</sup> CoE doc. CM/Inf/DH(2006)24 rev. 2, available at: <[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH\(2006\)24&Language=lanEnglish&Ver=rev2](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Inf/DH(2006)24&Language=lanEnglish&Ver=rev2)>, (last visited 30.12.2015)

<sup>5</sup> Interim Resolution CM/ResDH(2008) 69, available at: <[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH\(2008\)69&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResDH(2008)69&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383)> (last visited 30.12.2015)

<sup>6</sup> See main findings of the Legal Studies Program at: <<http://hakikatadalethafiza.org/en/how-do-we-work/main-findings-of-the-legal-studies-program/>> (last visited 30.12.2015)

in order to avoid its responsibility to ensure the efficiency and adequacy of investigations regarding these judgments, in its relevant Action Plans.<sup>7</sup>

14. Bearing in mind these obstacles and appreciating the lessons learned from the experiences of both domestic and international NGOs, this report aims to reveal the legal situation following the groundbreaking judgments of the ECtHR regarding enforced disappearances committed systematically by security forces of Turkey in the past against Kurdish civilians in pursuance of the fight against terrorism. Hence, since its foundation in 2011, *Hafıza Merkezi*, *inter alia*, carries out documentation of enforced disappearances that have occurred since 1980, and collects relevant legal data.<sup>8</sup> After comparing the archives of various human rights organisations such as the Human Rights Association (hereinafter İHD) and Human Rights Foundation of Turkey (hereinafter TİHV), Mesopotamia Association of Relatives of the Missing (hereinafter Meya-Der) and Association for Solidarity and Support for Relatives of Disappeared Persons (hereinafter Yakay-Der), *Hafıza Merkezi* has collected the names of more than 1,300 persons allegedly disappeared by state agents between 1980 and 2002 (the year the emergency rule was lifted) mostly in the Kurdish region.<sup>9</sup> Observations on a number of ongoing prosecution processes which have been monitored by *Hafıza Merkezi* are also included. Following confirmation by different sources, as of December 2015, accounts of more than 400 enforcedly disappeared persons have been verified and shared via the public database (the work remains in progress).<sup>10</sup> Information regarding legal proceedings regarding these types of incidents has also been shared in case legal documents where available and detailed information has been given concerning the date and place of the disappearance and suspects of the crime. One of the main purposes of documentation work is to reveal that these crimes were committed in a widespread and systematic manner against a certain group of civilians with the intent of intimidation by state agents within a certain period of time.
15. This report shows that the execution of the ECtHR judgments on enforced disappearances (like other judgments regarding violations of Article 2 and Article 3 of the Convention) against Turkey has never been in accordance with the generally recognized principles under international and European law to end impunity for grave

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<sup>7</sup> See for instance the Action Plan of the Government of Turkey submitted regarding the execution process of *Bozkuş and Others* judgment which has been supervised under *Erdoğan and Others Group*, available at: <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442439&SecMode=1&DocId=2103332&Usage=2>> (last visited 30.12.2015)

<sup>8</sup> For detailed information see: <http://hakikatadalethafiza.org/en/how-do-we-work/> (last accessed 15.09.2015)

<sup>9</sup> Human Rights Association (**İnsan Hakları Derneği – İHD**) was founded in 1986 and since that date volunteers of İHD have engaged in a committed struggle against impunity and state violence, supported victims and carried out a legal struggle against human rights violations of state agents. With the support of İHD, **the Saturday Mothers** gather every Saturday at Galatasaray, Istanbul, holding up the photographs of their enforcedly disappeared loved ones, since 1995. The Human Rights Foundation of Turkey (**Türkiye İnsan Hakları Vakfı – TİHV**) was founded in 1990 and since that date has given support to treatment of torture survivors and has documented human rights violations on a regular and systematic basis.

<sup>10</sup> See the database (in Turkish) available at: <<http://www.zorlakaybetmeler.org/>> (last visited 30.12.2015)

breaches of human rights law.<sup>11</sup> These principles have been gathered and determined in written form by the Committee itself since 2011 under the “Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations”<sup>12</sup> as to how to conduct an “effective investigation” in order to fulfil the state’s obligation to prevent impunity for gross human rights violations. Respectively, the provisions of the guidelines clearly stipulate that the state should take all general measures necessary to prevent impunity for human rights violations.<sup>13</sup> According to legal files accessed by the Legal Studies Program of *Hafıza Merkezi* there are clear breaches of the rules in the guidelines by Turkey, especially with regard to the absolute duty to prosecute under provision V. of the guidelines.

16. Deficiencies in the investigation files give rise to impunity, as witnessed in prosecution processes, such as in the incidents examined by the ECtHR within its *Cülaz and others*, *Gasyak and others* and *Nezir Tekçi* judgments. All of these cases ended with decisions of acquittal as a result of the knock-on effects of ineffective investigations and negligence of the judiciary during the prosecution process. The lack of accountability of state agents for their serious breaches of human rights encourages the repetition of these crimes - at least in different forms - and undermines public trust in the justice system. In order to put an end to the impunity of state agents for their grave human rights violations, to cease the suffering of victims because of these breaches, and to restore the rule of law, the conduct of the judiciary during the prosecution period is as important as the investigation process.
17. The collection of the very limited number of investigation files for examination in this report was made especially burdensome given the time elapsed and given the worrisome situation for the relatives of the disappeared persons, whose households were mostly destroyed and forcibly displaced by security forces when their loved-ones were forcedly disappeared. In addition to these aggravating circumstances, the lack of an accessible and centralised judiciary system makes it difficult to access the legal files for the relatives of the victims. Hence this report was only made possible by the victims’ strong support and by the devoted efforts of human rights lawyers as well as the support of Şırnak and Diyarbakır Bar Associations. We believe that contributing to hold state agents accountable for their gross human rights violations of the past is the main guarantee which can be provided by the CM to the democratization and reconciliation process of Turkey, and on a larger scale to the well-functioning of the European human rights system.

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<sup>11</sup> For the main sources the 2011 Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations draw upon, see its Preamble, <[http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Impunity\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/Publications/Impunity_en.pdf)> (last visited 30.12.2015).

<sup>12</sup> Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations, Provision VI. (Criteria for an Effective Investigation), at 11ff.

<sup>13</sup> Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations, Provision III (General measures for the prevention of impunity), at 8-9.



## B. The Crime of Enforced Disappearances under International Law

18. The crime of enforced disappearances is a multifaceted crime. It violates the right to liberty and security of a person, and in many emblematic cases also the right to life, the prohibition of torture and the right to respect for private and family life. Due to its characteristics, the offence of enforced disappearance is of a continuous nature. Apart from violating the victim's rights, it also inflicts continuous suffering, anguish and distress on the victim's relatives, as it is the perpetrator's aim to conceal the fate and whereabouts of the victim.<sup>14</sup> The suffering of the victims' relatives often continues for a life-time, if the fate of the victim remains unknown. As such, the crime of enforced disappearance has strong implications on any social development, commemorative culture and reconciliation.
19. The strategy of enforced disappearance was first seen in the „Nacht und Nebel Erlass“ conducted by the Nazi regime in Germany in 1941, where activists and resistance fighters were detained, disappeared and no information was given as to their fate.<sup>15</sup> The aim of this „technique“ or „strategy“ was to arouse fear and panic amongst the relatives to prevent acts of resistance.<sup>16</sup> Numerous cases of enforced disappearance followed in the 1970s, when a number of countries in Latin America were ruled by military regimes.<sup>17</sup> These regimes, in Guatemala, Brazil, Chile, Peru, Uruguay and Argentina adopted a systematic policy of enforced disappearance to suppress dissidents.<sup>18</sup>
20. As a response to reports from various parts of the world relating to enforced disappearances, the UN Working Group on Enforced or Involuntary Disappearances was established in 1980.<sup>19</sup> In addition, in 1992, the United Nations Declaration on the Protection of all Persons from Enforced Disappearance was adopted, followed by the Inter-American Convention on Forced Disappearance of Persons in 1994.<sup>20</sup> Furthermore, in December 2006, the UN International Convention for the Protection of All Persons from Enforced Disappearance (ICED) was adopted and entered into force in December 2010. Amongst other issues, the ICED recognizes the continuous

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<sup>14</sup> In 1983 the Human Rights committee recognized this violation of the victim's relatives' rights in *Quinteros Almeida v. Uruguay*, Communication No. 107/1981, final views 21 July 1983. See also, Manfred Nowak, *Civil and Political Rights, Including Questions of: Disappearances and Summary Executions*, Report submitted by Mr. Manfred Nowak pursuant to paragraph 11 of Commission resolution 2001/46 (2002), at 20. For decisions on the matter by the ECtHR see for example, *Kurt v. Turkey*, Application No. 24276/94, Judgment of 25 May 1998, at 53, *Aslakhanova and others v. Russia*, Application No. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, Judgment of 18 December 2012, at 133 and *Turluyeva v. Russia*, Application no. 63638/09, Judgment of 20 June 2013, at 118.

<sup>15</sup> Özgür Sevgi Göral, Ayhan Işık and Özlem Kaya, *The Unspoken Truth: Enforced Disappearances*, Hafıza Merkezi: Truth Justice Memory Center (2013), at 11.

<sup>16</sup> *Id.*, at 12.

<sup>17</sup> Nowak, *supra* note 14, at 8.

<sup>18</sup> *Id.*, at 7 and Göral et al, *supra* note 15, at 12.

<sup>19</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 4 August 2014, at 1. The mandate of the Working Group is repeatedly extended by the Human Rights Council.

<http://www.ohchr.org/EN/Issues/Disappearances/Pages/Annual.aspx> (last visited 30.12.2015)

<sup>20</sup> United Nations Declaration on the Protection of All Persons from Enforced Disappearance (1/Res/47/133, 18 December 1992). <http://www.un.org/documents/ga/res/47/a47r133.htm> (last visited 30.12.2015)

nature of enforced disappearances and sets out that the statute of limitations for such crimes should be of long duration and should commence from the time when the offence ceases. This means *de facto* that a statute of limitations does not apply to these offences as long as the fate of the disappeared remains uncovered.<sup>21</sup>

21. The Inter-American Commission on Human Rights and the United Nations Commission on Human Rights were the first to deal with the phenomenon of enforced disappearance.<sup>22</sup> In its landmark decision *Velásquez Rodríguez v. Honduras* the Inter-American Court of Human Rights (IACtHR) recognized that circumstantial or presumptive evidence is especially important in cases of enforced disappearance as they are characterized by an attempt to conceal information. It further held that direct evidence is not the only type of evidence that may legitimately be considered in reaching a decision.<sup>23</sup> In addition, the Court found a violation by Honduras of its positive obligation as it held that legal responsibility arises for the state if it does not exercise “due diligence” to prevent the violation or to investigate and punish those responsible to provide a remedy to the victims.<sup>24</sup> A violation of Honduras’s procedural obligation was found, as evidence showed an inability by Honduras to investigate the disappearance, to pay compensation and to punish the responsible in accordance with the terms of the Convention.<sup>25</sup> This jurisprudence by the IACtHR has influenced the ECtHR in its decisions on enforced disappearances.<sup>26</sup>
22. The ECtHR faced a major wave of disappearance cases in the 1990s relating to disappearances that took place in the context of actions by the security forces of Turkey in operations in the South-East of Turkey.<sup>27</sup> A decade later many people disappeared in Chechnya in the context of operations conducted by Russian security

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<sup>21</sup> Article 8 IECD. In addition, under international law criminal liability for war crimes such as enforced disappearances are exempted from statutes of limitation.

<sup>22</sup> The first case before the Human Rights Committee was the case of *Bleier v. Uruguay*, Communication No. 30/19978, final views of 29 March 1982. The case of *Velásquez Rodríguez v. Uruguay*, Judgment of July 29, 1988, IACtHR. (Ser. C) No. 4 (1988) is the landmark decision of the Inter-American Court of Human Rights in relation to enforced disappearances.

<sup>23</sup> *Velásquez Rodríguez v. Uruguay*, Judgment of July 29, 1988, IACtHR (Ser. C) No. 4 (1988), at 131.

<sup>24</sup> *Id.*, at 172.

<sup>25</sup> *Id.*, at 185. In the case of *Godínez Cruz v. Honduras* the Court found the same violations as in *Velásquez Rodríguez*. *Godínez Cruz v. Honduras*, Petition No. 8097/1982, Judgment of 20 January 1989, see also Nowak, *supra* note 14, at 28.

<sup>26</sup> For example, in *Kurt v. Turkey* the ECtHR referred to *Velásquez Rodríguez v. Honduras* as relevant international material on enforced disappearances. In addition, in *Cicek v. Turkey*, in its concurring opinion Judge Maruste referred to the case-law from the Human Rights Committee *Quinteros v. Uruguay* and the case-law from the IACtHR *Velásquez Rodríguez* when remarking that: “Disappearance is a recognised category in international law (...), which provides *inter alia*, that «... disappearance...violates...the right to life»; (...).” See, Research Report, References to the IACtHR in the case-law of the ECtHR, Council of Europe (2012), at 3, 4 and 16.

<sup>27</sup> See cases such as *Kurt v. Turkey*, Application No. 24276/94, Judgment of 25 May 1998, *Kaya v. Turkey*, Application no. 22535/93, Judgment of 28 March 2000, *Taş v. Turkey*, Application no. 24396/94, Judgment of 14 November 2000; and *Çakıcı v. Turkey*, Application no. 23657/94, Judgment of 8 July 1999. Apart from Turkey, also in Belarus a practice of enforced disappearance was conducted as several political figures disappeared. Examples of political figures that disappeared in Belarus were Viktor Gonchar and Anatoly Krasovsky. OSCE, „OSCE in Belarus issues statement on first anniversary of disappearance of Victor Gonchar and Anatoly Krasovsky”, Press release 15 September 2000, <http://www.osce.org/node/52894>.

forces - a practice continued today by local Chechen security forces -, leading to a large number of enforced disappearances cases appearing before the ECtHR.<sup>28</sup>

23. The case law of the ECtHR on enforced disappearances cases has developed over the past decades. At first, in *Kurt v. Turkey*, the Court considered cases of enforced disappearance to fall under Article 5 of the Convention, the right to liberty.<sup>29</sup> This approach has shifted to considering that the duty to investigate disappearances is an aspect of Article 2 of the Convention, the right to life. Another shift in the Court's jurisprudence sees to the burden of proof in relation to enforced disappearances cases. In the case of *Kurt v. Turkey* the Court applied a „beyond reasonable doubt test“ as to the standard of proof. This approach contrasted with the more lenient standard of IACtHR. Nevertheless, the jurisprudence of the ECtHR has changed over the years.<sup>30</sup> In the case of *Mahmut Kaya v. Turkey* the Court held that even though there was insufficient evidence to support beyond reasonable doubt that Dr. Kaya had been disappeared and was killed by state officials, there were strong inferences that the perpetrators of the murder were known to the authorities.<sup>31</sup>
24. Apart from failures by State Parties in cases of enforced disappearances to comply with their positive and negative obligations under the Convention, the ECtHR often finds violations of State Parties of their procedural obligations under Article 2 of the Convention, the right to life. There is a violation if the authorities have failed to conduct an effective, adequate and prompt investigation of the disappearance. Examples of cases in relation to Turkey and Russia where violations of procedural obligations were found are *Mahmut Kaya v. Turkey*, *Taş v. Turkey*, *Imakayeva v. Russia*, *Akslakhanova and others v. Russia*, *Sayğı v. Turkey* and *Turluyeva v. Russia*.<sup>32</sup>
25. Even though cases are litigated before regional human rights systems such as the ECtHR, enforced disappearance is still being used on a widespread scale as mentioned by the Working Group on Enforced or Involuntary Disappearances: “(...) *enforced disappearance is not a crime of the past but continues to be used across the world*

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<sup>28</sup> Examples of cases are: *Imakayeva v. Russia*, Application no. 7615/02, Judgment of 9 November 2006, *Baysayeva v. Russia*, Application no. 74237/01, Judgment of 5 April 2007, and *Aslakhanova and others v. Russia*, Application No. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, Judgment of 18 December 2012.

<sup>29</sup> *Kurt v. Turkey*, Application No. 24276/94, Judgment of 25 May 1998.

<sup>30</sup> For example in the case of *Timurtas v. Turkey* there was documentary evidence of the arrest of the applicant's son and the fact that he had been detained. However, as he had not been seen for six years after his arrest, the Court found that there was circumstantial evidence of death and thus the Court found a breach of Article 2. See also D.J. Harris, M. O'Boyle & C. Warbrick, *Law of the European Convention on Human Rights*, 2009, at 58.

<sup>31</sup> *Mahmut Kaya v. Turkey*, Application No. 22535/93, Judgment of 28 March 2000, at 87. Other examples of this „shift“ are *Taş v. Turkey* and *Varnava and others v. Turkey*. In *Taş v. Turkey* the Court found a violation of Article 2 as the victim must be presumed dead following his detention by the security forces, to which the responsibility of the state is engaged. *Taş v. Turkey*, Application No. 24396/94, Judgment of 14 November 2000, at 67. See also *Varnava and others v. Turkey*, Application nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90), Judgment of 18 September 2009, at 183 and 184.

<sup>32</sup> See, e.g., *Kaya v. Turkey*, Application No. 22535/93, Judgment of 28 March 2000, *Taş v. Turkey*, Application No. 24396/94, Judgment of 14 November 2000, *Imakayeva v. Russia*, Application no. 7615/02, Judgment of 9 November 2006, *Akslakhanova and others v. Russia*, *Sayğı v. Turkey*, Application no. 37715/11, Judgment of 27 January 2015 and *Turluyeva v. Russia*, Application no. 63638/09, Judgment of 20 June 2013.

*with the false and pernicious belief that it is a useful tool to preserve national security and combat terrorism or organized crime.*”<sup>33</sup>

26. Thus, there remains a pressing need to combat impunity in relation to enforced disappearances within Europe. Compliance by State Parties with judgments from the ECtHR in respect to enforced disappearances is one of the first steps necessary to combat this type of impunity and to relieve victims’ relatives from the continuous anguish and distress as long as the fate of the victims remains unknown.

### **C. Findings of the European Court of Human Rights (ECtHR) in Enforced Disappearance Cases in Turkey**

27. The ECtHR has examined a large number of applications alleging enforced disappearances that occurred in the 1990s in southeastern Turkey as a result of state agents’ activities within the context of the Kurdish conflict and found violations of the Convention in its significant number of judgments in respect of Turkey. As identified by *Hafıza Merkezi*, 67 applications related to 126 forcibly disappeared persons have been brought before the ECtHR up to the present, 51 of which resulted in violation judgments,<sup>34</sup> whereas 7 of them resulted in friendly settlements,<sup>35</sup> and 9 of them were declared inadmissible.<sup>36</sup>

28. In these judgments the violation of a range of rights, mainly the rights to life (Article 2), and to an effective remedy (Article 13), as well as the prohibition of torture and inhuman or degrading treatment (Article 3) have been found by the ECtHR. The reasoning of the ECtHR elucidated several problems which still remain in question today. These are highlighted below under the sections for each group of cases.

29. The subsequent execution of most of the judgments on enforced disappearances were consequently supervised by the CM under the group of *Aksoy* that concerns the violations including *inter alia* such disappearances resulting from actions of security forces, in particular in the southeast of Turkey in the 1990s, and subsequent lack of

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<sup>33</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 4 August 2014, at 1 and 111. The Working Group reported that 43,000 cases remain unclarified.

<sup>34</sup> For a list of cases on enforced disappearances in which a violation judgment has been delivered with their groups before the CM, see Appendix 1.

<sup>35</sup> *Aydın v. Turkey*, App. Nos. 28293/95, 29494/95 and 30219/96, ECtHR (10 July 2001); *İ.İ., İ.Ş., K.E. and A.Ö. v. Turkey*, App. Nos. 30953/96, 30954/96, 30955/96 and 30956/96, ECtHR (6 November 2001); *Yakar v. Turkey*, ECtHR, App No. 36189/97, ECtHR (26 November 2002); *Eren and others v. Turkey*, App. No. 42428/98, ECtHR (2 October 2003); *Hanım Tosun v. Turkey*, App. No. 31731/96, ECtHR (6 November 2003); *Yurtseven and others v. Turkey*, App. No. 31730/96, ECtHR (18 December 2003); *Fatma Aslan and others v. Turkey*, App. No. 35880/05, ECtHR (24 May 2011).

<sup>36</sup> *Adıgüzel v. Turkey*, App. No. 23550/02, ECtHR (11 October 2001); *Sevdet Efe v. Turkey*, App. No. 39235/98, ECtHR (9 October 2003); *Nergiz and Karaaslan v. Turkey*, App. No. 39979/98, ECtHR (6 November 2003); *Evin Yavuz and others v. Turkey*, App. No. 48064/99, ECtHR (1 February 2005); *Ulumaskan and others v. Turkey*, App. No. 9785/02, ECtHR (13 June 2006); *Zeyrek v. Turkey*, App. No. 33100/04, ECtHR (5 December 2006); *Yetişen v. Turkey*, App. No. 33100/04, ECtHR (10 July 2012); *Fındık and Kartal v. Turkey*, App. Nos. 33898/11 and 35798/11, ECtHR (9 October 2012); *Taşçı ve Duman v. Turkey*, App. No. 40787/10, ECtHR (9 October 2012).

effective investigation. Under this group there are 42 cases identified by *Hafıza Merkezi*<sup>37</sup> in which the ECtHR has made overarching findings, namely, inadequate investigations, shortcomings in ensuring accountability and reparation at domestic level, which are directly relevant to the necessary steps to implement the judgments.

30. In addition to these cases under the group of *Aksoy*, other cases before the ECtHR, later on gathered by the CM under the umbrella of *Erdoğan and others*,<sup>38</sup> *Bati and others*<sup>39</sup> and *Kasa*<sup>40</sup> were also concerned in particular with the question of inadequate investigation.

31. Therefore, first, the overarching issue of inadequate investigation will be addressed, which is a concern expressed in all of the cases in relation to Turkey before the ECtHR, followed by two additional parts on accountability issues and the issue of adequate reparations, both particularly addressed in cases of the *Aksoy* group.

## 1. Inadequate Investigation

32. In a high proportion of the cases on enforced disappearances within the *Aksoy* group, one of the main findings of the ECtHR is the failure of the investigating authorities to conduct a thorough and adequate investigation into the incidents that has given rise to the establishment of a procedural violation of Article 2 of the Convention.<sup>41</sup>

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<sup>37</sup> See Appendix 1.

<sup>38</sup> See Appendix 1.

<sup>39</sup> See Appendix 1

<sup>40</sup> *Cülaz and others v. Turkey*, App. Nos. 7524/06 and 39046/10, ECtHR (15 April 2014).

<sup>41</sup> *Çakıcı v. Turkey*, App. No. 23657/94, ECtHR (Grand Chamber) (8 July 1999); *Mahmut Kaya v. Turkey*, App. No. 22535/93, ECtHR (28 March 2000); *Ertak v. Turkey*, App. No. 20764/92, ECtHR (9 May 2000); *Timurtaş v. Turkey*, App. No. 23531/94, ECtHR (13 May 2000); *Taş v. Turkey*, App. No. 24396/94, ECtHR (14 November 2000); *Akdeniz and others v. Turkey*, App. No. 23954/94, ECtHR (31 May 2001); *Avşar v. Turkey*, App. No. 25657/94, ECtHR (10 July 2001); *I. Bilgin v. Turkey*, App. No. 25659/94, ECtHR (17 July 2001); *Tepe v. Turkey*, App. No. 27244/95, ECtHR (9 May 2003); *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004); *Nuray Şen v. Turkey*, App. No. 25354/94, ECtHR (20 March 2004); *Tahsin Acar v. Turkey*, App. No. 26307/95, ECtHR (Grand Chamber) (8 April 2004); *Tekdağ v. Turkey*, App. No. 27699/95, ECtHR (15 January 2004); *Erkek v. Turkey*, App. No. 28637/95, ECtHR (13 July 2004); *O. v. Turkey*, App. No. 28497/95, ECtHR (15 July 2004); *İkincisoy v. Turkey*, App. No. 26144/95, ECtHR (27 July 2004); *Seyhan v. Turkey*, App. No. 33384/96, ECtHR (2 November 2004); *Türkoğlu v. Turkey*, App. No. 34506/97, ECtHR (17 March 2005); *Süheyla Aydın v. Turkey*, App. No. 25660/94, ECtHR (24 May 2005); *Akdeniz v. Turkey*, App. No. 25165/94, ECtHR (31 May 2005); *Koku v. Turkey*, App. No. 27305/95, ECtHR (31 May 2005); *Toğcu v. Turkey*, ECtHR, App. No. 27601/95, ECtHR (31 May 2005); *Çelikkilek v. Turkey*, App. No. 27693/95, ECtHR (31 May 2005); *Taniş and others v. Turkey*, App. No. 65899/01, ECtHR (2 August 2005); *Ozgen and others v. Turkey*, App. No. 38607/97, ECtHR (20 September 2005); *Nesibe Haran v. Turkey*, App. No. 28299/95, ECtHR (6 October 2005); *Mordeniz v. Turkey*, App. No. 49160/99, ECtHR (10 January 2006); *Şeker v. Turkey*, App. No. 52390/99, ECtHR (21 February 2006); *Aydın Eren and others v. Turkey*, App. No. 57778/00, ECtHR (21 February 2006); *Kavak v. Turkey*, App. No. 53489/99, ECtHR (6 July 2006); *Diril v. Turkey*, App. No. 68188/01, ECtHR (19 October 2006); *Kaya and others v. Turkey*, App. No. 4451/02, ECtHR (24 October 2006); *Yazıcı v. Turkey*, App. No. 48884/99, ECtHR (15 December 2006); *Ucak and others v. Turkey*, App. Nos. 75527/01 and 11837/02, ECtHR (24 April 2007); *Canan v. Turkey*, App. No. 39436/98, ECtHR (26 June 2007); *Enzile Ozdemir v. Turkey*, App. No. 54169/00, ECtHR (8 January 2008); *Osmanoğlu v. Turkey*, App. No. 48804/99, ECtHR (24 January 2008); *Nehyet Günay and others v. Turkey*, App. No. 51210/99, ECtHR (21 October 2008).

33. In this regard, the ECtHR has observed striking omissions and defects in the conduct of the investigations into the disappearances, such as unwillingness or significant delays in seeking evidence from witnesses;<sup>42</sup> failure to examine the scene of the crime for material evidence;<sup>43</sup> lack of necessary details in autopsy reports;<sup>44</sup> significant delays or reluctance in taking statements from the complainants;<sup>45</sup> ruling for a verdict of non-prosecution or non-competence without the collection of necessary evidence;<sup>46</sup> lack of coordination between different prosecutors in the conduct of the investigations;<sup>47</sup> issuing standing search orders<sup>48</sup> and subsequently exchanging letters which have stated that no information was obtained;<sup>49</sup> and even abstaining from commencing an investigation in some instances.<sup>50</sup>
34. The same violation of the procedural element of Article 2 of the Convention<sup>51</sup> was found by the ECtHR in the investigating authorities' failure to ensure the complainants' effective access to the investigation.
35. In addition, the ECtHR has also underlined several times that the suffering arising from authorities' refusal to give information on the whereabouts of the forcibly disappeared person and the lack of an effective investigation constituted a breach of the prohibition of torture and ill-treatment with respect to the relatives of the forcibly disappeared person themselves provided in Article 3 of the Convention.<sup>52</sup>

<sup>42</sup> *Kurt v. Turkey*, App. No. 24276/94, ECtHR (25 May 1998), § 106; *Mahmut Kaya v. Turkey*, App. No. 22535/93, ECtHR (28 March 2000), § 106; *Timurtaş v. Turkey*, App. No. 23531/94, ECtHR (13 May 2000), § 89; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), § 176; *Türkoğlu v. Turkey*, App. No. 34506/97, ECtHR (17 March 2005), §126; *Nesibe Haran v. Turkey*, App. No. 28299/95, ECtHR (6 October 2005), § 77.

<sup>43</sup> *Mahmut Kaya v. Turkey*, App. No. 22535/93, ECtHR (28 March 2000), § 104; *Nuray Şen v. Turkey*, App. No. 25354/94, ECtHR (20 March 2004), § 177; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), § 176; *Şeker v. Turkey*, App. No. 52390/99, ECtHR (21 February 2006), § 73.

<sup>44</sup> *Mahmut Kaya v. Turkey*, App. No. 22535/93, ECtHR (28 March 2000), § 104; *Tepe v. Turkey*, App. No. 27244/95, ECtHR (9 May 2003), § 18; *İkincisoym v. Turkey*, App. No. 26144/95, ECtHR (27 July 2004), § 78.

<sup>45</sup> *Akdeniz and others v. Turkey*, App. No. 23954/94, ECtHR (31 May 2001), § 91; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), § 173; *İkincisoym v. Turkey*, App. No. 26144/95, ECtHR (27 July 2004), § 78; *Nesibe Haran v. Turkey*, App. No. 28299/95, ECtHR (6 October 2005), § 77.

<sup>46</sup> *Mahmut Kaya v. Turkey*, App. No. 22535/93, ECtHR (28 March 2000), § 103.

<sup>47</sup> *Tekdağ v. Turkey*, App. No. 27699/95, ECtHR (15 January 2004), § 80.

<sup>48</sup> This order instructs security forces to continue to search for the disappeared person and the perpetrators.

<sup>49</sup> *Çelikkilek v. Turkey*, App. No. 27693/95, ECtHR (31 May 2005), § 93; *Süheyla Aydın v. Turkey*, App. No. 25660/94, ECtHR (24 May 2005), § 184.

<sup>50</sup> *Osmanoğlu v. Turkey*, App. No. 48804/99, ECtHR (24 January 2008), § 91.

<sup>51</sup> *Çakıcı v. Turkey*, App. No. 23657/94, ECtHR (Grand Chamber) (8 July 1999), § 112-113; *Koku v. Turkey*, App. No. 27305/95, ECtHR (31 May 2005), § 157.

<sup>52</sup> *Nehyet Günay and others v. Turkey*, App. No. 51210/99, ECtHR (21 October 2008), §§ 103-104; *Osmanoğlu v. Turkey*, App. No. 48804/99, ECtHR (24 January 2008), §§ 97-98; *Enzile Özdemir v. Turkey*, App. No. 54169/00, ECtHR (8 January 2008), §§ 64-65; *Canan v. Turkey*, App. No. 39436/98, ECtHR (26 June 2007), § 84; *Tanış and others v. Turkey*, App. No. 65899/01, ECtHR (2 August 2005), § 124; *Akdeniz v. Turkey*, App. No. 25165/94, ECtHR (31 May 2005), §§ 122-124; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), §§ 182-183; *Orhan v. Turkey*, App. No. 25656/94, ECtHR (18 June 2002), §§ 359-360; *Çiçek v. Turkey*, App. No. 25704/94, ECtHR (27 February 2001), §§ 173-174; *Timurtaş v. Turkey*, App. No. 23531/94, ECtHR (13 May 2000), §§ 96-98; *Kurt v. Turkey*, App. No. 24276/94, ECtHR (25 May 1998), §§ 133-134.

36. In five other enforced disappearance cases,<sup>53</sup> the ECtHR made similar findings. In the case of *Meryem Çelik and others v. Turkey*<sup>54</sup> concerning the disappearances in July 1994 of 13 persons during the raid of the hamlet Ormancık in the town of Şemdinli by security forces, the ECtHR reiterated its earlier findings in a number of cases that the investigations of the administrative councils, which resulted in a decision to not authorize the prosecution of two members of the security forces, cannot be regarded as independent. Further, due to the manner of the investigation, the suffering of the relatives of the disappeared persons was explicitly addressed, since they have never received any plausible explanation or information as to the fate of their relatives following their disappearance. Therefore, the ECtHR established again the violations of Article 3 and the procedural element of Article 2 of the Convention.
37. The case of *Bozkır and others v. Turkey*<sup>55</sup> concerning the disappearances of five shepherds in the Hakkari mountains during a military operation, which took place in August 1996, the ECtHR found that the national authorities“ failed to take a number of important investigative measures, such as visiting the village or the place where the shepherds grazed their sheep, with view to verifying the claims of the relatives and to collecting evidence. Furthermore, they omitted to question the military personnel and thereby were accepting at face value their letters denying their involvement. The ECtHR ruled therefore that there were not only violations of the procedural element of Article 2 of the Convention, but in these cases also violations of Article 13.
38. In the cases of *Nihayet Arıcı and others v. Turkey*,<sup>56</sup> *Tekçi and others v. Turkey*<sup>57</sup> and *Kadri Budak v. Turkey*<sup>58</sup>, the ECtHR reiterated the same finding of ineffectiveness of the investigations into the disappearances contrary to the procedural obligations under the Article 2 of the Convention.<sup>59</sup> Notably, in the case of *Tekçi and others v. Turkey* concerning the disappearance of Nezir Tekçi following a military operation in April 1995 in an area close to the village of Yukarıölçek in Hakkari, the criminal prosecution against two members of the military forces that commenced 16 years after the incident and concluded by a decision of acquittal by the Eskişehir High Criminal Court, was not found prompt and adequate by the ECtHR.<sup>60</sup>
39. The ECtHR found in the case of *Kadri Budak v. Turkey* that the investigation that has been carried out after the bones of Metin and Bahri Budak were found in May 2005 was ineffective on the grounds of not seeking evidence from eye-witnesses;

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<sup>53</sup> As part of the the *Erdoğan and others* group, see Appendix 1.

<sup>54</sup> *Meryem Çelik and others v. Turkey*, App. No. 3598/03, ECtHR (16 April 2013).

<sup>55</sup> *Bozkır and others v. Turkey*, App. No. 24589/04, ECtHR (26 February 2013).

<sup>56</sup> *Nihayet Arıcı and others v. Turkey*, App. No. 24604/04 and 16855/05, ECtHR (23 October 2012).

<sup>57</sup> *Tekçi and others v. Turkey*, App. No. 13660/05, ECtHR (10 December 2013).

<sup>58</sup> *Kadri Budak v. Turkey*, App. No. 44814/07, ECtHR (19 December 2014)

<sup>59</sup> Non-independent administrative investigation; not examining of the scene of the violation for material evidence; not taking statements from implicated members of the security forces are the findings of the ECtHR in the case of *Nihayet Arıcı and others v. Turkey*, whereas, not taking meaningful steps to reveal the circumstances surrounding the disappearance; procrastinating the proceeding by transferring the investigation between different authorities; not identifying the members of the military for taking their statements are those in the case of *Tekçi and others v. Turkey*.

<sup>60</sup> *Tekçi and others v. Turkey*, App. No. 13660/05, ECtHR (10 December 2013).

furthermore it was ineffective because state officials contented themselves with the statements of security forces; and issuing a permanent search warrant; and because of the fact that although the report of the Forensic Institute revealed that the spent bullets found at the scene belonged only to types of weapons used by the army, they remained reluctant to take into account the involvement of the security forces.

40. The previous findings on violations of Art 2, 3 and 13 were reiterated in two further cases before the ECtHR.<sup>61</sup>

41. In the case of *Er and others v. Turkey*<sup>62</sup> concerning the disappearance in July 1995 of Ahmet Er following a military operation in Kurudere village of the Çukurca district of Hakkari province in southeastern Turkey, the ECtHR held that there was a violation of Article 2 on account of the inadequate investigation into Ahmet Er's disappearance and the inactivity of the investigating authorities to find out what had actually happened to him. Notably, the public prosecutor accepted the military members' version of the events without further investigation and no further action to hold them accountable. The ECtHR has also found that the relatives of Ahmet Er have suffered and continued to suffer distress and anguish as a result of the authorities' inability to find out what had happened because of the abovementioned manner of the investigation violating Article 3 of the Convention. Further, it has been observed that, despite the arguable complaints of the relatives of Ahmet Er, such a manner of conduct revealed the unavailability of an effective remedy at the domestic level, which constituted a breach of Article 13 of the Convention.

42. The case of *Gasyak and others v. Turkey*<sup>63</sup> related to the abduction and subsequent killing in March 1994 of Abdulaziz Gasyak, Süleyman Gasyak, Yahya Akman and Ömer Candoruk by gendarmerie officers and two confessors resulted with the finding of the ECtHR that there were no signs of any meaningful efforts to hold the security forces accountable. According to the ECtHR this was apparent from the indictment that charged only the two confessors for homicide and the subsequent judgment of acquittal for lack of sufficient evidence, although the defendants never appeared before the trial court. This again constitutes a violation of Article 2 of the Convention.

43. In another case, the *Cülaz and others v. Turkey*,<sup>64</sup> concerning the disappearance of 13 villagers after being taken into custody in Görümlü in June 1993, the ECtHR has confirmed an inadequate investigation process, in particular given the fact that it commenced 20 years after the incidents, against six members of the security forces. Furthermore, the lack of diligence cast doubt on the good faith of the investigative efforts. Before this background, in this case the ECtHR highlights the ordeal for the relatives of the disappeared persons. Moreover, the delay in taking statements from the members of the security forces not only created an appearance of collusion between

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<sup>61</sup> *Batı and others* group See Appendix 1.

<sup>62</sup> *Er and others v. Turkey*, App. No. 23016/04, ECtHR (31 July 2012).

<sup>63</sup> *Gasyak and others v. Turkey*, App. No: 27872/03, ECtHR (13 October 2009).

<sup>64</sup> *Cülaz and others v. Turkey*, App. Nos. 7524/06 and 39046/10, ECtHR (15 April 2014), this is the only enforced disappearance case, whose execution has been supervised under the group of *Kasa*.



judicial authorities and security forces, but was also liable to lead the relatives of the disappeared persons – as well as the public in general – to form the opinion that members of the security forces operate in a vacuum, in which they are not accountable to the judicial authorities for their actions. Accordingly, the ECtHR, here again, ruled that there was a procedural violation of Article 2 of the Convention.

## 2. Consequences addressing shortcomings of accountability and compensation

44. The ECtHR has held in various cases concerning enforced disappearances under the *Aksoy* group that the defects undermining the effectiveness of criminal-law protection permitted or fostered a lack of accountability of members of the security forces for their actions, which was not compatible with the fundamental rights and freedoms guaranteed under the Convention.<sup>65</sup> From these findings the ECtHR inferred that the investigations were not capable of leading to the identification and punishment of the perpetrators, and therefore, it concluded that there was a violation of Article 2 on the grounds of a breach of procedural obligations.

45. A common feature of the cases in question is the finding that, despite the seriousness of the allegations, the public prosecutors failed to take meaningful steps to broaden the investigations by not pursuing complaints of the relatives of the forcibly disappeared persons, who claimed that the security forces had been involved in illicit acts. The reason for such failure emerged from the fact that the prosecutors did not, for instance, interview or take statements from implicated members of the security forces.<sup>66</sup> Instead, they chose to accept at face value the documents or statements from them denying any involvement without verification<sup>67</sup> or to lay the responsibility on the PKK, although there was no concrete data to this effect.<sup>68</sup>

46. Moreover, the ECtHR has found that investigations into the members of the security forces by administrative councils as per Law of 1914 or Law No. 4483, requiring a preliminary inquiry to establish whether the investigation will be permitted, cannot be

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<sup>65</sup> *Mahmut Kaya v. Turkey*, App. No. 22535/93, ECtHR (28 March 2000), § 98; *Taş v. Turkey*, App. No. 24396/94, ECtHR (14 November 2000), § 66; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004).

<sup>66</sup> *Tepe v. Turkey*, App. No. 27244/95, ECtHR (9 May 2003), § 179; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), § 175; *Süheyla Aydın v. Turkey*, App. No. 25660/94, ECtHR (24 May 2005), § 169; *Koku v. Turkey*, App. No. 27305/95, ECtHR (31 May 2005), § 156; *Toğcu v. Turkey*, ECtHR, App. No. 27601/95, ECtHR (31 May 2005), § 117.

<sup>67</sup> *Çakıcı v. Turkey*, App. No. 23657/94, ECtHR (Grand Chamber) (8 July 1999), § 80; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), § 172; *Nesibe Haran v. Turkey*, App. No. 28299/95, ECtHR (6 October 2005), § 77; *İkincisoğlu v. Turkey*, App. No. 26144/95, ECtHR (27 July 2004), § 78; *Akdeniz and others v. Turkey*, App. No. 23954/94, ECtHR (31 May 2001), § 92; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), § 172; *Kurt v. Turkey*, App. No. 24276/94, ECtHR (25 May 1998), § 80; *Taniş and others v. Turkey*, App. No. 65899/01, ECtHR (2 August 2005), § 207.

<sup>68</sup> *Akdeniz and others v. Turkey*, App. No. 23954/94, ECtHR (31 May 2001), § 91; *Süheyla Aydın v. Turkey*, App. No. 25660/94, ECtHR (24 May 2005), § 180.

regarded as independent since these councils are chaired by the governor of the province or the governor of the district.<sup>69</sup>

47. Taking into consideration the failure of the authorities to comply with their obligation to carry out an effective investigation, where the relatives of a person had an arguable complaint that the latter has disappeared, the ECtHR observed in many cases within the *Aksoy* group that an effective remedy was not available under the domestic system. This furthermore undermined the effectiveness of any other remedies that might have existed, including a claim for compensation as civil proceedings considered, themselves bound by the findings of the criminal proceedings. The ECtHR, therefore, ruled in a number of instances, for example in the case of *Bozkuş and others v. Turkey*<sup>70</sup> that there was a violation of Article 13 of the Convention.<sup>71</sup>

### 3. Conclusion

48. In the light of the above findings, all of these cases share the fact that the applied legal measures/proceedings in cases of enforced disappearances show grave defects right from the beginning, i.e. in the investigative phase up to the phase of potential reparations for harms suffered by the victims and their relatives. They have all not only granted virtual impunity to the members of the security forces, but also have taken away the rights of relatives of the forcibly disappeared persons to effective remedy and to be protected from ill-treatment.

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<sup>69</sup> *Ertak v. Turkey*, App. No. 20764/92, ECtHR (9 May 2000), §§ 92-93; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), § 174; *Taş v. Turkey*, App. No. 24396/94, ECtHR (14 November 2000), § 71; *Orhan v. Turkey*, App. No. 25656/94, ECtHR (18 June 2002), § 342.

<sup>70</sup> *Bozkuş and others v. Turkey*, App. No. 24589/04, ECtHR (26 February 2013).

<sup>71</sup> *Ucak and others v. Turkey*, App. Nos. 75527/01 and 11837/02, ECtHR (24 April 2007), §§ 75-77; *Yazıcı v. Turkey*, App. No. 48884/99, ECtHR (15 December 2006), §§ 84-86; *Kaya and others v. Turkey*, App. No. 4451/02, ECtHR (24 October 2006), §§ 52-53; ); *Diril v. Turkey*, App. No. 68188/01, ECtHR (19 October 2006), §§ 69-71; *Kavak v. Turkey*, App. No. 53489/99, ECtHR (6 July 2006), §§ 95-97; *Aydın Eren and others v. Turkey*, App. No. 57778/00, ECtHR (21 February 2006), §§ 63-63; *Şeker v. Turkey*, App. No. 52390/99, ECtHR (21 February 2006), § 96; *Mordeniz v. Turkey*, App. No. 49160/99, ECtHR (10 January 2006), §§ 108-110; *Özgen and others v. Turkey*, App. No. 38607/97, ECtHR (20 September 2005), §§ 54-55; *Taniş and others v. Turkey*, App. No. 65899/01, ECtHR (2 August 2005), §§ 225-227; *Çelikkilek v. Turkey*, App. No. 27693/95, ECtHR (31 May 2005), §§ 109-110; *Toğcu v. Turkey*, ECtHR, App. No. 27601/95, ECtHR (31 May 2005), §§ 138-139; *Koku v. Turkey*, App. No. 27305/95, ECtHR (31 May 2005), §§ 181-182; *Akdeniz v. Turkey*, App. No. 25165/94, ECtHR (31 May 2005), §§ 140-141; *Süheyla Aydın v. Turkey*, App. No. 25660/94, ECtHR (24 May 2005), §§ 208-209; *Seyhan v. Turkey*, App. No. 33384/96, ECtHR (2 November 2004), § 96; *İkincisoğ v. Turkey*, App. No. 26144/95, ECtHR (27 July 2004), §§ 124-125; *Tekdağ v. Turkey*, App. No. 27699/95, ECtHR (15 January 2004), §§ 97-98; *Nuray Şen v. Turkey*, App. No. 25354/94, ECtHR (20 March 2004), §§ 192-193; *Ipek v. Turkey*, App. No. 25760/94, ECtHR (17 February 2004), §§ 200-201; *Tepe v. Turkey*, App. No. 27244/95, ECtHR (9 May 2003), § 197; *Orhan v. Turkey*, App. No. 25656/94, ECtHR (18 June 2002); §§ 395-396; *I. Bilgin v. Turkey*, App. No. 25659/94, ECtHR (17 July 2001), §§ 157-158; *Avşar v. Turkey*, App. No. 25657/94, ECtHR (10 July 2001), *Akdeniz and others v. Turkey*, App. No. 23954/94, ECtHR (31 May 2001), §§ 113-114; *Şarlı v. Turkey*, App. No. 24490/94, ECtHR (22 May 2001), §§ 74-78; *Çiçek v. Turkey*, App. No. 25704/94, ECtHR (27 February 2001), § 178; *Taş v. Turkey*, App. No. 24396/94, ECtHR (14 November 2000), §§ 92-93; *Timurtaş v. Turkey*, App. No. 23531/94, ECtHR (13 May 2000), §§ 112-113; *Mahmut Kaya v. Turkey*, App. No. 22535/93, ECtHR (28 March 2000), §§ 125-126; *Çakıcı v. Turkey*, App. No. 23657/94, ECtHR (Grand Chamber) (8 July 1999), §§ 113-114; *Kurt v. Turkey*, App. No. 24276/94, ECtHR (25 May 1998), §§ 140-142.

49. Notwithstanding the group in which the cases have been included by the CM for the execution, in all these judgments the ECtHR confirmed that there is a reluctance of the judiciary in Turkey to investigate cases of enforced disappearance committed by the security forces during the 1990s against Kurdish civilians and hold accountable the perpetrators with a stance taking into account the subordinate-superior relationships and the chain of command. Findings of the ECtHR in the context of inefficiencies of the legal proceedings are identical within all these judgments, as per the methods and positions of the alleged perpetrators and the main characteristics of the victims, which is a strong indicator of the systematic nature of the relevant violations.
50. Above all, during the 1990s the Government of Turkey's assertion before the ECtHR constituted a complete denial of the atrocities conducted by state agents against Kurdish civilians. The ECtHR judgments and the fact-finding hearings of the Commission within the region have contributed to the revelation of the narratives of the applicants. Despite the counterclaims of the Government of Turkey that the events claimed by the applicants did not actually occur, the ECtHR determined that the Government of Turkey did not fight against PKK within the scope of the rule of law, and failed to protect the right to life of its citizens, failed to investigate its agents' widespread and systematic violations in the pursuance of the fight against terrorism, failed to provide effective judicial mechanisms to the victims to claim their rights, failed to punish the perpetrators and provide reparations to the victims. The ECtHR judgments also determined the persistence of the denial within judicial bodies. Nevertheless, because of the limited function of the ECtHR as a regional human rights body, these judgments have not given rise to the acknowledgement of the truth by the Government of Turkey, but changed the discourse of the Government of Turkey from complete denial of grave human rights violations carried out by security forces to a denial of the responsibility of them by justifying their actions within the context of the fight against PKK and by questioning the credibility of the victims.<sup>72</sup>

#### **D. The Situation of Enforced Disappearances Cases in Turkey**

51. The execution of the abovementioned judgments has been supervised by the Committee of Ministers thus far under the title "Actions of the Security Forces in Turkey" as bundled into four groups of cases: *Aksoy, Batu and others, Erdoğan and others* and *Kasa*.
52. Since 1999 the CM has issued interim resolutions and other documents concerning general measures to ensure compliance with the judgments of the ECtHR in the cases against Turkey concerning the actions of the security forces. Over the course of around sixteen years, since the adoption of the first judgments of the ECtHR regarding

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<sup>72</sup> Başak Çalı, "The Logics of Supranational Human Rights Litigation, Official Acknowledgment, and Human Rights Reform: The Southeast Turkey Cases before the European Court of Human Rights, 1996–2006," *Law & Social Inquiry*, Volume 35, Issue 2, 311–337, Spring 2010.

the actions of the security forces, Turkey has adopted some general measures which are far from being effective in practice.

53. In order to better frame these developments and (failed) communications between the ECtHR, the CM and Turkey, a short overview on Turkey's legal and regulatory framework is laid out below. Some examples will be given, that show best how these developments in fact had an influence on the legal system in Turkey, but also others where they did not have any effect on the legislation and the law itself, pointing out that at times problems of enforced disappearance in Turkey can be found in the practice and application or non-enforcement of the law rather than in the legislation itself.

## 1. The legal and regulatory framework in Turkey

### 1.1. Emergency rule

54. The state of emergency law, or Law No. 2935, was in force between 25 October 1983 and 19 June 2002 in certain provinces in the southeastern region of Turkey with a predominantly Kurdish population.<sup>73</sup> During that period, many state of emergency decrees were issued, which restricted fundamental rights and freedoms in the region. These were lifted at the request of the Council of Ministers and following a vote in parliament.

55. According to Article 4(b) and (d) of the Decree No. 285 dated 10 July 1987 based on the Law No. 2935, all private and public security forces and service troops put under the order of the Gendarmerie Command of Public Security were under the responsibility of the regional governor of the state of emergency. During the period of emergency rule, six different regional governors served in the region. The Gendarmerie Command of Public Security was established with the commencement of the emergency rule.

56. According to Article 3 of the Decree No. 430 dated 16 December 1990 based on the Law No. 2935, the "*Governor of the state of emergency region can order the relevant public institutions in the state of emergency region to transfer their public officials who are deemed to be harmful to general security and public order permanently or temporarily to other positions. The concerned public official shall remain subject to the provisions of the special law on civil service applicable to him.*" This provision was applicable to judges and public prosecutors as public officers. According to Article 8 of the same decree, "*no legal claims of criminal, pecuniary or legal nature can be brought against, nor can any legal steps be taken with the judicial authority for*

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<sup>73</sup> State of emergency was initially declared in 8 provinces on the basis of Articles 119-121 of the 1982 Constitution, and Decree No. 84/7781, dated 01.03.1984, of the Cabinet. The region that would be known as the OHAL region throughout the 1990s was under martial law at the time. On 19 July 1987, martial law was lifted in the Diyarbakır, Hakkari, Siirt and Van provinces, and the OHAL Regional Governorship was formed. It was initially implemented in eight provinces: Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli and Van. Later, the Adıyaman, Bitlis and Muş provinces were included within its scope as neighboring provinces. When Batman and Şırnak were elevated to the status of province in 1990, the number reached 13. Bitlis's status was changed from neighbouring province to state of emergency province in 1994.

*this purpose in respect of any decision taken or any act performed by the Minister of Interior, the Governor of the emergency region and other governors, in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this Decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of individuals to claim indemnity from the State for damage suffered by them without justification.”*

57. Special Operations Branch Offices of police forces were established in 1982 at the command of the Department of Public Order in Ankara, İstanbul and İzmir, and were put under the responsibility of the Counter Terrorism and Operations Department of Directorate General for Security in 1987. In 1993 these Branch Offices were re-established as the Special Operations Department throughout Turkey under the direct command of the Security General Directorate. According to Decree No. 285, the Special Operations Department and the Counter Terrorism and Operations Department of the Directorate General for Security within the region under the emergency rule were also at disposal of the regional governor of the state of emergency.
58. According to the Law of the National Security Council and Secretariat General of the National Security Council No. 2945 dated 9 November 1983 based on Article 118 of the Constitution of Turkey dated 1982, the National Council, under the chairmanship of the President, was composed of the Prime Minister, the Commander of the Turkish Armed Forces, Ministers of National Defense, the Interior, Foreign Affairs, Commanders of the Land, Naval and Air Forces and the General Commander of the Gendarmerie. The National Security Council submitted its decisions on the identification, formulation and implementation of the national security policy of the state to the Council of Ministers with a “National Security Policy Document” prepared by its General Secretariat. This document would be effective with the approval of the Council of Ministers and updated according to the changing threats to national security and could not be made public. Even though the role of the National Security Council Documents appeared advisory according to the Constitution, it was not possible for any civil government to ignore any decisions of the National Security Council. With an amendment in 2003, the status of National Security Council decisions were made purely advisory, however it is obvious that the Council still formulates the national security policy of the state.
59. In 1985 with an amendment to Law No. 442 the permanent village guard system was established and the system is still been used by the Government of Turkey. Village guards are villagers resident across southeastern Turkey who are armed by the state. Administratively they are at the disposal of the district governor, and occupationally under the command of the Regional Gendarmerie Command. Since Gendarmerie forces within the region under the emergency rule were at the disposal of the regional governor of the state of emergency, village guards were also at the disposal of the regional governor.
60. Starting with 1985, in 1988, 1990, 1992, 1993, 1995 and 1999 seven Repentance Laws were enacted in Turkey. With Law No. 3419 dated 25 March 1988 on "Provisions Applicable to Perpetrators of Miscellaneous Crimes", the registers of

confessors who were former PKK militants were changed and expenses related to their protection such as plastic surgery were covered by the Ministry of Interior. They were also at the disposal of the regional governor of the state of emergency, since they were employed by the security forces within the region under the state of emergency rule.

61. As for criminal law and procedure during the emergency rule, the former Turkish Criminal Code made it a criminal offence to unlawfully deprive an individual of his or her liberty (Article 179 generally, Article 181 in respect of civil servants) and all forms of homicide (Articles 448-450). For these offences, complaints might be lodged pursuant to Articles 151 and 153 of the former Code of Criminal Procedure with the public prosecutor or local administrative authorities. The public prosecutor and law-enforcement officers had a duty to investigate crimes reported to them, with the former deciding whether a prosecution should be initiated pursuant to Article 148 of the former Code of Criminal Procedure.
62. In the case of alleged terrorist offences, the public prosecutor was deprived of jurisdiction in favour of a separate system of National Security prosecutors and courts established throughout the country at the material time as per Law No. 2845.
63. If the alleged author of a crime was a civil servant and if the offence was committed during the performance of his duties, permission to prosecute must be obtained from local administrative councils as per the Law of 1914 on the prosecution of civil servants.
64. If the person was a member of the armed forces, the applicable law was determined by the nature of the offence. Thus, if it is a “military offence” under the Military Criminal Code (Law no. 1632), the criminal proceedings were in principle conducted in accordance with Law no. 353 on the establishment of courts martial and their rules of procedure. Where a member of the armed forces has been accused of an ordinary offence, it was normally the provisions of the Code of Criminal Procedure which applied (Article 145 § 1 of the Constitution and sections 9-14 of Law No. 353).
65. According to Article 120 of the former Turkish Criminal Code which is applicable to the crimes committed before 2005, the statute of limitations applicable to an offence is determined by reference to the particular penalty for that offence. Since enforced disappearance is not defined as an offence in the former Turkish Criminal Code, judicial bodies take the criminal provisions concerning the homicide as the basis in disappearances cases and hold that the statute of limitations is 20 years as provided in Article 120/1 of the former Turkish Criminal Code.

## **1.2. Current relevant legislation**

66. Since the beginning of the 2000s legislation in Turkey was subjected to reforms in order to bring it into line with the Convention standards, e.g. the adoption of the new Turkish Criminal Code in 2005 and the new Turkish Code of Criminal Procedure in 2004.

67. As it was stated in the Report of the Commissioner for Human Rights of the Council of Europe in 2013, “*an overarching problem that remains to be fully addressed is the persistence of biased, state-centrist attitudes among prosecutors and judges, which results in often superficial and ineffective investigations, during which very important pieces of evidence against law enforcement officers and statements of victims are not given due importance and which often lead to acquittals.*”<sup>74</sup>
68. According to the new Turkish Criminal Code, unlawful deprivation of an individual of his or her liberty (Article 109 generally, Article 109 § 3 c-d in respect of civil servants) and all forms of homicide (Articles 81-81) constitute offences. For these offences, complaints may be lodged as per Articles 158 and 160 of the new Turkish Code of Criminal Procedure. The moment the prosecutor receives notification of a case that raises suspicion of a crime committed, he or she is under the burden of initiating an investigation in order to decide whether there are grounds to file a criminal case pursuant to Article 170 of the new Turkish Code of Criminal Procedure.
69. In the context of a package of reforms to the Constitution passed in June 2004, the system of National Security prosecutors and courts was transformed into the system of Assize courts and prosecutors with special powers competent to examine crimes under Article 250 of the new Turkish Code of Criminal Procedure. In July 2012, the system of regional Heavy Criminal prosecutors and courts authorized under Article 10 of the Anti-Terror Law superseded the system of Assize courts and prosecutors with special powers. Finally, in February 2014, Article 10 of the Anti-Terror Law was abolished, and thereby, such systems were fully abolished. These last changes occurred while investigations and trials on high profile cases were going on.
70. Regarding torture and ill-treatment, the amendment of Article 145 of the Constitution restricted the competence of military courts. As regards statutory changes affecting judicial proceedings, the new Turkish Criminal Code removed the requirement for prosecutors to obtain prior administrative authorization for investigating or prosecuting civil servants in connection with these crimes. However, Law No. 4483 on judicial proceedings concerning civil servants, adopted in 1999 and repealing the provisions of the Law of 1914 but preserving the need to obtain administrative authorization for such proceedings, continues to apply to offences other than torture and ill-treatment, and seems to be one of the major sources of impunity.
71. Military personnel are still subject to the scope of military jurisdiction in respect to crimes stated in their special laws (Law No. 353 and 1632).
72. Article 77 of the current Turkish Criminal Code regulates the crimes against humanity which includes the offenses of homicide, intentional injury, torture, and sexual assault if they are shown to have been carried out in a systematic manner against a section of the population. Neither Article 77 nor other provisions within the current Turkish Criminal Code regulates enforced disappearance as a crime.

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<sup>74</sup> Commissioner of Human Rights of the Council of Europe (2013) 24 at 18, para. 79, Report by Nils Muižnieks following his visit to Turkey from 1 to 5 July 2013. Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2395759&SecMode=1&DocId=2079692&Usage=2> (last visited 30.12.2015).

### 1.3. Conclusion

73. It can be concluded from both the examination of the ECtHR's findings in its judgments regarding enforced disappearances and a review of the legal provisions which were available under the emergency rule until 2001 that the investigative authorities and judiciary were not and could not be independent and impartial during that time. The climate in the region and the whole judiciary when it comes to anti-terror practices of state agents was repressive and threatening against any kind of dissidents who were assumed as a threat against national security, including judicial officers. From this point of view, reasons behind the omission and negligence of the judicial authorities to investigate grave human rights violations of state agents could be based on the existence of these repressive emergency rules.
74. Nevertheless, both from findings of ECtHR judgments and the examination of the investigation files regarding these grave human rights violations of state agents show that fourteen years after the abolishment of the emergency rule there is no significant change in the effectiveness of investigations. Discrepancies of the former investigations have been maintained by current prosecutors and even by the judiciary during the prosecution processes.
75. With regard to enforced disappearances, in case of the denial of authorities that they arbitrarily removed out of the protection of law and killed a civilian, it is almost impossible to prove that the person who has been allegedly abducted and killed by the authorities was first at their disposal through material evidence. But in case of the lack of material evidence such as custody records, the investigating authorities have never been held responsible - neither security forces nor their superiors - because of a lack of such records, or because of the submission of inaccurate records. The State of Turkey has not made any effort to provide any explanation about the fate or whereabouts of the victims, the circumstances of the offences, or the possible perpetrators.
76. In the abovementioned legal framework, it is obvious that without the direction of the National Security Council, the civil government would not have been able to determine the state's security policy. Regional governors would not have been entrusted with the extensive authority without the intention to implement the national security policy of the state. Without the instructions of the Ministry of Interior given through regional governors of the emergency rule, it would not have been possible especially for the gendarmerie forces which have a very strict hierarchical chain of command to conduct such widespread and systematic violations of human rights



within the region. The Special Forces Department of the police forces also would not have conducted such violations without the toleration of their headquarters which is under the command of the Ministry of Interior. The same reasoning has already been applicable with regard to village guards and confessors. Unfortunately, none of the investigations or prosecutions has been widened to an extent enabling to hold these superior authorities accountable.

77. On the other hand, the regulation of the crimes against humanity within the new Turkish Criminal Code has not given rise to the formalization of indictments under this provision with the intent to eliminate the expiration of the limitation periods determined by the statute of limitation.

78. Judicial actors of the legal proceedings have discretion to consider the extension of the inquiry in every step of the proceedings and to consider the systematic and/or widespread nature of the violations but they do not prefer to use their discretion in this direction. Up to the present neither any superior nor their inferiors have convicted because of their unlawful acts within the fight against terrorism.

79. Without the lack of this motivation there is a need for new legal measures to lift the statute of limitations for grave human rights violations of state agents and to force the judiciary to investigate the responsibility of superior authorities.

## **2. Supervision of the Committee of Ministers in Enforced Disappearance Judgments of the European Court of Human Rights (ECtHR)**

80. Considering the overarching impunity problem in Turkey, Turkey still needs to take actions in order to ensure compliance with the judgments of the ECtHR. For the purpose of this report relevant interim resolutions and some of the action plans submitted by the authorities of Turkey in execution processes of enforced disappearance cases are examined in this part, in order to better understand in a next step the ongoing systematic nature of the problems in the implementation of the ECtHR judgments.

### **2.1. General Measures**

81. The main groups of cases which have been formed by the CM for the supervision of the execution process of the ECtHR judgments regarding actions of security forces are the *Aksoy* Group and the *Bati and Others* Group. In 2014, the CM formalized the *Erdoğan and Others* Group and *Kasa* Group, which also includes cases concerning the

actions of security forces of Turkey. While the CM has decided to examine *Bati and Others*, *Erdoğan and Others* and *Kasa* Group of cases under the enhanced procedure taking into consideration the lack of effective investigations in respect of the actions of the security forces of Turkey, execution of the judgments within the *Aksoy* Group have been supervised under the standard procedure and the issue of effective investigation was closed at the 1035th meeting of the Ministers' Deputies in 2008. Nevertheless, analysis of the enforced disappearance cases under these four groups reveals that the same discrepancies affect in the same way the execution processes of these judgments.

#### a) Aksoy Group – Standard supervision

82. Under the Aksoy Group the CM adopted four interim resolutions: in 1999, in 2002, in 2005 and in 2008.<sup>75</sup> The CM defines this group of cases as relating to the “violations resulting from actions of security forces, in particular in the southeast of Turkey, mainly in the 1990s. It encompasses cases of unjustified destruction of property, disappearances, infliction of torture and ill-treatment in police custody and killings committed by members of security forces that furthermore show subsequent lack of effective investigations into the alleged abuses (violations of Art. 2, 3, 5, 8 and 13 and of Art. 1 of Protocol 1). Several cases also concern failure to co-operate with the Convention organs as required under Art. 38.”<sup>76</sup> According to Interim Resolution CM/ResDH (2008) 69, there are 175 judgments under the *Aksoy* Group which the ECtHR found that there had been numerous violations of the Convention<sup>77</sup> on account of: deaths as a result of excessive use of force by members of security forces, failure to protect the right to life, deaths and/or disappearances, ill-treatment, destruction of property, lack of effective domestic remedies. As mentioned before, 42 of these judgments regard enforced disappearances allegedly committed by security forces.

83. Structural problems remarked by the CM as the main cause of the violations determined within the judgments of the ECtHR on actions of the security forces in Turkey under the *Aksoy* Group. These were: ineffectiveness of procedural safeguards in police custody, general biased attitudes and practices of members of security forces, their education and training system, inadequacy of the legal framework governing their activities as well as shortcomings in establishing criminal liability and finally shortcomings in ensuring adequate reparations to victims. At the 1035<sup>th</sup> meeting on 18 September 2008 the CM evaluated the information provided by the Government of

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<sup>75</sup> Committee of Ministers, Interim Resolution Res DH (99) 434, 9 June 1999 (at 216ff); Committee of Ministers, Interim Resolution ResDH (2002) 98, 10 July 2002 (at 207ff); Committee of Ministers, Interim Resolution ResDH (2005) 43, 7 June 2005 (at 193); Interim Resolution CM/ResDH (2008) 69, 18 September 2008 (at 174ff), all of these can be found in the collection of the interim resolutions 1988-2008 (by country), H/Exec(2008) 1 <[http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/IntRes2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/IntRes2008_en.pdf)> (last visited 30.12.2015)

<sup>76</sup> Committee of Ministers, “Annotated Agenda and Decisions, 1078th (DH) Meeting, 2-4 March 2010”, CoE doc. CM/Del/OJ/DH(2010)1078 section 4.2, 18 March 2010.

<sup>77</sup> Interim Resolution CM/ResDH (2008) 69, 18 September 2008 (at 174 in the collection) (last visited 30.12.2015)

Turkey under the *Aksoy* Group so far, and issued Interim Resolution CM/ResDH (2008) 69. Assessments of the CM within all these resolutions are as follows:

*Improvement of procedural safeguards in police custody*

84. The CM found the information submitted by the Government of Turkey concerning the rights of persons held in police custody recognized in the new Code of Criminal Procedure (which came into force on 1 June 2005) satisfying regarding improvement of safeguards in police custody, and decided to close examination of the issue of ineffectiveness of procedural safeguards in police custody, considering also information submitted regarding the adoption of some circulars and amendments to some regulations by the authorities of Turkey.<sup>78</sup>

*Improvement of professional training of members of security forces and training of judges and prosecutors*

85. Taking into consideration the establishment of the “Staff Education and Training Unit”, which deals with the training of staff members of prisons and detention centers, training courses in police colleges and academia, and other training projects organised with the support of the Council of Europe<sup>79</sup>, the CM decided to close the issue of the improvement of professional training of security forces. Similarly, the CM found the establishment of the Turkish Academy of Justice with a focus on the education of judges and prosecutors, publishing of a bulletin, including ECtHR judgments on the website of the Ministry of Justice and trainings organised by the Academy, sufficient to close the issue of training of judges and prosecutors.<sup>80</sup>

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<sup>78</sup> Amendments made by the Government of Turkey so far encompass the following: abolition of Article 16 § 4 of the Law No. 2845 on State Security Courts regarding right to lawyer; issuance of *the Circular of the Ministry of Interior of 16 January 2003*; *The Circular of the Minister of Interior of 18 October 2004*; *the Circulars of the Ministry of Justice of 28 May and of 22 August 2002*; and *the Circular of the Ministry of Health of 10 October 2003* regarding procedural safeguards to prevent torture, as well as adoption of Article 99 of the new Code of Criminal Procedure regarding medical and technical conditions of the detention facilities; and the amendments made to the *Regulations on Apprehension, Police Custody and Interrogation* on 3 January 2004. All are regarded as improved general measures adopted following or in accordance with Interim Resolution ResDH (2002)98. Furthermore there is: Adoption of Article 251§ 5 and 91 of the Code of Criminal Procedure regarding the length of detention; adoption of Article 147 the Code of Criminal Procedure and Article 6 of the Regulation on Apprehension, Police Custody and Interrogation, which also came into force on 1 June 2005 regarding the duty to inform persons in police custody about their rights and charges against them; Article 95 of the Code of Criminal Procedure regarding the duty to inform a family member; Articles 147, 148 and 154 of the Code of Criminal Procedure; Article 10 of the Anti-terrorism Law (No. 3713); Article 10 of the Regulation on Apprehension, Police Custody and Interrogation, Circular (No. 24) issued by the Minister of Justice on 01 January 2006 regarding right to a lawyer; Article 9 of the Regulation on Apprehension, Police Custody and Interrogation; and Articles 7 and Article 8 of the Regulation on Physical and Genetic Examinations and Identification in Criminal Procedures regarding medical examination; Article 92 of the Code of Criminal Procedure; Article 26 of the Regulation on Apprehension, Police Custody and Interrogation; and Circular (No.3) issued by the Minister of Justice on 01 January 2006 regarding monitoring of custody records and detention premises by public prosecutors. All these legislative amendments were presented as improved general measures after Interim Resolution ResDH (2005) 43.

<sup>79</sup> Committee of Ministers, Interim Resolution ResDH (2005) 43, 7 June 2005 (at 193).

<sup>80</sup> The authorities of Turkey submitted a list of seminars, conferences, study-visits and other training activities organised in 2004, 2005 and in the first three months of 2006 within the context of Council of Europe/European

*Giving direct effect to the Convention requirements*

86. Under the heading of “giving direct effect to the convention requirements,” the CM considered the following measures: the amendments introduced in 2007 to Law No. 2559 on the duties and legal powers of the police; information provided by the Government of Turkey regarding instructions given to the Gendarmerie in order to ensure compliance of their actions with the Convention; repeated guarantees given by the Government of Turkey regarding effective use of Article 90 of the Constitution which gives direct effect to the Convention; and certain circulars introduced by the authorities of Turkey. It then decided to close the issue. The Circulars, which were issued on 1 June 2005 by the Ministry of Justice for the use of judges and prosecutors, were deemed to be ensuring of the effectiveness of criminal investigations. They are as follows: Circular No:2 indicates the requirement to carry out all criminal investigations swiftly and effectively, Circular No:4 indicates the requirement to carry out criminal investigations regarding torture and ill-treatment allegations in a manner that prevents further violations of the Convention; Circular No:8 indicates the requirement to carry out criminal investigations regarding torture and ill-treatment allegations by chief public prosecutors rather than police officers; Circular No:22 indicates the requirement to carry out an adequate criminal investigation regarding unidentified murders in conformity with the Convention. Except the latter, all circulars have also been considered to be ensuring of the effectiveness of procedural safeguards in police custody. Solely on the basis of these circulars, and promises given by the Government of Turkey to supervise the implementation of Article 90 of the Constitution of Turkey which gives direct effect to the Convention, the CM decided to close the issue, which also means that the CM closed the issue of ineffective investigations regarding enforced disappearances committed by state agents.

*Establishment of enhanced accountability of members of security forces*

87. The Government of Turkey provided information regarding the instructions included in circular No:2 relating to prompt and effective criminal investigation of torture and ill-treatment, and the amendment to Law No. 4483 which abolished the previously required administrative authorisation for the initiation of a criminal investigation against security forces who allegedly committed crimes of torture or ill-treatment. The CM urged the authorities of Turkey “to take the necessary legislative measures to remove any ambiguity regarding the fact that the administrative authorisation is no longer required to prosecute not only for torture and ill-treatment, but also any other serious crimes and to ensure that members of security forces of all ranks could be prosecuted without an administrative authorisation.”<sup>81</sup>

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Commission Joint Initiative and with the collaboration of various universities and institutions both in Turkey and abroad.

<sup>81</sup> Interim Resolution CM/ResDH (2008) 69, 18 September 2008.

Prompt and efficient implementation of the “Law on Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism”

88. The Government of Turkey stated that the Law No. 5233 on Compensation was adopted on 14 July 2004 and its related Regulation on 20 October 2004. The Government of Turkey claimed that both these legal arrangements on compensation and general measures of administrative law ensure reparation and compensation for pecuniary damages caused as a consequence of actions of security forces. The government also stated that in 2005 by Law No. 5442 the compensation law was amended and its scope and time frame was extended, and reminded that the ECtHR deemed the Law on compensation and measures taken by Turkey as an effective remedy in its *İçyer v. Turkey* judgment.<sup>82</sup> Taking into consideration the findings of the ECtHR in its *İçyer v. Turkey* judgment, and reassurances given by the authorities of Turkey regarding the practice of administrative courts of ensuring reparation for the damages caused by the actions of the security forces, the CM decided to close the issue.

Practical Impact of the Measures Taken

89. The authorities of Turkey provided a list of statistics regarding the number of investigations, acquittals and convictions into crimes of torture and ill-treatment for years between 2003 and 2007. However, the CM stated that although this information statistic could be interpreted as an indication of a decrease in the number of investigation files regarding allegations of torture and ill-treatment, the authorities of Turkey had not provided any information regarding the investigations, acquittals and convictions regarding serious offences other than torture and ill-treatment allegedly committed by security forces, and urged authorities of Turkey to provide detailed information regarding the impact of measures taken so far.

**b) *Bati and Others* Group – Enhanced supervision**

90. Under the *Bati and Others* Group the CM has supervised 68 cases including 2 enforced disappearance cases, namely *Er and Others v. Turkey* and *Gasyak and Others v. Turkey*. According to the classification of the CM this group consists of cases involving the “ineffectiveness of investigations and subsequent judicial proceedings into alleged abuses by members of security forces, in particular ill-treatment of the applicants or the death of their relatives under circumstances engaging the responsibility of the state, including during the transfer of detainees (violations of Art. 2, 3, 5/3, 5/4, 5/5 and 13.). The European Court concluded that these shortcomings resulted in granting virtual impunity to members of security forces.”<sup>83</sup>

<sup>82</sup> *İçyer v. Turkey*, App. No. 18888/02, ECtHR (12 January 2006)

<sup>83</sup> Council of Europe, Execution of Judgments of the ECHR, Pending Cases: current state of execution: *Bati and Others v. Turkey* (LEAD), App. No. 33097/96, ECtHR (3 June 2004), [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=BATI+and+others&StateCode=&SectionCode=>](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=BATI+and+others&StateCode=&SectionCode=>) (last visited 30.12.2015)

91. The CM determines the procedural shortcoming identified by the ECtHR within its judgments under this group of cases as follows: “excessive length of investigations conducted against state agents; lack of independence of the authorities that conducted the investigations; impossibility for the applicants to have access to investigation files; impossibility for the applicants to question witnesses and members of security forces; proceedings become time-barred as a result of excessive length of proceedings; decisions to suspend sentences rendered in respect of members of security forces; failure to suspend members of security forces from their duties while they were being prosecuted for ill-treatment; shortcomings in medical experts’ reports; the leniency of prison terms imposed on police officers involved; the conditional release of police officers convicted of ill-treatment.”<sup>84</sup> All issues regarding this group of cases are currently open and have been supervised by the CM under the enhanced supervision procedure.<sup>85</sup>

**c) *Erdoğan and Others Group and Kasa Group - Enhanced supervision***

92. In 2014 the CM decided to re-group some cases considering the similarities and to examine relevant cases under the enhanced procedure by indicating that these cases consist of complex problems.

93. Accordingly, the CM has currently supervised the execution of 9 cases, including 6 enforced disappearance cases, namely *Bozkır and Others v. Turkey*, *Nihayet Arıcı and Others v. Turkey*, *Meryem Çelik and Others v. Turkey*, *Nezir Tekçi v. Turkey*, *Kadri Budak v. Turkey*, *Saygı v. Turkey*, under *Erdoğan and Others* determined by the CM as a group consisting of cases that cover the actions of security forces, and in particular such action that took place during military operations and entailed a lack of effective investigation.

94. According to the same decisions, the CM has currently supervised the execution of 7 cases, including one enforced disappearance case, namely *Cülaz and Others v. Turkey* (which is determined as a repetitive case by the CM), under *Kasa* group determined by the CM as a group consisting of cases regarding death as a result of excessive use of force by security forces and a general lack of effective investigations.

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<sup>84</sup> *Ibid.*

<sup>85</sup> See. Communication from Turkey concerning the Batı group of cases against Turkey (Application No. 33097/96) 1243 meeting (8-10 December 2015) (DH) - Action plan (19/10/2015) <<https://wcd.coe.int/ViewDoc.jsp?Ref=DHDD%282015%291116&Language=lanFrench&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>> (last visited 30.12.2015)

## 2.2. Submitted Action Plans by the Government of Turkey Regarding Implementation of Enforced Disappearance Judgments of the ECtHR and Current Shortcomings in Selected Cases

### a) Action Plan of the Authorities of Turkey regarding *Nihayet Arıcı and others v. Turkey* Judgment Dated 06.12.2013, and Communication Dated 08.04.2015

95. With the Action plan dated 6 December 2013, the authorities of Turkey provided the respective information as required under the general measures: the translation of the judgment into Turkish and its circulation to the relevant judicial, administrative and legislative authorities; the establishment of the Human Rights Department under the Ministry of Justice and some conferences organised by this department during 2011; circulation of Circular No.8 regarding investigations of human rights violations, torture and ill-treatment; initiation of a general action plan regarding legislative arrangements to be made in accordance with the judgments of the ECtHR against law enforcement officers; adoption of Article 172/3 of the Criminal Procedure Code which arrange the re-opening of investigation files within 3 months after the decision where the ECtHR finds that the non-prosecution decision is based on ineffective investigation. The Government of Turkey considered these measures to be such general measures as required by the CM Guidelines, Provision III. (2011). The Government of Turkey then considered that the execution period of the judgment should be examined within the *Aksoy* Group.<sup>86</sup>

96. In its communication dated 8 April 2015 the Government of Turkey answered the letter submitted by the representative of the applicants Nihayet Arıcı, Hanefi Arıcı, Siman Töre, Mahsime Arıcı, Sidap Arıcı, Azade Arıcı and Gülendamar Arıcı, which stated that neither the effectiveness of the investigation nor the redress for damage arising from the actions of the security forces have been ensured so far. The government stated that the investigation was still ongoing. Additionally, the government claimed that the applicants Hanifi Arıcı and Abdulhamid Arıcı have not brought any compensation proceedings before the responsible and competent administration in accordance with domestic law. Their claim was dismissed on grounds of inadmissibility without examining its merits.<sup>87</sup>

97. At the outset, an investigation was initiated by the Şemdinli Public Prosecutor's Office under the investigation file No.1999/295 and the Chief Public Prosecutor issued the decision of non-prosecution numbered 1999/73 and dated 15 November 1999 in order to receive administrative authorisation [under the provisions of the Law of 1914] for investigation of members of the 2<sup>nd</sup> and 3<sup>rd</sup> Kayseri Commando Brigades who served

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<sup>86</sup> Communication from Turkey concerning the case of *Nihayet Arıcı and others against Turkey* (Application No. 24604/04), 16.01.2014, at 3

<<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2428756&SecMode=1&DocId=2096490&Usage=2>> (last visited 30.12.2015)

<sup>87</sup> Communication from the authorities (08/04/2015) concerning the case of *Nihayet Arıcı and Others against Turkey* (Application No. 24604/04), at 1

<<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2722900&SecMode=1&DocId=2255690&Usage=2>> (last visited 30.12.2015)

under the command of 1<sup>st</sup> Kayseri Commando Brigade (based in Kayseri) as a provisional unit deployed in Şemdinli during the operation. The District Administration Board of the Şemdinli District Governorship prohibited investigation proceedings against security forces on 13 June 2001. Upon the appeal of the applicants, the Van Regional Administrative Court reversed the decision and the investigation file was sent to the Şemdinli Criminal Court of First Instance for initiation of prosecution proceedings for the crimes of deliberate murder and seizure.

98. During the proceedings the court requested the list of the members of the mentioned military units. In response, the Kayseri Brigade Command sent a letter to the court which in summary stated that: 1. *It cannot be claimed that members of the security forces of Turkey are of such dishonour and disrepute to commit the crimes of murder and seizure.* 2. *The Turkish Armed Forces face allegations of villagers who support the PKK.* 3. *No military operation took place at the specified date by the 2<sup>nd</sup> and 3<sup>rd</sup> Kayseri Commando Brigades in the region where the crime was committed.* 4. *There is no possibility of security forces committing the crimes stated in detail in the non-prosecution decision of the public prosecutor.* 5. *It is evident that the strict hierarchy of the armed forces would not allow the occurrence of such an incident by the individual actions of the members of the security forces.* 6. *On the other hand it is evident that the incident was committed by terrorists in order to disgrace the armed forces and the bullets of a G3 infantry rifle could only have been placed at the crime scene by terrorists with the same intent.* 7. *The terrorist organisation had tried to use villagers by promising compensation, to turn the ECtHR against Turkey in order to disgrace the State of Turkey in the eyes of the international community.* 8. *The work to list the members of the relevant security forces is still in progress but revealing the identity and residence addresses of security forces may put them in danger.* 9. *The court should investigate the intelligence reports regarding the applicants and their village to discover whether they are supporters or members of the PKK before making a decision regarding allegations against the security forces.*<sup>88</sup>

99. This document reveals the attitude of military authorities in investigating grave human rights violations committed by their members and this attitude used to determine the decisions of courts in Turkey and unfortunately it still has a strong impact.

100. The Şemdinli Chief Public Prosecutor applied to the authorities for an administrative permission to investigate members of the security forces which were listed and he was denied permission by the Şemdinli District Administrative Council. Van District Administrative Court reversed this decision and sent the file to the Şemdinli Criminal Court of First Instance. The court decided that it was not necessary to decide on a decision of prosecution on 13 March 2002 due to the reason that there was no indictment. Then the file was sent back to the Şemdinli Chief Public Prosecutor's office and the investigation has been ongoing since 2002.

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<sup>88</sup> Turkish Land Forces Command - Kayseri Brigade Command, document (classified as confidential) dated 14 October 2001, numbered 7200-2277-01, within the current investigation file of Şemdinli Chief Public Prosecutors' Office (no2002/186).



101. In 2012 the ECtHR decided under Article 46 of the Convention that in contrast with the claims of the Kayseri Brigade Command, *“there has been a violation in respect of the death of applicants’ relatives under the circumstances described in the non-prosecution decision of the public prosecutor dated 15 November 1999 and there has been a violation on account of the failure of the authorities of the respondent State to conduct an effective investigation into the circumstances of the death of the applicants’ relatives,”* and [the ECtHR] *“considering that after ten years from the incident the proceedings are still in the investigation period, requested the respondent State to take necessary actions to finalise the investigation period as soon as possible, to reveal the circumstances within which the relatives of the applicants were murdered, and to draw conclusion regarding the compensation to be granted to the applicants.”*
102. According to information accessed by *Hafıza Merkezi* via the representative of abovementioned applicants: although there are two eye-witnesses who stated that the deceased were detained by the security forces and despite the findings of the ECtHR, the public prosecutor’s office has not been issued an indictment against security forces. Even in the document sent by the Kayseri Brigade Command in 2001 it is stated that there is a strict hierarchy within the military system of Turkey, the public prosecutors have only summoned some low level military members as witnesses, but no low level or high level members of the security forces as suspects. Since 8 March 2004, according to the standing search order issued by the public prosecutor, letters stating that no information was obtained have been submitted to the file by the Şemdinli District Gendarmerie Command. Even though the results produced by the Criminal Laboratory would prove that the bullets found at the crime scene had been fired by a G3 infantry rifle, it rests on the public prosecutor to issue an indictment against alleged (high and low level) perpetrators. Therefore, the representative of the abovementioned applicants states that given the ineffectiveness of the investigation ongoing in Şemdinli, he has applied on 5 March 2014 to the Hakkari Chief Prosecutors’ Office after the judgment of the ECtHR to request an effective investigation, but had achieved no results as of yet.
103. Regarding compensation, in contrast with the government’s claim, the representative of the above mentioned applicants brought compensation proceedings before the Van 3<sup>th</sup> Administrative Court under general domestic law against the Ministry of Interior under file number 2014/860. The Court dismissed the case with its decision No. 2015/316 on 27 February 2015, stating that, *“Firstly, the circumstances concerning absolute liability did not occur in the incident related to the compensation request. Additionally no liability can be attributed based on social risk principle either because several conditions for this principle are not met: the incident in question is not of general public interest; the damage is not caused by a risk of a social nature and the incident and damage is not the direct result of a public service; therefore the*

*defendant administration cannot be held responsible for the damage caused by the assumed incidents”.*<sup>89</sup>

**b) Action Plan of the Authorities of Turkey Regarding *Bozkır and others v. Turkey* Judgment Dated 10.01.2014**

104. In the Action Plan dated 10 January 2014 concerning the case of *Bozkır and others* against Turkey, in respect to the application of general measures the authorities of Turkey provided the same information submitted in the action plan regarding the implementation of *Nihayet Arıcı and Others v. Turkey* (see para. 95). With regard to individual measures the authorities of Turkey stated that the just satisfaction, awarded by the Court, was paid to the applicant and the investigation is still pending.<sup>90</sup> The Government of Turkey then considered that the execution period of the judgment should be examined within the *Aksoy Group*.<sup>91</sup>

105. According to the information reached by *Hafıza Merkezi* from the investigation file (by the authorisation of Hakkari Public Prosecutor Seray Kavuk): on 18 March 2014, the investigation file no. 2003/688 at the Van Specially Authorised Chief Public Prosecutor’s Office (first authorised by former Article 250 of the Criminal Procedure Code and then authorised by former Article 10 of the Anti-Terror Law) was transferred to the Hakkari Public Prosecutor’s Office following a decision of non-jurisdiction numbered 2014/2001.

106. The investigation has been ongoing under file number 2014/3170 involving an accusation of the crime of disrupting the unity and territorial integrity of the state. It is observed that no action has been taken regarding the investigation as of June 2015 except the standing search order issued by the public prosecutor on 31 October 2014, which was addressed to the Central District Gendarmerie Command due to the statute of limitations. It is stated within the decision that according to Article 102/1 of the former Criminal Code no. 765, the time limit for the investigation will expire as of 24 August 2016. In conclusion the investigation has been protracted and will be closed by a non-prosecution decision based on the statute of limitations at the end of the time limit prescribed within the provision in favour of the accused. Therefore, the authorities of Turkey have ensured neither an effective investigation nor an effective remedy for the applicants so far.

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<sup>89</sup> Van 3th Administrative Court, Decision numbered 2015/316, dated 27/02/2015.

<sup>90</sup> Communication from Turkey concerning the case of *Bozkır and others against Turkey* (Application No. 24589/04), Action plan (10/01/2014), at 2,

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442439&SecMode=1&DocId=2103332&Usage=2> (last visited 30.12.2015).

<sup>91</sup> Communication from Turkey concerning the case of *Bozkır and others against Turkey* (Application No. 24589/04), Action plan (10/01/2014), at 5,

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442439&SecMode=1&DocId=2103332&Usage=2> (last visited 30.12.2015).

**c) Action Plan of the Authorities of Turkey regarding *Meryem Çelik v. Turkey* judgment dated 10.01.2014**

107. In the Action plan dated 10 January 2014 concerning the case of *Meryem Çelik and others* against Turkey, in respect to the application of general measures the authorities of Turkey provided the same information submitted in the action plan regarding the implementation of *Nihayet Arıcı and others v. Turkey* and *Bozkır and others v. Turkey* (see para. 95). With regard to individual measures the authorities of Turkey stated that the just satisfaction, awarded by the Court, was paid to the applicant.<sup>92</sup> The Government of Turkey then considered that the execution period of the judgment should be examined within the *Aksoy Group*.<sup>93</sup>

108. According to the information reached by *Hafıza Merkezi* from the representative of the applicants the following facts are presented: an investigation was first initiated by the file No.1998/137 by Şemdinli Chief Public Prosecutor's Office and after statements of the applicants taken, a summary of proceedings numbered 1999/3 issued by the public prosecutor on 13 April 1999 and transmitted to the Hakkari Chief Public Prosecutor's Office since the alleged crimes fall within the competence of the Assize Court. Pursuant to the summary of proceedings, the Hakkari Chief Public Prosecutor issued a decision of non-prosecution numbered 1999/21 and dated 22 April 1999 in order to receive administrative authorisation for investigation of the accused members of the security forces under the provisions of the Law of 1914. The District Administration Board of the Şemdinli District Governorship prohibited the investigation proceedings against security forces on 8 June 2000. Upon the appeal lodged by the applicants, the Van Regional Administrative Court concluded an approval decision on 18 July 2000 and domestic remedies were exhausted.

109. After the judgment of the ECtHR, on 29 July 2013, the representative of the applicant filed a criminal complaint at the Hakkari Chief Public Prosecutor's Office, against Ali Çamurcu (who was Lieutenant Colonel at the time of the incident), Fatih Akçay (who was Gendarmerie Sergeant at the time of the incident) and the other suspects, and requested the re-opening of the investigation file. This request is in accordance with Article 172/3 of the Criminal Procedure Code, which arranges the re-opening of investigation files within 3 months after the decision in which the ECtHR finds that the non-prosecution decision is based on ineffective investigation. Since that time neither the applicants nor their representatives have received any information regarding their application from judicial authorities. Therefore, the authorities of Turkey, contrary to their own statements in their actions plan before the CM, have

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<sup>92</sup> Communication from Turkey concerning the case of *Meryem Çelik and others against Turkey* (Application No. 3598/03), Action plan (10/01/2014), at 3, <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442445&SecMode=1&DocId=2103346&Usage=2>> (last visited 30.12.2015).

<sup>93</sup> Communication from Turkey concerning the case of *Meryem Çelik and others against Turkey* (Application No. 3598/03), Action plan (10/01/2014), at 5-6, <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2442445&SecMode=1&DocId=2103346&Usage=2>> (last visited 30.12.2015).

ensured neither an effective investigation nor an effective remedy for the applicants so far.

### 2.3. Conclusion

110. The CM determined its approach for the implementation of the ECtHR judgments concerning the actions of the security forces in Turkey within a framework which would prevent the repetition of similar violations. Since 1999, the Government of Turkey submitted detailed information to the CM regarding comprehensive amendments conducted in the area of protection under police custody and training of judges, prosecutors and security forces with a perspective of human rights protection based on the findings of the ECtHR.
111. Beyond doubt, these enhancements in the legislation regarding protection of individuals under police custody have impeded widespread and systematic torture and ill-treatment in official detention centres. Nevertheless, as it can be illustrated from the excessive number of cases before the ECtHR regarding police violence during and after the demonstrations, the actions of security forces amounted to torture and ill-treatment has continued in public spaces and unofficial detention centres.<sup>94</sup> On the other hand, grave human rights violations of the security forces against civilians within the Kurdish region witnessed a shift from enforced disappearances to extrajudicial killings, intentional and targeted shootings within the residential areas.<sup>95</sup>
112. One of the other areas specified by the CM for the execution of the judgments of the ECtHR concerning the actions of the security forces in Turkey has been the accountability of the security forces and reparations for the victims. In these two areas the Government of Turkey has maintained its discourse based on the denial of the responsibility of its security forces regarding their grave human rights violations and refused the acknowledgment of the truth regarding unlawful actions of state agents within the context of the fight against PKK. As it was stated before, the Government of Turkey has justified the human rights violations of its agents with the gravity of the fight against terrorism and has used all means to undermine the credibility of the victims and their families, for instance, by accusing them of being supporters, or even members of the PKK. Within the scope of this perception of the Government of Turkey, the credibility of the witnesses and even the legal representatives of the victims is challenged. Therefore, from the very beginning of the investigation to the

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<sup>94</sup> IHOP – Monitoring Reports of the Implementation of the ECtHR Judgments, 2014/2 The Execution Of The Ataman Group Cases – Monitoring Report prepared by Başak Çalı.

<sup>95</sup> Hafiza Merkezi, Urgent Call for Cizre, 8.9.2015, < <http://hakikatadalethafiza.org/en/urgent-call-for-cizre/>>, see also; Investigation Report of Diyarbakır Bar Association, 21.9.2015, <<http://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu.pdf>>, Joint Investigation Report of Human Rights Association, Human Rights Foundation of Turkey, Diyarbakır Chamber of Medicine, General Practitioners Association, 15.9.2015, < <http://tihv.org.tr/wp-content/uploads/2015/09/Cizre-%C4%B0nceleme-Raporu.pdf>>. See also: European Commission, Turkey 2015 Report, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 10.11.2015, SWD(2015) 216 final, p.25.

final court decision the concept to protect state agents is the intent of all state officials including that of the judiciary. Nevertheless, the directions and determinations of the CM are far from being effective in changing the course of the perception of the Government of Turkey and cannot lead to the acknowledgement of the truth regarding past atrocities of state agents and to them being held accountable.

113. For instance, the CM had requested from the Government of Turkey - at the beginning of the process of the execution of ECtHR judgments concerning the actions of the security forces in Turkey - statistics and data regarding the number of the security forces who have been accused, investigated, prosecuted, convicted or acquitted in the context of the violations determined by the ECtHR in its relevant judgments. The Government of Turkey submitted some statistics regarding the investigations, prosecutions, acquittals and convictions concerning security forces who had been involved in torture and ill-treatment.<sup>96</sup> According to these statistics from 2003 to 2005, acquittals in cases concerning security forces decreased nearly 10 percent, which could be considered as an improvement regarding the number of violations. Nevertheless, as human rights organisations working on the issue declared in their reports, the accusations of the prosecutors have shifted from torture, ill-treatment and the offence of exceeding the limits of authorisation for the use of force to intentional injury since the entry into force of the law which lifted the statute of limitations, removed the necessity of administrative permission for investigations and reduced the punishment for the first set of accusations. This approach of prosecutors on the one hand could give rise to the impunity of accused security forces by subjecting them to administrative permission; on the other hand, it could exclude the offence from the statistics of torture and ill-treatment.<sup>97</sup>

114. With respect to enforced disappearances and extrajudicial, arbitrary and summary executions, the Government of Turkey has not submitted any specific statistics regarding investigations, prosecutions, acquittals and convictions of the state agents for their involvements in these grave human rights violations.

115. Regarding compensation and reparation demands of the victims, the Government of Turkey claimed that the “Law no. 5233 on Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism” and general administrative measures ensure the fulfilment of the obligations of the state. Nevertheless, as it is well illustrated with the above mentioned decision of the Administration Court regarding the compensation claims of the applicants of *Nihayet Arıcı and others* case, the social risk criterion could be considered as a basis to refuse such claims. The social risk criterion is also applied to the claims under Law No. 5233. It is obvious that the

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<sup>96</sup> Interim Resolution CM/ResDH (2008) 69, 18 September 2008.

<sup>97</sup> TİHV, “İşkenceye Açık Kapılar Mevzuat ve Uygulama Çerçevesinde Cezasızlık Olgusunun Değerlendirilmesi,” [Open Doors to Torture: An assessment of impunity in the legislation and in practice], İzmir, May 2009, Preperad By Aysun Koç, Hülya Üçpınar, Nazan Sakallı, Nergiz Tuba Ataf. HRW, “Adalet Karşı Safları Sıklaştırmak Türkiye”de Polis Şiddetiyle Mücadele Önündeki Engeller,” [Closing Ranks against Accountability: Barriers to Tackling Police Violence in Turkey], December, 2008, see also HRW World Report 2012: Turkey.

Government of Turkey's assertions on compensation and reparation also based on the denial of the responsibility of state agents in these damages.

### **3. Systemic Problems in the Implementation of the ECtHR Judgments regarding Enforced Disappearances**

#### **3.1. Investigation Period**

##### *Protracting and ineffective investigations:*

116. According to the analysis of around 300 investigation/prosecution files and criminal complaints by *Hafıza Merkezi*, it has been confirmed that 68 percent of the investigations remain ongoing and are protracted in various ways. Examples of protracting and ineffective investigations within the implementation period of the ECtHR judgments are as follows:
117. The implementation period of the *Orhan v. Turkey* judgment reveals that the investigation still remains ongoing and protracted. After various applications, the legal representative of applicants was informed by the prosecutor that the prosecutor has requested information from relevant authorities through a writ of execution regarding the incident on 12.03.2015 after as much as 21 years later than the incident.
118. The implementation period of the *İpek v. Turkey* judgment involves a similar situation and the investigation still remains ongoing and protracted. Security forces have searched unsuccessfully for the perpetrators and informed the public prosecutor at regular intervals until 01.12.2014.
119. The investigation regarding the *Süheyla Aydın v. Turkey* judgment also remains ongoing and protracted. After various applications, the prosecutor requested information from relevant authorities through a writ of execution regarding the incident in 05.03.2014 and heard a witness in 05.02.2014.
120. The investigation regarding the *Tanış and others v. Turkey* judgment also remains ongoing and protracted. The prosecutor decided on a permanent search warrant until the end of the time period of statute of limitations in 01.06.2015 and the Silopi Chief Public Prosecutor's Office refused the request of the applicants to prosecute the alleged perpetrators, namely Levent Ersöz (who was Şırnak Gendarmerie Regional Command at the time of the incident), Selim Gül and Veli Kuş on 29 March 2015.
121. As mentioned above, the investigation regarding the *Bozkır and others v. Turkey* judgment also remains ongoing and protracted. The prosecutor decided on a permanent search warrant until the end of the time period of statute of limitations on

31.10.2014. The investigation regarding the *Nihayet Arıcı and others v. Turkey* judgment also remains ongoing and protracted as stated above.

122. The investigation regarding the *Er and others v. Turkey* judgment resulted in a verdict of non-prosecution based on lack of evidence, dated 16.12.2014. The representative of the applicants pleaded the verdict on 24.12.2014 and the decision was reversed by the Assize Court. But the investigation file was consolidated by an unrelated investigation file as stated by the representatives of the applicants and transferred to the Hakkari Chief Public Prosecutor's Office from Çukurca Chief Public Prosecutor's Office by a decision of non-jurisdiction. After a predestination period, the files were separated and the investigation file relating to the *Er and others v. Turkey* judgment was transferred back to the Çukurca Chief Public Prosecutor's Office.

Statute of limitations:

123. According to the analysis by *Hafıza Merkezi* of around 300 investigation/prosecution files and criminal complaints, 9 percent of the investigations resulted in verdicts of non-prosecution, decisions of acquittal or barred by the statute of limitations. Based on this analysis, it could be said that prosecutors' offices have remained unwilling and inactive in initiating investigations and conducted proceedings in an unreasonable manner that leads to the expiration of the limitation period.

124. As is common practice in Turkey, Articles 448-450 and 102/1 of the former Turkish Penal Code, which were regulated the crime of homicide and the statute of limitations for the prosecution of that crime, are applied to enforced disappearances committed by the security forces during 1990s. The link between enforced disappearances, their systematic and widespread character and state authorities is overlooked, and they are treated as singular cases of homicide, so that they are subjected to the statute of limitations law of 20-years. Therefore, it may be said that a large portion of the investigations into the crimes committed in the 1990s are either barred by the statute of limitations or under such risk. This also constitutes a violation of national and international law, as Article 90 of the Constitution sets forth that, in the case of conflicts between international and domestic law, international treaty obligations take precedence.

125. There is no effective remedy against verdicts of non-prosecution. Article 173 of the Code of Criminal Procedures which regulates the appeal against a decision of non-prosecution is not an effective remedy, since the appeals of the victims against non-prosecution decisions of public prosecutors based on the statute of limitations are refused automatically based on procedural grounds without the examination of merits.

126. Investigations relating to the *Çiçek v. Turkey* judgment resulted in a verdict of non-prosecution based on the statute of limitations, dated 29.05.2014, investigations relating to the *Kurt v. Turkey* judgment resulted in a verdict of non-prosecution based on the statute of limitations, dated 21.11.2014, investigations relating to the *Kadri Budak v. Turkey* judgment resulted in a verdict of non-prosecution based on the statute of limitations, dated 02.06.2014. There were no effective criminal proceedings regarding the disappearance of Tahsin Çiçek, Ali İhsan Çiçek, Çayan Çiçek and Üzeyir Kurt, and disappearance and subsequent death of Bahri Budak and Metin Budak.

127. The Government of Turkey does not have any comprehensive approach for the application of the statute of limitations to enforced disappearance cases. The legislative and judicial authorities frequently allege the prohibition of retrospective application of the law which would introduce non-applicability of the statute of limitations to the violations of the right to life by indicating the principle of legality under Article 7 of the ECHR and Article 15 of the International Covenant on Civil and Political Rights. As a matter of fact these concerns of the authorities are irrelevant when the ECtHR's case law regarding retrospective application of the criminal law with respect to crimes against humanity and war crimes is taken into account, which "acknowledged that human rights law allows states to introduce new jurisdictions for the prosecution of past international crimes into their domestic law and that abolition of a domestic statute of limitations that applies to past international crimes incorporated into domestic law would therefore also be permissible under human rights law."<sup>98</sup>

128. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, indicated in his 2015 Turkey report that "the application of the statute of limitations for unlawful killings further aggravated the climate of impunity". He recommended that "the statute of limitations be removed for all violations of the right to life."<sup>99</sup>

### **3.2. Prosecution Period**

129. According to an analysis of around 300 investigation/prosecution files and criminal complaints conducted by *Hafıza Merkezi*, only 23 percent of criminal complaints were prosecuted, there were verdicts of conviction in just 1 percent of the whole data.

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<sup>98</sup> Human Rights Watch, January 2013 Legal Opinion Submitted to Minister of Justice of Turkey, Lifting the Statute of Limitations for Violations of the Right to Life and Torture by Suspected State Perpetrators, 25 March 2013.

<sup>99</sup> A/HRC/23/47/Add.2, paras. 62 and 117.



Limited scope of the indictments:

130. Prosecutions are initiated with a limited scope. Each incident is considered as a stand-alone case and therefore the systematic, organized and widespread structure of the violations is disregarded.
131. For instance, on 26 December 2013, a prosecution was initiated regarding the disappearance of 11 villagers in circumstances engaging the responsibility of the authorities on 9 October 1993. The same incidents were examined by the ECtHR in *Akdeniz and others v. Turkey* judgment. Retired General Yavuz Ertürk was the Bolu 2<sup>nd</sup> Commando Brigade Commander at the time of the incidents and accused of “murdering multiple persons for the same reason, encouraging people to revolt and murder each other and of establishing an organization to commit crimes.” In its two relevant judgements, the ECtHR found a violation of Article 38 § 1 (a) of the Convention based on, *inter alia*, the non-appearance of General Yavuz Ertürk at the hearings conducted by the delegates in Ankara during the proceedings of the *Çiçek v. Turkey* and *Orhan v. Turkey* cases despite reminders from the Commission that they considered that General Yavuz Ertürk was a relevant and material witness, and the ECtHR found that “it can draw inferences from the Government's conduct in respect of the non-attendance of General Ertürk. (*Çiçek v. Turkey* § 126)”. Despite these findings Yavuz Ertürk was not heard in any of the investigations conducted in relation to the *Çiçek v. Turkey* and *Orhan v. Turkey* judgments neither as a witness nor as a suspect. Despite the indictment of the case related to disappearance of 11 villagers mentions the disappearance of Tahsin Çiçek, Ali İhsan Çiçek, Çayan Çiçek, Selim Orhan, Hasan Orhan and Cezayir Orhan, Yavuz Ertürk was not accused because of their disappearances and his Brigade's other actions during a two-year-period in the related region. As is the case in other prosecutions regarding enforced disappearances, neither the high-level decision makers nor the hierarchical superiors of Yavuz Ertürk have been included in the indictment.

Transfer of cases:

132. 7 out of 8 prosecutions initiated have been transferred to a city other than the place of the offenses, by a decision of the Ministry of Justice due to “security reasons”. Such transfers obstruct the relatives and lawyers of the victims from following the proceedings properly and cause financial burdens due to transportation costs. Also most of the trials have been transferred to the cities, where there is a strong sentiment of Turkish nationalism and thus, it raises the question whether such transfers were politically motivated and intentional.
133. On 6 January 2015, after almost five years since the opening of the case (starting date of the case is 11 September 2009) related to the *Gasyak and Others*<sup>100</sup> judgment, the court of appeals for the 5<sup>th</sup> Circuit decided to move the trial from Şırnak to

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<sup>100</sup> *Gasyak and others v. Turkey*, App. No: 27872/03, ECtHR (13.10.2009), execution of judgment has been supervised by the CM under Batı Group by enhanced supervision procedure.

Eskişehir due to security reasons. In the first hearing of the case related to the *Tekçi and others*<sup>101</sup> judgment held in September 2011, the court of appeals for the 5<sup>th</sup> Circuit decided to move the trial from Hakkari to Eskişehir due to security reasons. After the first hearing of the case related to the *Cülaz and others*<sup>102</sup> judgment on 31 October 2013, the court of appeals for the 5<sup>th</sup> Circuit decided to move the trial from Şırnak to Ankara due to security reasons. At the hearing of the case related to the *Akdeniz and others* judgment on 27 December 2013, defendant attorneys demanded the moving of the trial to another city for security reasons. On 29 January 2014, the court of appeals for the 5<sup>th</sup> Circuit granted this request and decided to transfer the case from Diyarbakır to Ankara due to security reasons. On 24 January 2015, the Midyat Assize Court requested the transfer of the case related to the *Seyhan*<sup>103</sup> judgment before a hearing was conducted in Midyat. On 18 February 2015 the Court of Appeals for the 5<sup>th</sup> Circuit granted this request and decided to move the trial from Dargeçit to Adıyaman due to security reasons.

134. There is almost no current prosecution against members of the security forces for their grave violations of human rights in the past, which has not been transferred from the province where the crime was committed to another city. This is surprising since there were no issues of public security during the hearings of these cases conducted in the provinces where the crime was committed. These decisions reveal an oblique strategy of the state to complicate the prosecution process of its agents, since the transfer of these cases also hampers those responsible from properly collecting evidence, hearing witnesses, and investigating the crime scene. Also, most of the time, it completely impedes the questioning of witnesses and the accused by the relatives of the victims (complainants) in person due to travel expenses which are not provided by the state.

135. In all of these cases, perpetrators have continued to serve their duty and in most of them the judges' attitudes towards the victims and their legal representatives remained unconcerned or even biased in comparison with their attitudes towards defendants and their legal representatives. There are visible concerns related to the impartiality of the courts. The fact that the promotion, appointment and disciplinary procedures of judges and prosecutors are regulated by the Supreme Council of Judges and Prosecutors, in which the Minister of Justice and Undersecretary of the Ministry are natural members, exacerbates the conflict of interest, and exposes judges and prosecutors to political pressure applied by the executive power. In most of these cases the duration of trials is excessive due to the fact that hearings are held at a minimum of 3-month interval and the documentation requested from official authorities are not submitted to the courts in due time.

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<sup>101</sup> *Tekçi and others v. Turkey*, App. No. 13660/05, ECtHR (10 December 2013), execution of judgment has been supervised by the CM under Erdoğan and others Group by enhanced supervision procedure.

<sup>102</sup> *Cülaz and others v. Turkey*, App. Nos. 7524/06 and 39046/10, ECtHR (15 April 2014), execution of judgment has been supervised by the CM under Kasa Group by enhanced supervision procedure.

<sup>103</sup> *Seyhan v. Turkey*, App. No. 33384/96, ECtHR (2 November 2004), execution of judgment has been supervised by the CM under Aksoy Group by standard supervision procedure.

Non-application of witness and victim protection:

136. The testimonies of witnesses in such trials are crucial for lack of other material evidences. However, there is very limited guarantee of witness protection in the trials relating to the crimes committed by state officials.
137. During the trials of the case related to the *Gasyak and Others* judgment defendants and their relatives (supporters) threatened the victims and their legal representatives directly in the court room, but no criminal proceedings was initiated following these threats. On the contrary, the case was transferred to another province, where the victims' attendance to the trials was made almost impossible because of financial reasons. Hence, they were *de facto* rendered even more defenceless.
138. In the investigation period of the case related to the *Gasyak and Others* judgment, the identity of two anonymous witnesses whose testimonies were very important for the revelation of truth and matched testimonies of other witnesses, were revealed because of the lack of necessary protection. After their identities were revealed the „anonymous“ witnesses withdrew their testimonies. Besides, the other key witness also withdrew his testimony and declared that he had been threatened by the accused. A Kurdish couple who had witnessed one of the abductions and ill-treatments subject to the case also withdrew their testimonies that they gave during one of the trials. One of the witnesses, who was the district governor at the time of the incident, appeared to be blackmailed by an anonymous letter, and given directions on how he should give his testimony in favour of the accused. In this case like the others, witnesses were not provided with the necessary protection.

Decisions of Acquittal:

139. In the case related to the *Cülaz and others* judgment, on 3 July 2015, the public prosecutor requested that the Ankara 2<sup>nd</sup> Assize Court acquit the defendants due to contradictions between the testimonies of witnesses, the possible inducements to witnesses, the lack of material evidence obtained from excavations, and finally the lack of adequate evidence for conviction of the defendants. The Ankara 2<sup>nd</sup> Assize Court, without granting any time to the complainants and their legal representatives to submit their considerations against the acquittal request of the public prosecutor by stating the lack of such a right for complainants within the Turkish Code of Criminal Procedure, in the same trial, accepted the request of the public prosecutor and acquitted the defendants due to a lack of sufficient evidence. The complainants appealed the decision and the case is currently before the Court of Cassation (Yargıtay).
140. In its *Cülaz and others* judgment the ECtHR after mentioning the subsidiary nature of its role where domestic proceedings have taken place quoted from its *Paul and Audrey Edwards v. The United Kingdom* judgment and stated that: “The passage of

*time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family.”*<sup>104</sup>

141. Furthermore, in the same judgment the ECtHR stated that the delay in taking the testimonies of the accused security forces - as in similar delays in other necessary steps of investigation as it was indicated in its *Aydan v. Turkey*<sup>105</sup>, *Bektaş and Özalp v. Turkey*<sup>106</sup> and *Ramsahai and others v. Netherlands*<sup>107</sup> judgments - “not only creates an appearance of collusion between the judicial authorities and the police, but is also liable to lead the relatives of the deceased – as well as the public in general – to form the opinion that members of the security forces operate in a vacuum in which they are not accountable to the judicial authorities for their actions.”<sup>108</sup> Nevertheless, all the major flaws of the investigation period which were indicated by the ECtHR have been maintained during the prosecution period and the appearance of a collusion between the judicial authorities and accused security forces also persisted during the prosecution.

142. In the case related to the *Tekçi and others* judgment, on 19 December 2014, the public prosecutor requested that the Eskişehir 1<sup>st</sup> Assize Court acquit the defendants due to a lack of adequate evidence for the conviction of the defendants. The Eskişehir 1<sup>st</sup> Assize Court, on 11 September 2015, accepted the request of the public prosecutor and acquitted the defendants due to a lack of sufficient evidence to reach a state of certitude regarding the facts in issue. The complainants appealed the decision and the case is currently before the Court of Cassation (Yargıtay).

143. In its *Tekçi and others* judgment, the ECtHR stated that, by giving reference to its *Abuyeva and others v. Russia*<sup>109</sup> judgment, “taking into consideration the specific circumstances of applications and due to the ongoing criminal investigation which is pending before national authorities, the Court finds that under the supervision of the Committee of Ministers acting under Article 46 of the Convention, the respondent Government must be obliged to finalize the investigation which has been at preliminary period for ten years, and to take all necessary measures for the disclosure of the circumstances in which the relatives of the applicants were killed and to draw conclusions regarding the due compensation for the applicants.”<sup>110</sup> Nevertheless, with the decision of acquittal neither the circumstances of the offences nor the whereabouts of the enforcedly disappeared loved ones of the applicants were clarified. There was also no conclusion regarding reparations, which must be provided to the relatives of victims.

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<sup>104</sup> *Audrey Edwards v. The United Kingdom*, App No. 46477/99, ECtHR (14 March 2002), p.86.

<sup>105</sup> *Aydan v. Turkey*, App No. 16281/10, ECtHR (12 March 2013), p.112.

<sup>106</sup> *Bektaş and Özalp v. Turkey*, App. No. 10036/03, ECtHR (20 April 2010), p.65.

<sup>107</sup> *Ramsahai and others v. Netherlands*, App. No. 52391/99, ECtHR (15 May 2007), p.330.

<sup>108</sup> *Cülaz and others v. Turkey*, App. Nos. 7524/06 and 39046/10, ECtHR (15 April 2014), p.190.

<sup>109</sup> *Abuyeva and others v. Russia*, App. No. 27065/05, ECtHR (2 December 2010), p. 243.

<sup>110</sup> *Tekçi and others v. Turkey*, App. No. 13660/05, ECtHR (10 December 2013), p.52.

144. In the case related to the *Gasyak and others* judgment, on 18 June 2015, the public prosecutor requested that the Eskişehir 2<sup>nd</sup> Assize Court acquit the defendants due to a lack of conclusive and convincing evidence on the grounds of personal conscience. Decisions and judgements on the grounds of conscience is determined for judges. There is no law or custom that a public prosecutor can ask for a judgement based on grounds of conscience. 44 hearings of the case were conducted at the Diyarbakır Specially Authorised 6<sup>th</sup> Assize Court, which was competent to hear cases regarding organized crime. In this case, the Diyarbakır Specially Authorised Public Prosecutor accused the suspects of “establishing an organization to commit crimes”, “being a member of this organization”, “soliciting murder” and “committing murder” by alleging that they murdered 20 persons. According to the indictment, the Cizre District Gendarmerie Captain Cemal Temizöz established a civilian interrogation/execution team and in the years between 1993 and 1995 utilized this team in order to detain, investigate under torture, forcibly disappear or murder 21 persons either because, according to his convictions, they were helping the PKK, or because of personal reasons. On 1 March 2014, specially authorized courts were abolished with amendments made by Law No. 6526 and the files were distributed to the assize courts in regions where the crimes were committed. This case file was sent to the Şırnak Assize Court but as stated before, because of security reasons, was transferred to the Eskişehir 2<sup>nd</sup> Assize Court.
145. It is important to note that before the abolishment of specially authorised courts and prosecutor offices, the Diyarbakır Specially Authorised Public Prosecutor requested that the Diyarbakır Specially Authorised 6<sup>th</sup> Assize Court convict Gendarmerie Captain Cemal Temizöz, confessors Adem Yakin, Hıdır Altuğ, Abdülhakim Güven and Gendarmerie Sergeant Burhanettin Kıyak for some of the killings. Nevertheless, without any measures taken within the period between the two requests of different public prosecutors, the defendants were acquitted.
146. The Eskişehir 2<sup>nd</sup> Assize Court decided to drop the case regarding the offence of establishing an organisation to commit crimes and/or being a member of this organisation due to statute of limitations. The Court also decided to refuse the case regarding the incidents examined by the ECtHR in its *Gasyak and others* judgment in respect to Abdülhakim Güven and Adem Yakin because of the decision of acquittal given by the Şırnak Assize Court in 2005. In its *Gasyak and others* judgment the ECtHR states that “*the Court observes at the outset that, despite the applicants' and the eyewitnesses' repeated submissions as to the alleged involvement of gendarmes in the abduction and subsequent killing of the four relatives, there is no information in the file to suggest that attempts were made to identify and question the personnel working at the checkpoint or the personnel at the nearby Bozalan gendarmerie station. Indeed, the national authorities' failure to give serious thought to the possibility of security force involvement in the killing is apparent from the trial court's conclusion – which was also adopted by the Government – that, as one of the defendants had been helping the security forces with their operations at the time, it*

was not logical that he would be involved in any killings”<sup>111</sup> and concluded that the Government of Turkey violated the procedural aspect of Article 2 of the ECHR. Moreover, as a response to the claims of the Government of Turkey that because of the failure of the applicants to submit their applications in a reasonable time, the ECtHR stated that “*The Court deems it important to reiterate at this juncture that there is little ground to be overly prescriptive as regards the possibility of an obligation to investigate unlawful killings arising many years after the events, since the public interest in obtaining the prosecution and conviction of perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity.*”<sup>112</sup>

147. Nevertheless, on the one hand, the Eskişehir 2<sup>nd</sup> Assize Court acquitted the defendants for their crimes of murder due to a lack of sufficient evidence, and on the other hand, decided to file a criminal complaint against the key witness of the investigation on the basis of a claim of providing a false testimony. Regarding the incidents examined by the ECtHR in its *Gasyak and others* judgment, the flaws of the investigation indicated by the ECtHR were never taken into account and the nature of these crimes as crimes against humanity was never considered by judicial bodies.

### 3.3. Means of Redress

148. In the *Bozkır and others* judgment the ECtHR states that “*the national authorities were under an obligation to carry out an effective investigation into the circumstances of the men’s disappearance. However, no effective criminal investigation in accordance with Article 13 of the Convention, which stipulates even a broader obligation to investigate as Article 2, was ever conducted, the Court finds, therefore, that the applicants were denied an effective remedy in respect of the disappearance of their relatives, and were thereby denied access to any other available remedies at their disposal, including a claim for compensation.*”<sup>113</sup>

149. The “Law on Compensation of the Losses Resulting from Terrorism and from the Measures taken against Terrorism No. 5233” entered into force in 2004 and with the extension adopted in 2006 by Law No. 5442, its time limit was extended until 3 January 2007.<sup>114</sup> A Human Rights Watch Report from 2006 states that the amount of the compensation offered by the government after the *İçyer v. Turkey* judgment of the ECtHR decreased significantly and after that decision there had been an obvious aggravation regarding the implementation process of Law No. 5233 and its relevant

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<sup>111</sup> *Gasyak and others v. Turkey*, App. No: 27872/03, ECtHR (13 October 2009), p.77

<sup>112</sup> *Ibid.* p.64.

<sup>113</sup> *Bozkır and others v. Turkey*, App. No. 24589/04, ECtHR (26 February 2013), p.80.

<sup>114</sup> Turkey: Law No. 5233 of 2004 on the Compensation of Damages that Occurred due to Terror and the Fight against Terror [Turkey], 17 July 2004, available at: <<http://www.refworld.org/docid/447c781a4.html>>

Regulation.<sup>115</sup> In the report of the Foundation for Society and Legal Studies (TOHAV) from 2009, criticisms were mainly based on the burden of proof which was put on internally displaced persons and the narrow scope of the Law No. 5233 and its relevant Regulation and the lack of independence of the Damage Assessment Committee and the lack of appeal mechanisms against its decisions.<sup>116</sup>

150. Given the flaws in Law No. 5233 and the ineffectiveness of the investigations which renders it almost impossible for the applicants to receive compensation under domestic law, it is certain that authorities of Turkey have not ensured redress for the relatives of the victims. The main reason to conclude that there is no redress for the victims of grave human rights violations of state agents during the 1990s in Turkey is the insistent denial of the Government of Turkey of the responsibility of its agents and the victimhood of the relatives of the disappeared persons. This denial has been carried out by all relevant authorities including the judiciary and parliament. Besides there are a wide range of difficulties, from a lack of qualified translators available during the trials to the lack of reimbursement for the relatives of victims for their travel costs to the cities where the cases were transferred undermines the right to access to justice.

### 3.4. Conclusion

151. As UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, indicated in his 2015 Turkey report, due to the ineffectiveness of investigations and the length of proceedings “the fight against impunity remains a serious challenge in Turkey.”<sup>117</sup> The European Commission also states in its 2015 Turkey Report that: “*No comprehensive plan was developed to address the issue of missing persons, including thorough and independent investigations into alleged past cases of extrajudicial killing by security and law enforcement officers or the PKK. Mass graves discovered in the south-east were not adequately investigated. The recommendations of the UN Special Rapporteur about lack of prosecutions over extrajudicial, summary or arbitrary executions were not addressed. The statute of limitations for cases of missing persons and extrajudicial killings dating from the 1990s remained in force. As a result, several cases were dropped in 2014 and 2015. Only 12 cases involving past crimes continued. Turkey should consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute.*”<sup>118</sup>

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<sup>115</sup> HRW, Unjust, Restrictive, and Inconsistent. The Impact of Turkey’s Compensation Law with Respect to Internally Displaced People, 2006. Available at <<https://www.hrw.org/sites/default/files/reports/turkey1206web.pdf>> (last visited 30.12.2015)

<sup>116</sup> Foundation for Society and Legal Studies – TOHAV, Implementation of Law No.5233, 2009.

<sup>117</sup> Christof Heyns, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Follow-up to country recommendations: Turkey, 6 May 2015, A/HRC/29/37/Add.4.

<sup>118</sup> European Commission, Turkey 2015 Report, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 10.11.2015, SWD(2015) 216 final, p. 25.

152. The abovementioned investigation and prosecution periods well illustrate that the major flaws of the investigations determined by the ECtHR judgments remain throughout the proceedings following the relevant judgments, and these flaws remain as general and systemic problems of the judiciary in Turkey, which renders it impossible for the victims and in general the public to know the truth. Neither the judiciary nor the executives have undertaken discernible steps to ensure the revelation and acknowledgement of the truth, clarification of the circumstances in which these grave human rights violations of the past were committed, acceptance of responsibility regarding involvement of the state agents in grave human rights violations against civilians and the accountability of them, and to ensure the remedy and compensation to the victims.

### **Recommendations with regard to the lack of an effective investigation**

- A. By taking into account that the ECtHR has found in almost all of its relevant judgments a violation of the procedural aspect of Article 2 of the ECHR due to a lack of an effective investigation and the lack of accountability, especially where the investigation was terminated on the basis that the suspects could not be identified despite all possible measures having been carried out, or because of the termination of the prescription periods, the answers to the questions below must be clarified by Turkey with regard to the execution of the judgments of the ECtHR:
- Whether the involvement of the alleged security forces had been established in the investigation or not,
  - Whether the investigative authorities had taken further actions to identify possible perpetrators or not,
  - Whether the investigative authorities had requested archived information from the relevant operational unit allegedly involved in the violation or not,
  - Whether the investigative authorities had used the archived information provided by the authorities in order to identify the possible perpetrators or not,
  - Whether the investigative authorities had taken any further action where the authorities refused to provide requested information or not,
  - Whether the investigative authorities had established expert examinations, for example, for autopsy reports, ballistic examinations and crime scene investigations or not, and whether any expert examination used to contribute to the investigation in order to identify possible perpetrators or not,
  - Whether the investigative authorities had taken measures to ensure inter-agency cooperation between different judicial authorities and/or between judicial and governmental authorities or not,



- Whether the investigative authorities had taken into account the reports and investigations that were carried out by parliamentary research commissions or not,
- Whether the investigative authorities had been provided any legal guidance in respect to the applicability of the statute of limitations in these proceedings or not, and what the practical effect of such guidance had been.

### **Recommendations with regard to the lack of an effective domestic remedy**

B. By taking into account that the ECtHR has found in almost all of its relevant judgments a violation of Article 13 of the ECHR because of a lack of an effective domestic remedy, the authorities of the Government of Turkey need to clarify:

- the total number of the judgments under *Aksoy, Batu and others, Erdoğan and others* and *Kasa* groups that are investigated by the authorities,
- the total number of the convicted state agents who were allegedly involved in violations determined by the ECtHR under these four group of cases, and how many of them were convicted for violations of the right to life,
- the list of further actions that have been undertaken by investigative or judicial authorities since the relevant ECtHR judgment became final,
- whether the authorities of Turkey prepared a comprehensive plan regarding the right to remedy and reparation for the victims of the grave human rights violations of state agents in the past, or not.

### **Recommendations with regard to the crime of enforced disappearances**

C. Being aware of the extreme seriousness of the crime of enforced disappearance and to combat impunity for this crime, Turkey should take necessary measures in the light of enforced disappearance cases:

1. Ensure that enforced disappearance constitutes an offence under its criminal law,
2. Ensure that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity under its criminal law,
3. Hold criminally responsible any person who commits and/or condones the commission of, and the attempt to commit this crime, and any person who has hierarchical responsibility for the commission of this crime and/or failed to take all necessary measures to prevent this crime,

4. Impose sanctions on any person who delays or obstructs the remedies with regard to the deprivation of liberty, and any person who fails to record and/or refuses to provide information or provides inaccurate information with regard to the deprivation of liberty,
5. Lift the statute of limitations with regard to this crime, or at least ensure that the duration of limitation is proportionate to the extreme seriousness of the crime and ensure that the duration of limitation is determined by taking into account the continuous nature of the crime,
6. Ensure the right of victims to justice, reparation (including restitution, rehabilitation, restoration of dignity and reputation, and guarantees for non-repetition), compensation and the right to know the truth about the circumstances and fate of the disappeared person,
7. Regulate the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as family law and property rights,
8. Ensure that the prior administrative authorisation system is inapplicable to the alleged perpetrators of this crime notwithstanding the position or rank of the perpetrator,
9. Ensure that a separate judicial police force is established with its own personnel other than the administrative police forces,
10. Ensure that the Ministry of Justice is to collect, organize and make accessible and available data with regard to enforced disappearances, unlawful, arbitrary or summary killings allegedly committed by state agents, and the legal proceedings which have been conducted with regard to these offences to date,
11. Ensure that the High Council of Judges and Prosecutors is to be fully impartial and independent, by ceasing the influence of the Minister of Justice as the permanent head of the Council, and leaving the administration of the personnel affairs of judges and prosecutors to the disposal of the Council.

**Annex 1** – List of relevant ECtHR Judgments

**Annex 2** – List of Domestic Criminal Trials

**Annex 1 – List of relevant ECtHR Judgments**

	<b>Name of the case</b>	<b>App. No.</b>	<b>Date of the case</b>	<b>Status of execution</b>	<b>Type of supervision</b>
1	<b>Kurt v. Turkey</b>	24276/94	25.05.1998	Aksoy Group	Standard
2	<b>Çakıcı v. Turkey</b>	23657/94	08.07.1999	Aksoy Group	Standard
3	<b>Mahmut Kaya v. Turkey</b>	22535/93	28.03.2000	Aksoy Group	Standard
4	<b>Ertak v. Turkey</b>	20764/92	09.05.2000	Aksoy Group	Standard
5	<b>Timurtaş v. Turkey</b>	23531/94	13.06.2000	Aksoy Group	Standard
6	<b>Taş v. Turkey</b>	24396/94	14.11.2000	Aksoy Group	Standard
7	<b>Çiçek v. Turkey</b>	25704/94	27.02.2001	Aksoy Group	Standard
8	<b>Şarlı v. Turkey</b>	24490/94	22.05.2001	Aksoy Group	Standard
9	<b>Akdeniz and others v. Turkey</b>	23954/94	31.05.2001	Aksoy Group	Standard
10	<b>Avşar v. Turkey</b>	25657/94	10.07.2001	Aksoy Group	Standard
11	<b>İrfan Bilgin v. Turkey</b>	25659/94	17.07.2001	Aksoy Group	Standard
12	<b>Orhan v. Turkey</b>	25656/94	18.06.2002	Aksoy Group	Standard
13	<b>Tepe v. Turkey</b>	27244/95	09.05.2003	Aksoy Group	Standard
14	<b>İpek v. Turkey</b>	25760/94	17.02.2004	Aksoy Group	Standard
15	<b>Nuray Şen v. Turkey</b>	25354/94	30.03.2004	Aksoy Group	Standard
16	<b>Tahsin Acar v. Turkey</b>	26307/95	08.04.2004	Aksoy Group	Standard
17	<b>Tekdağ v. Turkey</b>	27699/95	14.06.2004	Aksoy Group	Standard
18	<b>Erkek v. Turkey</b>	28637/95	13.07.2004	Aksoy Group	Standard
19	<b>O. v. Turkey</b>	28497/95	15.07.2004	Aksoy Group	Standard
20	<b>İkincisoy v. Turkey</b>	26144/95	27.07.2004	Aksoy Group	Standard
21	<b>Seyhan v. Turkey</b>	33384/96	02.11.2004	Aksoy Group	Standard
22	<b>Türkoğlu v. Turkey</b>	34506/97	17.03.2005	Aksoy Group	Standard
23	<b>Süheyla Aydın v. Turkey</b>	25660/94	24.05.2005	Aksoy Group	Standard
24	<b>Akdeniz v. Turkey</b>	25165/94	31.05.2005	Aksoy Group	Standard
25	<b>Koku v. Turkey</b>	27305/95	31.05.2005	Aksoy Group	Standard
26	<b>Toğcu v. Turkey</b>	27601/95	31.05.2005	Aksoy Group	Standard
27	<b>Çelikbilek v. Turkey</b>	27693/95	31.05.2005	Aksoy Group	Standard
28	<b>Taniş and others v. Turkey</b>	65899/01	02.08.2005	Aksoy Group	Standard
	<b>Özgen and others v. Turkey</b>	38607/97	20.09.2005	Aksoy Group	Standard
	<b>Nesibe Haran v. Turkey</b>	28299/95	06.10.2005	Aksoy Group	Standard
31	<b>Mordeniz v. Turkey</b>	49160/99	10.01.2006	Aksoy Group	Standard
32	<b>Şeker v. Turkey</b>	52390/99	21.02.2006	Aksoy Group	Standard
33	<b>Aydın Eren and others v. Turkey</b>	57778/00	21.02.2006	Aksoy Group	Standard

34	<b>Kavak v. Turkey</b>	53489/99	06.07.2006	Aksoy Group	Standard
35	<b>Diril v. Turkey</b>	68188/01	19.10.2006	Aksoy Group	Standard
36	<b>Kaya and others v. Turkey</b>	4451/02	24.10.2006	Aksoy Group	Standard
37	<b>Yazıcı v. Turkey</b>	48884/99	05.12.2006	Aksoy Group	Standard
38	<b>Üçak and others v. Turkey</b>	75527/01 and 11837/02	27.04.2007	Aksoy Group	Standard
39	<b>Canan v. Turkey</b>	39436/98	26.06.2007	Aksoy Group	Standard
40	<b>Enzile Özdemir v. Turkey</b>	54169/00	08.01.2008	Aksoy Group	Standard
41	<b>Osmanoğlu v. Turkey</b>	48804/99	24.01.2008	Aksoy Group	Standard
42	<b>Nehyet Günay and others v. Turkey</b>	51210/99	21.10.2008	Aksoy Group	Standard
	<b>Gasyak and others v. Turkey</b>	27872/03	19.10.2009	Batı and others Group	Enhanced
	<b>Er and others v. Turkey</b>	23016/04	31.10.2012	Batı and others Group	Enhanced
	<b>Nihayet Arıcı and others v. Turkey</b>	24604/04 and 16855/05	23.11.2012	Erdoğan and others Group	Enhanced
	<b>Bozkır and others v. Turkey</b>	24589/04	26.02.2013	Erdoğan and others Group	Enhanced
	<b>Meryem Çelik and others v. Turkey</b>	3598/03	16.04.2013	Erdoğan and others Group	Enhanced
	<b>Tekçi and others v. Turkey</b>	13660/05	10.12.2013	Erdoğan and others Group	Enhanced
	<b>Cülaz and others v. Turkey</b>	7524/06 and 39046/10	15.04.2014	Kasa Group	Enhanced
	<b>Kadri Budak v. Turkey</b>	44814/07	09.12.2014	Erdoğan and others Group	Enhanced
	<b>Sayğı v. Turkey</b>	37715/11	27.01.2015	Erdoğan and others Group	Enhanced

**Annex 2 – List of Domestic Criminal Trials**

<p>Case of <i>Akdeniz and others v. Turkey</i>, Application No. 23954/94, ECtHR (31 May 2001)</p>	<p><b>Name of the case before domestic court</b></p>	<p>Case of Yavuz Ertürk</p>
	<p><b>Starting date</b></p>	<p>24 October 2013</p>
	<p><b>Defendants</b></p>	<p>Bolu 2nd Commando Brigade Commander retired General Yavuz Ertürk</p>
	<p><b>Offenses</b></p>	<p>Murdering multiple persons for the same reason, encouraging people to revolt and murder each other, establishing an organization with the aim of committing criminal acts</p>
	<p><b>Statutory Basis</b></p>	<p>Articles 450/5, 149, 313 of the former Turkish Criminal Code</p>
	<p><b>Victims</b></p>	<p>11 forcibly disappeared persons named as Bahri Şimşek, Nesrettin Yerlikaya, Turan Demir, Ümit Taş, Celal Aziz Aydoğdu, Abdo Yamuk, Mehmet Şerif Avar, Behçet Tutuş, Mehmet Salih Akdeniz, Mehmet Şah Atala and Hasan Avar</p>
	<p><b>Date and place of the crime</b></p>	<p>9 October 1993, Alaca village of the town of Kulp in Diyarbakır province</p>
	<p><b>Authorized court</b></p>	<p>Ankara 7th High Criminal Court</p>

<p>Case of <i>Seyhan v. Turkey</i>, Application No. 33384/96, ECtHR (2 November 2004)</p>	<b>Name of the case before domestic court</b>	Case of Dargeçit
	<b>Starting date</b>	30 October 2014
	<b>Defendants</b>	Former Mardin Gendarmerie Commander Hurşit İmren, former Dargeçit Gendarmerie Commander Mehmet Tire, Gendarmerie Station Commander Mahmut Yılmaz, Gendarmerie Station Vice-Commander Haydar Topçam and driver in Gendarmerie Station Kerim Şahin
	<b>Offenses</b>	Murdering and instigating to murder
	<b>Statutory Basis</b>	Article 450/4 of the former Turkish Criminal Code
	<b>Victims</b>	8 persons including one soldier Specialist Sergeant Bilal Batırır named as Süleyman Seyhan, Nedim Akyön, Mehmet Emin Aslan, Seyhan Doğan, Davut Altınkaynak, Abdurrahman Olcay, Abdurrahman Coşkun
	<b>Date and place of the crime</b>	Between 30 October 1995 and 3 November 1995, Dargeçit district of Mardin province
	<b>Authorized court</b>	Adıyaman High Criminal Court

<p>Case of <i>Çelikkilek v. Turkey</i>, Application No. 27693/95, ECtHR (31 May 2005)</p>	<b>Name of the case before domestic court</b>	Case of JITEM
	<b>Starting date</b>	24 September 2008
	<b>Defendants</b>	Mahmut Yıldırım (Yeşil), Abdülkadir Aygan (Aziz Turan), Muhsin Gül, Fethi Çetin (Fırat Can Eren), Faysal Şanlı, Hayrettin Toka, Hüseyin Tilki (Hüseyin Eren), Ali Ozansoy (Ahmet Turan Altaylı), Adil Timurtaş, Recep Tiril (Recep Erkal), Kemal Emlük (Erhan Berrak), Saniye Emlük (Emel Berrak), İbrahim Babat (Hacı Hasan), Mehmet Zahit Karadeniz, Lokman Gündüz ve Yüksel Uğur.
	<b>Offenses</b>	Establishing an organization with the aim of committing criminal acts, murdering multiple persons
	<b>Statutory Basis</b>	Articles 450/5 and 313 of the former Turkish Criminal Code
	<b>Victims</b>	12 persons who were either extra judicially and arbitrary killed or forcibly disappeared named as Harbi Arman, Lokman Zuğurlu, Zana Zuğurlu, Servet Aslan, Şahabettin Latifeci, Ahmet Ceylan, Mehmet Siddık Etyemez, Abdulkadir Çelikkilek, Hasan Caner, Hasan Utanç, Tahsin Sevim, Mehmet Mehdi Kaydu
	<b>Date and place of the crime</b>	Between 1992 and 1996, Diyarbakır
	<b>Authorized court</b>	Ankara 6th High Criminal Court

Case of <i>Gasyak and others v. Turkey</i> , Application No. 7872/03, ECtHR (13 October 2009)	<b>Name of the case before domestic court</b>	Case of Temizöz and others
	<b>Starting date</b>	11 September 2009
	<b>Defendants</b>	Gendarmerie Senior Colonel Cemal Temizöz, Kamil Atağ, Kukel Atağ, Temer Atağ, Adem Yakin, Abdulhakim Güven, Hıdır Altuğ and Burhanettin Kiyak
	<b>Offenses</b>	Establishing an organization with the aim of committing criminal acts, being a member of this organization, inciting and committing homicide
	<b>Statutory Basis</b>	Articles 450/4-5 and 313/2-3-4 of the former Turkish Criminal Code
	<b>Victims</b>	20 civilians who were either extra judicially and arbitrary killed or forcibly disappeared named as Ramazan Elçi, Ramazan Uykur, Abdullah Efelti, İbrahim Adak, Mehmet Gürri Özer, İbrahim Danış, Abdurrahman Afşar, Abdurrahman Akyol, İhsan Arslan, Beşir Bayar, Abdurrezzak Binzet, İzzet Padır, Abdullah Özdemir, Mustafa Aydın, Süleyman Gasyak, Abdülaziz Gasyak, Ömer Candoruk and Yakya Akman
	<b>Date and place of the crime</b>	Between the years 1993 and 1995, in the town of the Cizre in Şırnak province
	<b>Authorized court</b>	Eskişehir 1st High Criminal Court
	<b>Conclusion of the first instance court</b>	Acquittal of the defendants on the grounds that there has been no concrete evidence



Case of <i>Tekçi and others v. Turkey</i> , Application No. 13660/05, ECtHR (10 December 2013)	<b>Name of the case before domestic court</b>	Case of Nezir Tekçi
	<b>Starting date</b>	4 May 2011
	<b>Defendants</b>	Retired Lieutenant Kemal Alkan, retired Captain Ali Osman Akın
	<b>Offenses</b>	Murdering person with monstrous feeling and torturing
	<b>Statutory Basis</b>	Article 450/3 of the former Turkish Criminal Code
	<b>Victims</b>	Nezir Tekçi who was forcibly disappeared
	<b>Date and place of the crime</b>	April of 1995, Aşağı Ölçek hamlet of the town of Yüksekova in Hakkari province
	<b>Authorized court</b>	Eskişehir 1st High Criminal Court
<b>Conclusion of the first instance court</b>	Acquittal of the defendants on the grounds that there has been no concrete evidence	

<p>Case of <i>Cülaz and others v. Turkey</i>, Application Nos. 7524/06, 39046/10, ECtHR (15 April 2014)</p>	<b>Name of the case before domestic court</b>	Case of Mete Sayar
	<b>Starting date</b>	5 November 2013
	<b>Defendants</b>	Gendarmerie Border Division Commander retired brigadier general Mete Sayar, Görümlü 1st Mechanized Infantry Battalion Commander retired Colonel Hasan Basri Vural, 3rd Squadron Commander Lieutenant İbrahim Kıraç, Captain Murat Ali Yıldız, Kayseri Airborne Brigade Lieutenant Serdar Tekin and Tansel Erok from 2nd Commando Battalion
	<b>Offenses</b>	Murdering multiple persons
	<b>Statutory Basis</b>	Article 450/5 of the former Turkish Criminal Court
	<b>Victims</b>	6 forcibly disappeared persons named as Şemdin Cülaz, İbrahim Akıl, Mehmet Salih Demirhan, Halit Özdemir, Hamdo Şimşek and Hükmet Şimşek
	<b>Date and place of the crime</b>	14 June 1993, the town of Görümlü in Şırnak province
	<b>Authorized court</b>	Ankara 9th High Criminal Court
<b>Conclusion of the first instance court</b>	Acquittal of the defendants on the grounds that there has been no concrete evidence	