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Communication from an NGO ('Stichting Justice Square') (02/11/2023) in the case of Yuksel Yalcinkaya v. Türkiye (Application No. 15669/20) (appendices in Turkish are available at the Secretariat upon request).

Information made available 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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Réunion : 1483e réunion (décembre 2023) (DH)

Communication d'une ONG ('Stichting Justice Square') (02/11/2023) dans l'affaire Yuksel Yalcinkaya c. Türkiye (requête n° 15669/20) (des annexes en turc sont disponibles auprès du Secrétariat sur demande) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

JUSTICE SQUARE

Amsterdam, 31 October 2023

Council of Europe

DGI – Directorate General of Human Rights and Rule of Law

Department for the Execution of Judgments of the European Court of Human Rights

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Subject: NGO Communication under Rule 9(2) of the Rules of the Committee of Ministers concerning the execution of the judgment of the European Court of Human Rights in the case of Yüksel Yalçınkaya v. Türkiye (Application no. 15669/20)

Dear Madams and Sirs,

1. **Stichting Justice Square** hereby respectfully submits its observations and recommendations 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"* regarding the execution of the judgment of the Grand Chamber of the European Court of Human Rights in **Yüksel Yalçınkaya v. Türkiye** (Application no. 15669/20) Judgment of 26 September 2023), in advance of the 1483rd meeting (December 2023) (DH) of the Ministers' Deputies on the execution of judgments.

I. Introduction

2. In line with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments, **Stichting Justice Square**[1] hereby presents this communication regarding the execution of the European Court of Human Rights (hereafter "the Court" or "ECtHR") judgment in the case of Yüksel Yalçınkaya v. Türkiye (no. 15669/20).
3. **Stichting Justice Square**, based in Amsterdam, is a non-profit and non-governmental human rights organisation that works to make a meaningful impact on the lives of persecuted people, refugees, victims of war, and those affected by conflict and displacement by promoting democratic values globally, fostering international cooperation and advocating for the protection of human rights.
4. In order to contribute to its swift implementation by national courts, after the announcement of the Grand Chamber's judgment on 26 September 2023, the lawyers of our organisation worked tirelessly to translate the judgment into Turkish and published it on the website and social media accounts of the **Stichting Justice Square** on the following day. An updated version of this translation was later posted on the Court's HUDOC database to make it available to victims, lawyers judges, and prosecutors in Türkiye[2].
5. The purpose of our communication is to provide the Committee of Ministers with updated information and explanations on the implementation of the ECtHR judgment in Yüksel Yalçınkaya v. Turkey (no. 15669/20), in particular information on the state of play regarding the general **"measures to be taken in respect of similar cases"** as required by the said judgment.
6. Given the special circumstances of the case, the Court in this case indicated to the respondent State the type of measures that might be taken to put an end to the situation which has given rise to the finding of a violation. The Court recalled in para. 406 of the judgment the guidelines of the Committee of Ministers, which in Recommendation No. R (2000) 2 called on the Contracting Parties to the Convention to introduce mechanisms for re-examining the case and reopening the proceedings at the domestic level, and reminded that in exceptional circumstances such measures represented "the most efficient, if not the only, means of achieving *restitutio in integrum*".
7. The Court considered in the Yüksel Yalçınkaya case that the situation that led to a finding of violations of Articles 7 and 6 of the Convention in that case «was not prompted by an isolated incident or attributable to the particular turn of events, but may

[1] https://justicesquare.org/
[2] Accessible here

be regarded as having stemmed from a systemic problem. This problem has affected – and remains capable of affecting – a great number of persons (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 189, ECHR 2004-V). This is evidenced by the fact that there are currently over 8,000 applications in the Court's docket involving similar complaints raised under Articles 7 and/or 6 of the Convention relating to convictions that were based on the use of ByLock as in the present case.» (§ 414 of the judgment)

8. As the breach was due to a systemic problem affecting a large number of people, the Court stressed the need for general measures to be taken at the national level in order to comply with such a judgment (§ 416 of the judgment).
9. In order for the Court to avoid having to establish similar violations in numerous cases in the future, the Court stressed that Turkish authorities need to address the defects identified in the present judgment on a larger scale – that is, beyond the specific case of the present applicant. Reminding the respondent State's obligations under Article 46 of the Convention, it invited the Turkish authorities to draw the necessary conclusions from the present judgment, **particularly in respect of, but not limited to, the cases currently pending before the domestic courts**, and to take any other general measures as appropriate in order to resolve the problem identified above that has led to the findings of violation here. As clearly understood from the judgment, the domestic courts are obliged to take due account of the relevant Convention standards as interpreted and applied in the present judgment (§ 418 of the judgment).
10. As reminded by the Court, Article 46 of the Convention has the force of a constitutional rule in Türkiye in accordance with Article 90 § 5 of the Turkish Constitution, according to which international agreements duly put into effect have the force of law and no appeal lies to the Constitutional Court to challenge their constitutionality.
11. As stated in Recommendation Rec (2004) 6 of the Committee of Ministers, Turkiye is under a general obligation to address the problems underlying all violations of the Convention. As clearly expressed at the recent Summit of Heads of State and Government in Reykjavik, the respondent State must address the systemic and structural human rights problems identified by the Court, including in the case of Yüksel Yalçınkaya, by ensuring the full, effective and prompt implementation of the Convention, taking into account its binding nature.
12. This judgment is of particular importance as the problem affects - and may continue to affect - a large number of people. 8,000 pending cases similar to that of Yüksel Yalçınkaya mean that the applicants in all these cases have already been sentenced to at least 6 years and 3 months' imprisonment for the same offence, in violation of Articles 6 and 7 of the Convention. This also means that their sentences have either already been served, are currently being served, or are yet to be served in maximum

security prisons. Every day, people are being arrested throughout the country for wrongful convictions similar to those in the Yüksel Yalçınkaya verdict. Investigations and prosecutions continue with arrests and detentions -carried out in a most humiliating way- on charges similar to and under the same conditions as the systemic problem identified in the Yüksel Yalçınkaya judgment. These facts demonstrate the importance and urgency of the full, effective, and prompt implementation of the Yüksel Yalçınkaya judgment in similar cases, in line with the findings of the Court. Moreover, the systemic problem identified in the Yüksel Yalçınkaya case was not unique to those allegedly prosecuted for the use of Bylock. In all cases, the judicial authorities were never interested in proving the person's membership in a terrorist organisation in the way described by the Court in the Yalçınkaya case. As soon as they find any kind of link to the Hizmet/Gulen movement in their past lives, they automatically conclude that they are members of a terrorist organisation with an arbitrary, discriminatory, expansive and unreasonable interpretation of anti-terror legislation even contrary to the Court of Cassation's well-established case-law. According to the latest figures announced by the Turkish Minister of Justice on 6 October 2023, 253,754 real or alleged members of the Hizmet movement have been prosecuted for membership in a terrorist organisation since July 2016, and 122,904 of them have already been convicted.

II. Case Description

13. The applicant, Yüksel Yalçınkaya, was a teacher at a public school in Kayseri. He was sentenced on 21 March 2017 by the Kayseri Assize Court to six years and three months' imprisonment for membership in an armed terrorist organisation. The conviction was based on the applicant's use of an encrypted messaging application called "ByLock", having an account with Bank Asya and being a member of a trade union (Aktif Eğitimciler Sendikası) and an association (Kayseri Gönüllü Eğitimciler Derneği). The applicant applied to the ECtHR on 17 March 2020, alleging that his trial and conviction had violated Articles 6, 7, 8 and 11 of the Convention.
14. The application was initially referred to the Second Section of the Court. The Section selected the application as a **"leading case"** in terms of similar cases on 2 March 2021. On 3 May 2022, the Second Section decided to waive jurisdiction in favour of the Grand Chamber. The Grand Chamber held a public hearing on the application on 18 January 2023.
15. On 26 September 2023, following closed deliberations on 18 January and 28 June 2023, it delivered its judgment. The Grand Chamber found violations of Articles 7, 6, and 11 of the Convention.
16. According to the Grand Chamber, the offense of membership in an armed terrorist organisation under Turkish law was at the material time and still remains, an offense of specific intent. The presence of some specific subjective elements was therefore a

conditio sine qua non. Despite that, the finding by the domestic courts, through an expansive interpretation of the applicable provisions of the Criminal Code and the Prevention of Terrorism Act, that the use of ByLock denoted membership of an armed terrorist organisation, without seeking to establish the presence in the applicant's specific case of the knowledge and intent required under the legal definition of the crime in domestic law, effectively attached objective liability to the use of ByLock. The Court, therefore, came to conclusion that the view that this expansive and unforeseeable interpretation of the law by the domestic courts had the effect of setting aside the constituent – notably the mental – elements of the offense and treating it as akin to an offense of strict liability, thereby departing from the requirements clearly laid down in domestic law. The scope of the offense was, therefore, extended to the detriment of the applicant in an unforeseeable manner, contrary to the object and purpose of Article 7. For these reasons, the Court found that there had been a violation of Article 7 of the Convention.

17. With regard to **Article 6 of the Convention**, the judgment emphasized that the right to a fair administration of justice had an important place in a democratic society and that the evidence obtained, whether electronic or not, may not be used by national courts in a way that undermines the fundamental principles of a fair trial. In this context, the ByLock app could be downloaded from public app stores or websites without any control mechanisms until early 2016, i.e. for almost two years, which weakens the exclusivity argument. No explanation was provided by the Government as to why and by whose decision the raw data on ByLock was withheld from individuals, and requests in this regard simply went unanswered. The request to submit the raw data to an independent review to verify its content and integrity was also ignored by the national courts. Issues such as the discrepancy between the different lists of ByLock users published by MIT, as well as the discrepancy between the number of users identified and ultimately prosecuted and the number of downloads, were left unanswered by the national courts, and there was no information on how the integrity of the raw data was ensured, particularly in the period prior to the first court decision of 9 December 2016. For these reasons, doubts about the reliability of the ByLock data could not be easily dismissed as abstract or unfounded. According to the Court, the domestic courts failed to take adequate measures to ensure the overall fairness of the proceedings against the applicant. In the Court's view, the domestic courts' failure to put in place appropriate safeguards vis-à-vis the key piece of evidence at issue to enable the applicant to challenge it effectively, to address the salient issues lying at the core of the case and to provide reasons justifying their decisions was incompatible with the very essence of the applicant's procedural rights under Article 6 § 1. These failings had the effects of undermining the confidence that courts in a democratic society must inspire in the

public and breaching the fairness of the proceedings. Therefore, the Court held that the criminal proceedings against the applicant fell short of the requirements of a fair trial in breach of Article 6 § 1 of the Convention

18. The judgment also made important observations in relation to the violation of **Article 11 of the Convention**. The Court indicated that Turkiye has issued a large number of convictions for membership of trade unions and associations after 2016. However, these unions and associations were legally established and operated before their closure by Decree-Law No. 667 following the coup attempt. According to the Court's Grand Chamber, Article 314/2 of the Turkish Penal Code, as interpreted in the context of the applicant's membership of associations, did not satisfy the "prescribed by law" requirement of the Convention and concluded that there had been a violation of Article 11 of the ECHR in the present case.
19. Under **Article 46 of the Convention**, the Grand Chamber examined the systemic problem arising from the unpredictable interpretation of anti-terrorism legislation by the judiciary in cases involving sympathizers of the Hizmet Movement. The Court stated that the situation that led to a finding of violations of Articles 7 and 6 of the Convention in the present case was not prompted by an isolated incident or attributable to the particular turn of events, but may be regarded as having stemmed from a systemic problem. In this regard, the Court noted that there were more than 8,000 cases pending before it and this number would increase significantly in the future.
20. Paragraph 418 of the judgment refers to general measures that need to be taken by Turkiye for the implementation of the judgment, which reads; "*The Court is therefore of the opinion that in order to avoid it having to establish similar violations in numerous cases in the future, the defects identified in the present judgment need, to the extent relevant and possible, to be addressed by the Turkish authorities on a larger scale – that is, beyond the specific case of the present applicant. It accordingly falls to the competent authorities, in accordance with the respondent State's obligations under Article 46 of the Convention, to draw the necessary conclusions from the present judgment,* ***particularly in respect of, but not limited to, the cases currently pending before the domestic courts****, and* ***to take any other general measures as appropriate in order to resolve the problem identified above that has led to the findings of violation here*** *(see paragraph 414 above; see also, mutatis mutandis, Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, § 314, 1 December 2020). More specifically, the domestic courts are required to take due account of the relevant Convention standards as interpreted and applied in the present judgment. The Court underlines in this respect that Article 46 of the Convention has the force of a constitutional rule in Türkiye in accordance with Article 90 § 5 of the Turkish Constitution, according to which international agreements duly put into effect have the*

force of law and no appeal lies to the Constitutional Court to challenge their constitutionality."

III. General measures required for the implementation of the judgment in respect of similar cases

A. Political statements made after the judgment which questioned the authority of the judgment

21. Following the announcement of the Yüksel Yalçınkaya judgment, worrying public statements were made by the highest-level political figures, which may negatively impact the proper, effective, and prompt implementation of the said judgment by the judiciary.

22. Following the announcement of the judgment on 26 September, President Erdogan made the following statement at the Parliament:

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

23. Similar statements were made by Minister of Justice, Yilmaz Tunc, after the announcement of the judgment of the Grand Chamber:

> "….*It is unacceptable for the ECtHR to overstep its authority and issue a judgment of violation by examining the evidence in a case where our judicial authorities at all levels, from the court of first instance to the Court of Appeal, from the Court of Cassation to the Constitutional Court, have deemed the evidence sufficient*."

B. State of play regarding the general measures to be taken in similar cases

24. In order to comply with and fully implement Yüksel Yalçınkaya judgment general measures have to be taken by Turkiye, which addresses the systemic problem identified by the Court, i.e. changing the expansive and improper interpretation of domestic anti-terror legislation contrary to the established case law of the Court of Cassation and the European Court of Human Rights.

25. The Court describes the required measures to be taken by Turkish authorities in paragraphs 413 to 418.

26. It follows from the judgment that the Turkish Government must ensure that judicial practice in cases of alleged or actual sympathisers of the Hizmet movement prosecuted for membership in a terrorist organisation is brought into line with the principles set out in the Yüksel Yalçınkaya case. These general measures include the prevention of

similar violations in the new investigations, ongoing investigations and prosecutions, and cases that have been concluded with final convictions. In other words, law enforcement and judicial authorities must take into account the principles set out in the Yalçınkaya judgment at all stages of criminal proceedings. For cases that have been closed with final convictions, the *restitutio in integrum* measures oblige domestic courts to reopen cases similar to Yüksel Yalçınkaya's situation.

1. Criminal investigations continued to be carried out with the same offense and under similar circumstances

27. We would like to indicate that many persons have been and continue to be investigated on similar grounds that have played an important role in the Grand Chamber's making these findings. In a statement made in July 2022, former Minister of Interior Soylu had announced that 332,884 people were detained between 15 July 2016 and 20 June 2022 because of their alleged Hizmet Movement links[3]. According to the latest figures announced by the Turkish Minister of Justice on 6 October 2023, 253,754 people have been prosecuted for membership in a terrorist organisation since July 2016, and 122,904 of them have already been convicted. Since October 18, 2022, at least 1555 people have been detained in mass arrests for providing financial aid and material support to families of persons arbitrarily detained as a result of fallacious charges of terrorism. Even after the announcement of the Yüksel Yalçınkaya judgment, on a single day, on 24 October 2023, 611 persons were arrested throughout Turkiye for allegedly providing financial support to the families of detained or convicted persons and for being members of a terrorist organization. This is not of course limited to that day. Every day many people continue to be arrested in Turkey based on the alleged use of Bylock app or any other information linking the person somehow with the Hizmet movement but without making an assessment about the cumulative constitutive material and mental elements of the offence of being a member in a terrorist organization. So, there is no indication that Turkish law enforcement authorities including prosecutors have ever changed their practices that have been found by the Court contrary to its case law. Although the right to freedom and security has not been an issue examined in the Yüksel Yalçınkaya case, the Court already found this right's violation in around 1160 person's applications and did not accept that the alleged use of Bylock app could constitute a basis for the reasonable suspicion that the person committed the alleged offense. We will continue to inform the Committee of Ministers of the state of the implementation of those judgments as well. However, we would like to inform the Committee that there is no indication so far that the general measures

[3] See here.

have been implemented by the Turkish authorities as far as investigations are concerned and the systemic problem continues to persist.

2. Pending Criminal Prosecutions before the Trial Courts and the Court of Cassation

28. **Stichting Justice Square** could not verify any change in the practices of the trial courts and the Court of Cassation's practices in the pending cases before them. The Court of Cassation has not rendered and published any judgment since the announcement of the Yüksel Yalçınkaya judgment. We will keep the Committee informed about the practices of the trial courts and the Court of Cassation in pending criminal prosecutions in the future.

3. Closed cases with final convictions

29. The reopening of criminal proceedings in similar cases that have been closed with a final conviction is the most appropriate, if not the only, way to remedy other similar violations and to put an end to the violations found in the present case and to provide the applicant with a remedy.
30. In Turkish law, in general, there are two main extraordinary remedies that can remedy similar violations by reopening cases that have been closed by a final judgment. The first is the reopening of judicial proceedings under Article 311 § 1 of the Code of Criminal Procedure. The second remedy is the appeal by the Chief Public Prosecutor of the Court of Cassation to the competent criminal chamber of the Court of Cassation in accordance with article 308 (and 308/A for cases finalised by regional appeal courts) of the Code of Criminal Procedure.

a) Reopening of cases by trial courts under article 311 § 1 of the Code of Criminal Procedure categorically rejected by trial courts

31. Following the judgment of the Grand Chamber in Yalçınkaya v. Turkey (no. 15669/20), a large number of persons in a similar situation filed requests for "reopening of criminal proceedings" before the competent assize courts in accordance with Article 90 of the Turkish Constitution and Article 46 of the ECHR and Article 311 § 1 of the Code of Criminal Procedure.
32. In fact, Article 311 § 1 of the Code of Criminal Procedure constitutes a legal basis in order for the trial courts to remedy the deficiencies that might exist in similar cases to the case of Mr Yüksel Yalçınkaya.
33. We would like to bring the Constitutional Court's Ibrahim Er and others' judgment (No: 2019/33281) to the attention of the Committee of Ministers, which imposes an obligation to trial courts to reopen criminal proceedings, under the principle of the objective effect of the Constitutional Court's judgments, in the similar cases where the Constitutional Court already found a violation.

34. In its judgment on the Yılmaz Çelik Application (Application Number: 2014/13117), the Constitutional Court examined the case of an applicant who had been convicted of membership to a terrorist organisation under Article 314 § 2 of the Turkish Criminal Court. With its judgment dated 19 July 2018, the Constitutional Court ruled that the right to a fair trial had been violated on the grounds that the trial court's reasoning that the said structure had the elements of a terrorist organization had been insufficient. Upon the reopening of the criminal proceeding by the trial court, the applicant was acquitted complying with the judgment of the Constitutional Court. Following the Constitutional Court's judgment in the Yılmaz Çelik case, many others, who had been sentenced for being a member of the same terrorist organization, were also acquitted as the result of the reopened cases.
35. However, in the case of İbrahim Er and Others, who were convicted with a final judgment for membership in the same organization *(the organization that was the subject matter of the Yilmaz Celik case)* and had not previously made an individual application to the Constitutional Court, had their applications for reopening rejected by the local courts in accordance with the Constitutional Court's decision. Subsequently, they made an individual application to the Constitutional Court.
36. On 26 January 2023, the Constitutional Court, reminded that it had already examined the same issue in its Yılmaz Çelik case and held that *the rejection of the local courts' request for reopening of criminal proceedings within the scope of the objective effect of this constitutional interpretation and the necessity to apply the Constitutional Court's decision to other cases of the same nature violated the right to a fair trial in the context of the right to a reasoned decision*. In other words, the Constitutional Court held that where a violation of a right established in the Convention and the Constitution has been found, it must be applied to all similar pending and finalised proceedings and cases without the need to bring them before the courts concerned.
37. Ibrahim Er and others' judgment of the Constitutional Court indeed constitutes a sufficient basis for reopening the criminal proceedings under Article 311 § 1 of the Code of Criminal Procedure.
38. **Stichting Justice Square**, which closely follows the implementation of the Court's Yüksel Yalçınkaya judgment on the ground, made an open appeal to its followers on its social media accounts, to collect examples of judgments of the courts that rejected retrial requests. We received many such decisions from our followers. **We hereby submit copies of some of those decisions as one PDF document together with the initial reasoned conviction judgments rendered by the relevant first-instance courts -only- <u>for the Secretariat's use and analysis</u>. Please do not publish these decisions as they include personal data.**

39. As can be understood from those judgments, the assize courts have categorically rejected the reopening requests of the convicts who had been convicted of the same offense based on similar evidence, including the alleged use of the Bylock app. It could also be understood from the conviction decisions of some persons that they were sentenced on the grounds that they had an account in Bank Asya, which benefited from the presumption of legality until the date of its closure as stated in the judgment of the Grand Chamber, and in which their salaries were deposited. It can further be seen from the convictions of some individuals that they were convicted on the grounds of membership to associations, which were established and operated legally before their closure and which were clearly emphasised in the Yulsel Yalçınkaya judgment as being directly related to the exercise of a right falling within the scope of Article 11 of the Convention. In none of those conviction judgments, the trial courts proved or analysed the existence of material and mental elements of the offense of being a member of a terrorist organization as described in the Yalçınkaya case. Similarly, the defense rights of defendants were violated in similar conditions described in the Yalçınkaya case. The criminal prosecutions were nothing but the formal procedures that needed to be completed to announce the conviction of the defendant. No defense arguments of the defendants were ever considered by the trial courts in all of the samples submitted to the Committee of Ministers attached to this submission.
40. **Stichting Justice Square** would like to point out that the requests for the reopening of criminal proceedings of persons convicted of the same offense under similar circumstances as Yüksel Yalçınkaya were categorically rejected by the trial courts and therefore no general measures were taken by the Turkish authorities to remedy the deficiencies identified in the cases closed by the final judgments similar to Yüksel Yalçınkaya's case, and therefore no *restitutio in integrum* measures were taken in respect of similar cases including the ones pending before the European Court of Human Rights.

b) Reopening of cases by trial courts as the result of the procedures under Articles 308 and 308A of the Code of Criminal Procedure remains uncertain

41. Under article 308, the Chief Public Prosecutor of the Court of Cassation may appeal against the judgments of trial courts that have been approved by any criminal chamber of the Court of Cassation. The Chief Public Prosecutor may act either *ex officio* or upon request. There is no time limit if the appeal is to be made in favour of the accused.
42. Similarly, the Chief Public Prosecutor's Office of the Regional Court of Appeal may lodge an appeal with the Regional Court of Appeal against final decisions of the criminal chambers of the Regional Court of Appeal as set out in Article 308A of the Code of Criminal Procedure. The Chief Public Prosecutor's Office may act *ex officio* or upon

request within thirty days from the date of the decision. However, there is no time limit for appeals in favour of the accused.

43. As of the date of this submission, **Stichting Justice Square** is not aware of any appeal proceedings that have ever been initiated *ex officio* under these articles. Similarly, we are not aware of any outcome of such a procedure that might have been initiated at the request of or on behalf of a defendant. We will keep the Committee of Ministers informed in the future of any developments that may occur as a result of these procedures.

C. Conclusions and Recommendations to Committee of Ministers

44. Following the judgment of the Grand Chamber in Yüksel Yalçınkaya v. Turkey (no. 15669/20), the Government has not yet submitted an action plan or an action report. However, the statements made by senior figures, including the President, against the implementation of the judgment following its announcement are worrying and have the potential to negatively affect the proper, effective, and prompt implementation of the judgment, particularly in relation to similar cases.
45. The courts have categorically rejected the defendants' requests to reopen cases that have been closed by final judgments, thus preventing them from remedying the defects that may have existed in their judgments, similar to the case of Mr Yüksel Yalçınkaya.
46. There is no publicly available information on whether and to what extent the Chief Public Prosecutors will use the powers granted to them under Articles 308 and 308A of the Code of Criminal Procedure.
47. We will continue to inform the Committee of Ministers of the developments on the execution of the Yüksel Yalçınkaya judgment.
48. As mentioned above, the proper, effective, and prompt execution of this judgment concerns the lives of thousands of people in Turkey. This is not limited to over 8,000 similar cases pending before the Court as of 26 September 2023. According to the Minister of Justice's announcement on 6 October 2023, 253,754 real or alleged members of the Hizmet movement have been prosecuted for membership in a terrorist organisation since July 2016, and 122,904 of them have already been convicted. The number of pending cases before the Court will significantly increase in the coming months. Irrespective of the evidence used, whether the alleged use of Bylock app or not, in convicting them, in none of those judgments trial courts ever interested in establishing the material and mental elements of the offense in question. Any sort of connection of persons with the Hizmet movement was deemed sufficient to convict them for such a serious offense. In all over 8,000 pending cases before the Court and other thousands of cases similar to that of Yüksel Yalçınkaya, the defendants have already been sentenced to at least 6 years and 3 months imprisonment for the same offense, in violation of Articles 6 and 7 of the Convention. Their sentences have either

already been served, or are currently being served, or are yet to be served in prisons. Every day, people are being arrested for the execution of their sentences throughout the country for unjust convictions similar to those in the Yüksel Yalçınkaya verdict. Investigations and prosecutions continue with arrests and detentions on charges similar to and under the same conditions as the systemic problem identified in the Yüksel Yalçınkaya judgment.

49. **These facts and the worryingly persistent systemic problem identified by the Court, coupled with the statements of senior politicians questioning the authority of the Yüksel Yalçınkaya case and the Court itself, require the Committee of Ministers to act urgently to ensure that Turkey fully, effectively and promptly implements the Grand Chamber's Yüksel Yalçınkaya judgment particularly in respect of, but not limited to, the cases currently pending before the domestic courts, in accordance with the Court's findings**.
50. For these reasons, **Stichting Justice Square,** kindly invites the Council of Ministers :
    - to include Yüksel Yalçınkaya v. Turkey (no. 15669/20) judgment on the agenda of the 1484th meeting (March 2024);
    - to examine it under the enhanced procedure and under debated meetings and to keep the follow-up of this case on the agenda of each human rights meeting.

Sincerely yours,

Stichting Justice Square

Mustafa Özmen

President

Annex: Copies of decisions