SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE OF MINISTERS
COMITÉ DES MINISTRES

COUNCIL OF EUROPE
1949 - 2024
CONSEIL DE L'EUROPE

Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 23/05/2024

DH-DD(2024)583

Meeting: 1501st meeting (June 2024) (DH)

Communication from an NGO (ASSEDEL (Association européenne pour la défense des droits et des libertés)) (07/05/2024) concerning 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.

* * * * * * * * * * * *

Réunion : 1501e réunion (juin 2024) (DH)

Communication d'une ONG (ASSEDEL (Association européenne pour la défense des droits et des libertés)) (07/05/2024) relative à 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.

RULE 9.2 SUBMISSION

by

ASSEDEL (Association européenne pour la défense des droits et des libertés)

on the general measures required for the implementation of

Yüksel Yalçınkaya v. Türkiye Grand Chamber judgment

for the 1501st meeting of the Committee of Ministers

7 May 2024

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex FRANCE

7 May 2024

by email

Rule 9.2 Submission from ASSEDEL in the Case of Yüksel Yalçınkaya v. Türkiye [GC] (15669/20)

I. INTRODUCTION

1. This Rule 9.2 concerns the implementation of general measures pertaining to the implementation of the *Yüksel Yalçınkaya v. Türkiye* judgment. The submission is prepared by ASSEDEL (Association européenne pour la défense des droits et des libertés). ASSEDEL is a non-governmental association based in Strasbourg, whose objective is to disseminate, promote, and defend human rights and fundamental freedoms in the spirit of the European Convention on Human Rights, both within the Council of Europe system and at the local, national, and international levels.

2. The submission provides the Committee of Ministers with information based on expert and legal opinions prepared by prominent jurists in Türkiye on the general measures required for the implementation of the Yalçınkaya v. Türkiye Grand Chamber judgment[1]. Furthermore, ASSEDEL asks the Committee of Ministers to schedule the *Yalcinkaya* judgment for examination on the agenda of the Committee of Ministers as soon as possible, given the ongoing practice of the Turkish courts and high-level officials (in the aftermath of the Yalçınkaya judgment) described below, which is contrary to the measures prescribed by the judgment, and given the ongoing investigations and prosecutions for membership of an armed terrorist organization in similar circumstances as those of Yüksel Yalçınkaya.

[1] Yüksel Yalçınkaya v. Türkiye Grand Chamber, Application no. 15669/20, 26.09.2023.

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

3. The submission provides information on the approach of the Turkish domestic courts with regard to necessary general measures, as well as statements made by high-level Turkish officials following the judgment. It also sets out contextual information on the domestic court's approach towards the re-opening of the criminal proceedings in similar cases, with reference to the general measures called for by the Turkish authorities under Article 46 of the ECHR[2].

II. CASE SUMMARY

4. Yüksel Yalçınkaya, who was a teacher before the 15 July 2016 coup attempt, was arrested and detained after the coup attempt on suspicion of membership of an armed terrorist organization which is described by Turkish authorities as FETÖ/PDY (i.e. the Gülen Movement, as described by its volunteers). In 2017, the indictment was issued against him, based on his use of the Bylock application, as well as having an account at Bank Asya, a legal bank at the relevant time, being a member of a trade union closed by a decree-law, and two anonymous witness statements. Mr. Yalçınkaya was sentenced to 6 years and 3 months in prison for membership of the armed terrorist organization. The applicant's appeals against his conviction were rejected by higher courts on abstract and stereotype grounds and at final phase, in 2019, the Constitutional Court found his individual application to be manifestly ill-founded through a summary ruling.

5. On 26 September 2023, the ECtHR Grand Chamber delivered its judgment, finding violations of Article 6(1), Article 7 and Article 11 of the ECHR. The ECtHR found a violation of the principle of no punishment without law on account of the applicant's conviction for membership in an armed terrorist organisation based decisively on the use of an encrypted messaging application by the name of "ByLock", without establishing

[2] See, Yüksel Yalçınkaya v. Türkiye judgment, § 418, as follows: *"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 (see paragraph 141 above)."*

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

the offence's constituent material and mental elements in an individualized manner (Article 7). Under Article 6(1) of the ECHR, the Court found a violation of the right to a fair trial on account of prejudice to the defence due to the non-disclosure of raw data obtained from ByLock's server without adequate procedural safeguards (Article 6 § 1).

6. The Court also found a violation of freedom of assembly and association on account of the domestic courts' unforeseeable extension of the scope of offence when relying on the applicant's membership of a trade union and an association considered as affiliated with a terror organisation, to corroborate his conviction (Article 11).

7. The Court held that Türkiye had to take general measures as appropriate to address, on a larger scale, the defects which had led to the findings of violation in this judgment, notably with regard to the Turkish judiciary's approach to the use of ByLock. In accordance with obligations under Article 46 of the Convention, Turkey must "*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*". The Court noted that there were – at the time - approximately 8,000 applications on its docket involving similar complaints under Articles 7 and/or 6 of the Convention and, given that the authorities had identified around 100,000 ByLock users, many more might potentially be lodged.

III. INDIVIDUAL MEASURES

8. Following the ECtHR's judgment, Kayseri 2nd Assize Court acknowledged the request for re-opening of the case and decided to adjourn the hearing on 02.04.2024, with a scheduling order dated 28.11.2023. The details of the Yalçınkaya's re-trial are as follows.

9. Firstly, the Assize Court has included matters that were not investigated during the investigation phase and the first trial. Accordingly, the witness Tuğba Avcı, who was not heard in the first trial, was heard. The witness in question is a person who was not previously heard during the investigation and the first trial. The witness Tuğba Avcı's statement that the applicant was a member of an armed terrorist organization was based on her statement that she constantly saw a newspaper, the name of which she could not remember, in front of the door of his house.

10. Secondly, Kayseri 2nd Assize Court requested that the raw data on the Bylock content allegedly belonging to Yalçınkaya be sent, if it is possible to obtain it, in addition to the Bylock Determination and Evaluation Report. This was the only request regarding the grounds for violation given by the ECtHR under Article 6, and there was no request

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

regarding how the reliability of the Bylock data was ensured. The Ankara Chief Public Prosecutor's Office rejected this request, which was included in the minutes of court order. The reason given was that "...since the raw data is not decryptable, it is not possible to extract it on the basis of User ID without any processing. It is not possible to give the entire raw data to any suspect or defendant, as it would also contain information about all suspects associated with Bylock."

11. Afterwards, Kayseri 2nd Assize Court made some requests in the order regarding Mr. Yalçınkaya's Bank Asya account activity, whether he had canceled his Digitürk subscription or whether there were any statements given against him as to effective remorse. These requests are also incompatible with the ECtHR's findings under Article 7. As a matter of fact, in the Yalçınkaya judgment, the ECtHR stated that these acts were legal acts that benefit from the presumption of legality[3]. Accordingly, the court decided to assign an expert to investigate these facts.

12. At the end, the Assize Court also decided to examine whether the applicant's first-degree relatives had committed any crimes and whether there were any judicial proceedings against them. Although the applicant had served his imprisonment sentence, the court prohibited him from leaving the country and scheduled his next hearing on 12 September 2024.

13. As a result of all these requests and the first session of the Yalçınkaya's re-trial, our initial observation is that the Kayseri 2nd Assize Court did not understand and interpret the ECtHR's findings correctly.

IV. GENERAL MEASURES

The practice of the Turkish domestic courts concerning the re-opening of the criminal cases and the outcomes of the ECtHR's findings

[3] See, ibid. § 343, as follows: *"Nevertheless, the Court cannot but note the lack of any meaningful discussion in the domestic courts' judgments as to how those acts could be evidence of criminal conduct, even in an ancillary manner. It observes in this regard that, at the time they were undertaken, the acts in question were all seemingly lawful acts that benefited from the presumption of legality (see Taner Kılıç, cited above, § 105) and that moreover pertained to the applicant's exercise of his Convention rights, in so far as the membership of a trade union and an association were concerned (see the further discussions within the framework of Article 11 of the Convention in paragraphs 385-397 below). The domestic courts were therefore required to clarify how these acts had reinforced the finding regarding the applicant's membership of an armed terrorist organisation. The Court notes in particular that the explanation provided by the applicant to account for his Bank Asya transactions was never verified or otherwise addressed by the domestic courts."*

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

14. Shortly after the ECtHR's judgment and the obligations prescribed under Article 46, those who have been convicted in similar 'ByLock trials' have petitioned domestic courts to re-open their criminal cases. However, domestic courts have systematically rejected requests for the re-opening of the criminal cases, citing as justification the lack of any ECtHR violation judgment against the individuals who made the requests. Previously made communications[4] to the Committee of Ministers by other associations (Stitching Justice Square) have provided detailed information and documentation on these petitions.

15. Trials concluded after the Yalçınkaya judgment and the convictions rendered by different level courts also contradict the findings of the Grand Chamber in Yalçınkaya judgment and the individuals have been imprisoned for their so-called membership of an armed terrorist organization due to their legal actions. As submitted by Stitching Justice Square, following the announcement of the Yuksel Yalcinkaya judgment, 611 people were detained in 77 provinces for using the Bylcok program or similar charges[5].

Statements made by the high-level officials about the Yalçınkaya judgment

16. The systematic refusal by the Turkish judicial authorities to grant the re-opening of the criminal proceedings in similar cases should be considered in the context of statements made by high-level officials made after the Yalçınkaya judgment.

17. On 26 September 2023, the day on which the ECtHR announced the Yalçınkaya Grand Chamber judgment, the Minister of Justice Yılmaz Tunç made a statement on his official account and emphasized that the ECtHR had delivered a decision contrary to the ECHR[6].

18. The President of the Constitutional Court, Mr. Zühtü Arslan, stated that he fundamentally disagreed with the ECtHR's judgment on Yalçınkaya and said *"We do not agree with the ECtHR decision. The Constitutional Court's decision is definite. Therefore, they have rendered a judgment other than our judgment. The ECtHR's decisions are publicly known and discussed. The most recent decision is also being discussed. But*

[4] Rule 9.2 submissions by Justice Square on the implementation of Yüksek Yalçınkaya v. Türkiye (15669/20), 31.10.2023, https://hudoc.exec.coe.int/eng?i=DH-DD(2023)1389E and 13.02.2024, https://hudoc.exec.coe.int/eng?i=DH-DD(2024)217E

[5] Rule 9.2 submission by Justice Square on the implementation of Yüksek Yalçınkaya v. Türkiye (15669/20), 13.02.2024, paras.13-14, https://hudoc.exec.coe.int/eng?i=DH-DD(2024)217E

[6] See,https://twitter.com/yilmaztunc/status/1706691787002191985?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1706691787002191985%7Ctwgr%5E66ab0c3c43aca58fa88dcecbdeba56e1d795e827%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.bbc.com%2Fturkce%2Farticles%2Fcv2le2e07q1o

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

ultimately the courts in Türkiye will determine the verdict. We will look at it in the re-opening of the criminal case. It will be brought before us and we will decide then." [7]

19. At the opening ceremony of the Turkish Grand National Assembly new legislative year, the President described the ECtHR's judgment on Yalçınkaya as the last straw and made the following statements: *"The recent decisions of the European Court of Human Rights, an institution of the Council of Europe, have been the last straw. The members of the terrorist organization and their supporters who take courage from this decision should not be encouraged for no reason. This decision will not help the Fethullahist scoundrels who are already condemned in the conscience of the judgment."* [8]

20. As is clear from the judgments of the domestic courts and the statements of high-level officials, the Turkish authorities do not recognize the ECtHR's judgment. Domestic courts state that the judgment is binding only on the Yalçınkaya case and does not constitute grounds for re-opening proceedings or acquittal in other similar cases (despite the Court's judgment referring to general measures in respect of, but not limited to, the cases currently pending before the domestic courts).

21. In this respect, ASSEDEL hereby brings to the attention of the Committee of Ministers the expert and legal opinions prepared by well-known jurists in Türkiye after the delivery of the Yalçınkaya judgment, which set out by means of detailed legal norms how the re-opening of cases and acquittal processes should be conducted in similar cases. The original texts of these opinions are also attached as annexes to the submission.

Expert and legal opinions of jurists on the general measures required for the implementation of the Yalçınkaya judgment

22. Prof. Dr. Sami Selçuk is the former President of the First Presidency of the Court of Cassation and Head of the Department of Criminal Law at Bilkent University. His expert opinion (**Annex-1**) written first summarizes the principles of universal legal norms regarding the legality of crimes and punishments under criminal law. According to the Turkish Penal Code and the ECtHR, as *per* Article 7 of the Convention, the legal definition of crimes and their sanctions must be statutory, clear and unambiguous, and as a requirement of the principle of supremacy of law, the Convention must be observed

[7] See, https://www.diken.com.tr/aym-baskani-arslan-aihm-kararina-katilmiyoruz/

[8] See, https://aktifhaber.com/gundem/erdogandan-aihmin-yalcinkaya-kararina-tepki-bardagi-tasiran-damla-olmustur.html

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

even in times of war or other extraordinary circumstances, and be closed to interpretations that allow for any deviation.

23. In view of the acquittal of defendants who have been convicted, based *inter alia* on the use of the ByLock application, for the crime of 'establishing a terrorist organization' and for the crime of ‘being a member of such an organization’, it is necessary to assess whether the requirement of *intent* for the crime of membership of an organization has been established and, in particular, that it must be proven that the use of Bylock has contributed materially or morally to the FETÖ/PDY terrorist aims by using force (coercion and violence).

24. As a result, the intention to use force and violence must be concretely demonstrated as evidence of the charges of membership and leadership of a terrorist organization in these proceedings. The expert opinion emphasized that a charge of membership of a terrorist organization cannot be made with evidence such as being a Bylock user, being a member of an association, having an account in a bank, attending religious conversations, subscribing to newspapers. Accordingly, Turkish courts should base their proceedings on this reasoning and should allow the re-opening of the criminal procedure for all the similar cases.

25. Prof. Dr. Doğan Soyaslan is lecturer at Çankaya University; his legal opinion (**Annex-2**) sets out steps to be taken for both the Yalçınkaya case, as well as for similar cases and trials. Firstly, implementation of individual measures requires the re-opening of the criminal proceedings against Mr. Yalçınkaya and his acquittal.

26. Further, the grounds of the Yalçınkaya judgment should be applied to all Bylock trials. In pending similar cases, local courts should not consider the mere use of the Bylock application as an indication of membership of an organization, in accordance with the presumption of innocence and objective responsibility. In other words, they should not convict Bylock users, as well as those who are members of certain associations and unions affiliated with FETÖ/PDY, or those who subscribe to certain newspapers, by accepting these as evidence.

27. The expert opinion notes that the Constitutional Court should rule that the right to a fair trial has been violated in the individual applications of persons who have been convicted on the basis of Bylock use, union-association membership, newspaper subscription, which are pending before the Constitutional Court, and should return the case file back to the first instance court.

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

28. Finally, the Yalçınkaya judgment should be applied retrospectively as a reason for re-opening of the criminal cases for those who had been convicted through final '*Bylock decisions*'.

29. A three-tier distinction is made in terms of how the retrial of the finalized cases in question can be legally initiated depending on the stage in which the cases are situated:

- **a.** If the conviction is finalized after the Court of Cassation judgment, the Chief Public Prosecutor of the Court of Cassation may, *ex officio* or upon the applicant's request, appeal the decision to the Criminal Chamber that upheld the conviction. Since it is in favor of the accused, there is no time limit (Article 308 of the Code of Criminal Procedure). The grounds for appeal should be the erroneous implementation of a law (Article 288/2 of the Code of Criminal Procedure).
- **b.** If the conviction is finalized after the judgment of the Criminal Chamber of the Regional Court of Appeal, the Chief Public Prosecutor's Office of the Regional Court of Appeal may appeal to the Criminal Chamber as of the notification of the judgment. He/she may file an objection *ex officio* or upon the request of the applicant's lawyer. No time limit is required for the appeal in favor of the accused (Article 308/A of the Code of Criminal Procedure).
- **c.** If the conviction is finalized after the decision of the first instance court due to the failure to appeal against it, then, after the *Yalçınkaya* judgment, the judgment may be brought into conformity with the law through overturning in the interest of the law according to Article 309 of the Code of Criminal Procedure. In this case, the Ministry of Justice, upon being informed of the ECtHR judgment, may request the Court of Cassation to overturn the judgment of the court of first instance by submitting its reasons.

30. Consequently, expert Mr. Soyaslan indicated that the Yalçınkaya judgment applies to all similar proceedings, that all ongoing 'ByLock' proceedings should result in acquittal, and that, for finalized convictions, the above-mentioned retrial processes should be followed, and these individuals should also be acquitted.

31. In February 2024, the Executive Board Member of the Human Rights Center of the Union of Turkish Bar Associations, Attorney Dr. Serkan Cengiz, published a report titled "*Evaluation of the ECtHR Yüksel Yalçınkaya v. Türkiye*" (**Annex-3**).

32. According to this report, the Yalçınkaya judgment is the first judgment on the entirety of FETÖ/PDY-related criminal proceedings. It is a requirement of Article 90, Paragraph 5 of the Constitution that the findings of the ECtHR's judgment be taken into account on a wider scale, including, but not limited to the cases pending before the local courts, in

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

order to find an appropriate solution to eliminate the underpinnings of the structural problems identified and pointed out by the ECtHR under Article 46. Within this context, a change in jurisprudence should be made to eliminate the structural problems identified by the ECtHR for trials based on the use of Bylock applications and other such evidence for ongoing trials. For finalized convictions, the retrial institution should operate based on the principle of *restitutio in integrum*.

33. Assoc. Prof. Dr. Tolga Şirin (**Annex-4**), lecturer at Marmara University Faculty of Law, prepared an expert opinion upon the request of another person convicted on similar evidence, addressing the effects of the Yalçınkaya judgment towards other similar cases. Regarding the impact of the Yalçınkaya judgment on the referenced case, Mr. Şirin referred to Article 311(e) of the Code of Criminal Procedure which as follows: *"... e) If new facts or new evidence have been produced, which when taken in to consideration solely or together with the evidence previously submitted, are of the nature that require the acquittal of the accused or the conviction of the accused because of a provision of the Criminal Code that require a lighter punishment; ... "***.** Accordingly, the conditions for re-opening the criminal case are fulfilled when it comes to convictions rendered as a result of proceedings based on evidence such as the use of the Bylock application, delivered subsequently to the *Yalçınkaya* judgment. As a result, the expert argues that all institutions and organizations using public power, especially judicial bodies, should take the necessary steps to return the victims of violations to their status before the violation. Mr. Şirin highlighted that the first step for national judges in this direction is to activate the institution of renewal of the proceedings and the second step is to conduct trials according to the principles set out in the *Yalçınkaya* judgment.

34. The legal opinion prepared by Prof. Dr. Mustafa Ruhen Erdem (**Annex-5**), lecturer at Yaşar University Faculty of Law, evaluated whether a person who is currently on trial for FETÖ/PDY membership at first instance can be convicted based on the evidence in his file. As noted by Mr. Erdem, the evidence in the case file in question includes the alleged use of Bylock, taking part in the board of directors of an association closed down by a decree law, having a bank account at Bank Asya, being in contact with high-level leaders of FETÖ/PDY, and the witness statements. Mr. Erdem pointed out that in order to answer the question whether the person concerned can be convicted as a result of the aforementioned evidence, the principles of the Yalçınkaya judgment must be applied, which is binding for the Turkish judiciary under Article 46 of the Convention for similar FETÖ/PDY trials. The expert report concluded that the person could not be convicted of membership of an armed terrorist organization on the basis of the outstanding evidence in the relevant case file.

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

Concrete steps required to be followed for Bylock prosecutions under the general measures

35. As a result of the expert and scientific opinions summarized above, following the Yalçınkaya judgment, the steps to be taken in Bylock trials under Article 46 ECHR should be as follows:

- The national jurisprudence on Bylock trials needs to be revised according to the ECtHR's findings.
- As a result of this jurisprudence;
    - Ongoing trials at first instance must result in acquittal;
    - Convictions pending before the Court of Appeal and Court of Cassation should be overturned;
    - For the individual applications before the Constitutional Court, violation decisions should be issued and the files should be sent back to the courts of first instance for re-trials.
- As regards final convictions, requests for re-trial should be accepted under applicable procedural law in accordance with the procedure detailed in paragraph 27. However, given the current resistance of local courts to apply this procedure, a legislative amendment should be made to Article 311, subparagraphs e and f of the Criminal Procedure Code. In this context, the relevant subparagraphs should be amended so that the Yalçınkaya judgment not only has consequences for the applicant but also for all other Bylock trials, as requested by the ECtHR under Article 46.

V. CONCLUSION AND RECOMMENDATIONS

36. The current Turkish judicial practice in similar cases and the statements of high-level authorities reveal that this type of proceedings (and convictions) continue, ignoring the general measures that should have been taken for the implementation of the *Yalçınkaya* judgment. The domestic courts' justification for this practice is the incorrect interpretation that the ECtHR judgment applies only to Mr. Yalçınkaya and has no effect on other similar proceedings (despite the fact the Court had applied Article 46). However, the implementation of this judgment requires appropriate general measures that can address these violations particularly in respect to the cases currently pending before the domestic courts at the time of the judgment, **but not limited to these**. The Court specifically indicated that the authorities need to take any (other) general measures as appropriate in order to resolve the problem identified. This also means that solutions should be put in place to trigger the re-opening of closed ByLock proceedings in which defendants were

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org

convicted. Specifically, the Turkish authorities should consider the enforcement of Article 311 (subparagraphs e and f) of the Criminal of Criminal Procedure and should carry out legal amendments to the relevant subparagraphs of that article to address the systemic problem in the Yalçınkaya judgment. The Turkish courts should order the acquittal of individuals as a result of the re-trials by implementing the findings in Yalçınkaya Grand Chamber judgment.

37. In conclusion, within the context of general measures required, ASSEDEL requests the Committee of Ministers schedule the case for examination at its'earliest convenience and ask Türkiye to:

- submit a comprehensive action plan taking into account the findings and recommended steps in the expert legal opinions presented above,
- revise the substantive principles implemented in proceedings and investigations carried out in similar cases in accordance with the ECtHR *Yalçınkaya* Grand Chamber judgment, and
- introduce a procedure for initiating the re-opening of the criminal proceedings for all similar cases by carrying out legal amendments to the subparagraphs e and f of Article 311 of the Code of Criminal Procedure.

ASSEDEL

List of annexes

Annex-1: Expert opinion of Prof. Dr. Sami Selçuk

Annex-2: Legal opinion of Prof. Dr. Doğan Soyaslan

Annex-3: "*Evaluation of the ECtHR Yüksel Yalçınkaya v. Türkiye*" report published by the Human Rights Center under the Union of Turkish Bar Associations

Annex-4: Expert opinion of Assoc. Prof. Dr. Tolga Şirin

Annex-5: Legal opinion of Prof. Dr. Mustafa Ruhen Erdem

Association européenne pour la défense des droits et des libertés
4 Rue de Reims 67000 STRASBOURG
www.assedel.org / info@assedel.org