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Communication from NGOs (Human Rights Solidarity, Arrested Lawyers Initiative and Italian Federation for Human Rights) (12/08/2024) 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.

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Réunion : 1507e réunion (septembre 2024) (DH)

Communication d'ONG (Committee of the Relatives of the Missing Persons of Ashia) (29/02/2024) 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.

Furthering ECHR Compliance in Turkey

This submission is prepared within the scope of the project called Furthering ECHR Compliance in Turkey co-run by the Arrested Lawyers Initiative

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HUMAN RIGHTS SOLIDARITY

FIDU - Federazione Italiana Diritti Umani ETS
Italian Federation for Human Rights

The Arrested Lawyers Initiative
"Defends the defenders"

Council of Europe

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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)*

I. Introduction

1. Human Rights Solidarity[1], The Arrested Lawyers Initiative[2] and The Italian Federation for Human Rights[3] 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" concerning the execution of the Grand Chamber of the European Court of Human Rights' judgment in *Yüksel Yalçınkaya v. Türkiye (Application no. 15669/20)* dated 26 September 2023.

2. The purpose of this communication is to provide the Committee of Ministers with information and explanations on the implementation of the ECtHR judgment in *Yüksel Yalçınkaya v. Turkey (no. 15669/20)*, particularly regarding the general measures required by the judgment, and to give a brief response to the State Party's Action Plan dated 5 August 2024.

3. The Court considered in *Yüksel Yalçınkaya* that the situation leading to violations of Articles 7 and 6 of the Convention stemmed from a systemic problem, not an isolated incident. It recalled the guidelines of the Committee of Ministers, as outlined in Recommendation No. R (2000) 2, which urged the Contracting Parties to introduce mechanisms for re-examining cases and reopening proceedings at the domestic level (para. 406 of the judgment). The Court reminded that in exceptional circumstances, such measures represented "the most efficient, if not the only, means of achieving restitutio in integrum." To avoid future similar violations, the Court emphasized that Turkish authorities need to address the defects identified in the present judgment on a larger scale. It invited Turkish authorities to draw necessary conclusions from the judgment, particularly concerning pending

[1] Human Rights Solidarity (HRS) is a charity, registered with the Charity Commission for England and Wales, which works on rights and freedoms and is predominantly youth-led. HRS strives to raise awareness and influence political decision-making on human rights violations through public and media outlets.

[2] The Arrested Lawyers Initiative a Brussels-based rights group consists of lawyers making advocacy to ensure lawyers and human rights defenders perform their duty without fear of intimidation, reprisal, and judicial harassment. The Arrested Lawyers Initiative is a member of the International Observatory for Lawyers.

[3] The Italian Federation for Human Rights – Italian Helsinki Committee (under the acronym, FIDU) is an organization of the Third Sector, i.e. a non-profit civil society organization. FIDU is based in Rome and operates throughout Italy and worldwide; carries out its activities through its national and local bodies, and achieves its goals in compliance with international and EU standards, as well as with the Italian Constitution and laws; it is non-profit-making and pursues civic, solidarity and social utility purposes by carrying out activities of general interest; can join international federations and networks of associations that pursue the same ends with the same methods; it can bring together other associations with a federation pact.

domestic cases, and to take any other general measures as appropriate (§ 418 of the judgment).

II. Case summary

4. The case concerns a violation of the principle of no punishment without law on account of the applicant's conviction for membership in an armed terrorist organization based decisively on the use of an encrypted messaging application by the name of "ByLock", without establishing the offence's constituent material and mental elements in an individualized manner (Article 7). Under Turkish law, the offense of membership in an armed terrorist organization required specific intent. Despite this, domestic courts' expansive interpretation of the law attached objective liability to the use of ByLock without establishing the necessary prior knowledge and intent.

5. The case also concerns 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). The lack of control mechanisms for ByLock downloads, the withholding of raw data, unanswered requests for independent review, and discrepancies in user data raised doubts about the reliability of ByLock evidence.

6. The case further concerns 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). Many convictions for trade union and association membership were issued after 2016, despite these organizations being legally established before their closure by Decree-Law No. 667. The expansive interpretation of anti-terrorism legislation did not meet the "prescribed by law" requirement, resulting in a violation of Article 11.

7. Under Article 46, the Grand Chamber examined the systemic issue of unpredictable anti-terrorism legislation interpretations. With over 8,000 pending cases and likely more to come, the Court called for general measures to address this systemic problem. The Court held that the reopening of the criminal proceedings, if requested, would be the most appropriate way of putting an end to the violations found in the present case and of affording redress to the applicant. It further held that the authorities are required to take general measures as appropriate to address systemic problems regarding domestic courts' approach to the use of ByLock.

III. General context

8. This problem has affected and continues to affect many individuals, as evidenced by over 8,000 applications pending before the Court involving similar complaints under Articles 7 and 6 related to ByLock-based convictions (§ 414 of the judgment). These 8,000 pending cases similar to *Yüksel Yalçınkaya* involve applicants sentenced to at least 6 years and 3 months' imprisonment for the same offense. Many have served, are serving, or will serve these sentences in maximum security prisons. Arrests and detentions continue under similar charges, highlighting the urgency for full and prompt implementation of the judgment.

9. For eight years, the Turkish Government has been cracking down on lawyers, particularly those with alleged links to the Gulen Movement or those who did not fully support Erdogan after the failed coup attempt.

10. According to a joint report by the International Bar Association's Human Rights Institute and the Arrested Lawyers Initiative, more than 1,700 lawyers have been arrested, and 553 have been sentenced to a total of 3,380 years in prison on terrorism-related charges, predominantly for membership in a terrorist organization.[4]

11. These lawyers mostly have been prosecuted in mass trials. In 2019, Human Rights Watch reported: "*In some cases, however, prosecutors chose to prosecute multiple lawyers in a single trial, alleging that they were part of what they call a "FETÖ lawyers structure*". [5] According to the prosecutors, the lawyers in question had discharged their professional duties in the service of an outlawed group, thus subverting a legitimate professional function and transforming it into a criminal activity.

12. Currently, mass trials involving multiple lawyer defendants, about which the media has also chosen to use the label "FETÖ lawyers' structures", are taking place in at least eight provinces in Turkey (Ankara, Bursa, Samsun, Antalya, Trabzon, Manisa, Denizli, and Konya). In several of these, those prosecuted, and sometimes convicted, include the heads of the bar associations.[6]

[4] https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/

[5] https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey

[6] Ibid.

13. According to indictments and decisions examined by the Arrested Lawyers Initiative, the use of ByLock and membership to associations that were closed with emergency decree laws have been used as criminalizing evidence against these lawyers along with the identities of their clients.

a) Mass trial of lawyers in Ankara

14. As also stated in the HRW report, one such mass trial against lawyers is the case where Ankara Prosecutor's Office indicted 52 lawyers in Ankara. The prosecutor called this case "FETÖ Ankara lawyers' structure" case.

15. HRW report states: "*The indictment repeatedly includes as evidence the fact that between 2014 and 2016, the defendants represented individuals linked to the Gülen movement: police officers prosecuted in that period for alleged irregular wiretapping of thousands of people and individuals prosecuted for their alleged involvement in cheating in civil service entry exams (KPSS exams) by distributing or receiving examination questions or answers in advance of the exams. ... it is a perversion of the rule of law to prosecute lawyers for defending the individuals charged with those offences, where the supposed criminal acts by the lawyers amount to no more than the discharge of their professional obligations and functions. The prosecutor in the Ankara case alleges that the lawyers voluntarily acted for their clients without being appointed by the legal aid service of bar associations and labels 17 instances when the lawyers were carrying out legitimate activity for their clients as 'aiding suspects and in the investigations against them creating an impression in favor of FETÖ and against the state and making statements to the media constituting propaganda that the investigations and trials were unfair.*"[7]

16. Indictments portraying the work of a defence lawyer in these terms but void of any evidence of engagement in criminal activity threatens the very core of fair trial, by attempting to smear the essential role and function of defence lawyers in ensuring respect for the rule of law. When governments, prosecutors and courts treat the representation of certain clients as evidence of criminal activity by the lawyers, they are effectively eliminating the right to legal representation against criminal charges which is fundamental to a fair trial.

17. Defendants in the Ankara lawyers' trial were detained in August 2016, weeks after the attempted coup, and the majority spent periods of up to 16 months in pretrial detention before being conditionally released subject to restrictions such as a ban on overseas travel and regular signing in at a police station.

[7] Ibid

b) Evidence Against Lawyers

18. Evidence against the lawyers including those in the Ankara trial includes:

(i) being members of a lawyers associations[8], for lawyers in Ankara trial this association is the Law and Life Association, which was lawfully incorporated at the relevant time and closed under Emergency Decree No. 667,

(ii) the identities of their clients,

(iii) use of the ByLock app,

(iv) being customers of Bank Asya,

(v) making donations to a relief organization called Kimse Yok which was honoured by Parliament and later closed down under Emergency Decree No. 667,

(vi) possession of certain books.

19. In the Yalçınkaya case, similar elements were considered evidence for the same purpose: evidence used against the applicant included his use of an account at Bank Asya, and his membership of a trade union and an association that was considered to be affiliated with the FETÖ/PDY.

20. The indictment, prepared by the Ankara Chief Public Prosecutor's Office, accused these lawyers of being executive or ordinary members of Hukuk & Hayat (Law & Life), a lawyers' association in Ankara that was shut down by decree-law during the state of emergency declared after the failed coup. The association, which provided professional training and social events, and offered assistance to trainees and junior lawyers, was charged with "membership of an armed terrorist organization" based on its members' list obtained from the Governorship's office. Notably, a police report concluded that the association committed no offense.

21. According to the indictment, the only evidence that Hukuk & Hayat was directly linked to the Gulen Movement was that it was shut down by a decree law. The court did not look beyond that. The public prosecutor did not offer any evidence as to how exactly such a professional organisation was being run by the Gulen Movement. The prosecutor sometimes uses the identity of a particular board member and his clients to link Hukuk & Hayat to the Gulen Movement, followed by linking the

[8] 34 lawyers associations were closed down with emergency decree laws.

association's ordinary members and board members to the Movement and charging them with membership to an armed organisation.[9]

22. Being allegedly ByLock users, which was an encrypted messaging app like WhatsApp and Signal, is also another decisive evidence against these lawyers. The lawyers during the entire prosecution challenged this evidence and asked for a digital copy of evidence against them as well as an expert panel examination to address the inconsistencies in the ByLock material, however, all of these requests were declined, and the Court exclusively relied on police report stating that they are ByLock users.

23. The court found that the defendant's organizing their efforts to represent certain people during police interviews constituted criminal activity carried out to "show the state in a bad light" or "show that the investigations and criminal proceedings which followed were unlawful". The evidence against every defendant includes a list of their clients. If any one of their clients was a person or a company allegedly associated with the Gulen Movement, it was used to convict them. For instance, the fact that the clients of a defendant included a teachers' union which was closed down by a decree law was considered incriminating evidence.[10]

c) Decision of Ankara Regional Appeal Court's 22nd Criminal Chamber dated 27 December 2023

24. This case was considered by the Ankara Regional Appeal Court through several hearings. The final two hearings were held in November and December 2023.

25. In the November 2023 hearing, the defendants who are lawyers invoked the Grand Chamber's Yalçınkaya judgment and asked the Court either to deliver an acquittal

[9] Turkish Constitution and the European Convention of Human Rights enshrine the freedom of association. On the other hand, according to Articles 23-24 of the UN Basic Principles of the Role of Lawyers, lawyers are entitled to "freedom of association and assembly" and to "form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity". They shall have the right to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions because of their lawful action or their membership in a lawful organization.

According to Article 18 of the UN Basic Principles on the Role of Lawyers, lawyers may not be identified with their clients or their clients' causes as a result of discharging their functions. Despite the clear prohibition to do so however, the prosecutor and the Ankara Appeal court have relied on such lawyers' client lists. Having represented the individuals who are prosecuted under anti-terror laws or entities such as schools, associations or companies which were closed down or confiscated by decree-laws was held as incriminating evidence.

[10] https://arrestedlawyers.org/2024/01/31/ankara-appeal-court-defies-echr-sentences-19-lawyers-to-125-years/

decision or wait for any decision from the Court of Cassation in the form of a general measure.

26. Ankara Regional Appeal Court's 22nd Criminal Chamber thus adjourned the case to 27 December 2023. However, in the final, 27 December 2023 hearing the Ankara Regional Appeal Court, convicted all the lawyers under Article 314-2 of the Turkish Penal Court and sentenced them to prison sentences ranging from 6 to 8 years, 125 years in total.

27. In justifying its decisions as described above, the court explicitly ignored the rulings of the European Court of Human Rights (ECHR), and in particular Yalçınkaya judgment, even though these rulings were repeatedly cited as precedents by the defendants' lawyers.

28. **Ankara Regional Appeal Court's 22nd Criminal Chamber stated:** "Although some of the defendants and their legal counsels have claimed in their oral and written submissions that the judgment of the ECHR in *Yüksel Yalçınkaya v. Turkey* constitutes a precedent for them, there is no final judgment of the ECtHR regarding the violation of the European Convention on Human Rights (ECHR) and its additional protocols concerning the defendants. In light of the ECtHR judgment in *Yüksel Yalçınkaya v. Turkey*, ... it has been concluded that the violations referred to in that judgment relate only to the finding of violations specific to the application in that particular case and that the violations of the principles of the right to a fair trial under Article 6 ECHR and the principles of legality in criminal matters and punishment under Article 7 ECHR referred to in the judgment are not applicable to the defendants". **(Ankara Regional Appeal Court's 22nd Criminal Chamber, Docket No: 2022/311, 27 December 2023,** Appendix**)**

29. In light of this decision by the Ankara Regional Appeal Court, it is clear that there is a marked reluctance within the Turkish judiciary to comply with the rulings of the ECtHR, despite the fact that these rulings are binding on them.

30. We should underline that the jurisdiction of Ankara Regional Appeal Court's 22nd Criminal Chamber covers seven provinces including Ankara, Eskisehir, Kirikkale, Kastamonu, Kirsehir, Cankiri, and Karabük. Ankara Regional Appeal Court's 22nd Criminal Chamber considers the appeals made against the decisions of Assize Courts tasked to try terrorism cases in these seven provinces. Thus, it is not defiance of a single court, but it signals defiance of all assize courts in these seven provinces.

IV. General measures

31. The systemic problem identified in this case is not unique to those prosecuted for ByLock use. Judicial authorities have not proven membership in a terrorist organization as described in the Yalçınkaya case, instead assuming membership based on any past link to the Gulen movement, using an expansive and unreasonable interpretation of anti-terror legislation contrary to established case-law. According to the Turkish Justice Minister Yılmaz Tunç's statement, dated July 2024, more than 702,000 people have been investigated by the police on terrorism charges (Article 314 of the Turkish Penal Code) since the 2016 coup attempt over their affiliation with the Gulen Movement.[11] Of those at least 330,000[12] were taken into custody by the police and at least 100,000[13] were remanded into pretrial detention. In January 2023, the Turkish Government submitted its Action Plan[14] to the Committee of Ministers of the Council of Europe, in which it also provided statistical data regarding the application of Article 314 of the TPC. According to this data, between 2017 and 2021, more than 310,000 individuals (all categories in the below table included except for acquittal) have been sentenced for membership in an armed terrorist organization. [15]

Year	Sentence of Imprisonment	Fine	Suspension of Imprisonment	Security measures	Other convictions	Acquittal	Suspension of pronouncement of the judgment
2021	18 816	12	135	12 986	12 093	17 970	4 738
2020	18 860	11	195	12 933	12 145	16 516	4 699
2019	30 589	8	357	21 130	18 764	26 175	7 550
2018	43 553	3	297	33 448	31 111	23 970	4 455
2017	14 971	8	171	11 437	10 340	6 096	692

Source[16]

[11] Turkey has investigated more than 700K people over Gülen links since failed coup: minister https://turkishminute.com/2024/07/12/turkey-investigate-more-than-700k-people-over-gulen-link-failed-coup-minister/

[12] https://www.trthaber.com/haber/gundem/bakan-soylu-fetoden-332-bin-884-kisi-gozaltina-alindi-692917.html

[13] Ibid

[14] See: Communication from Türkiye concerning the cases of *Selahattin Demirtas v. Turkey (no. 2)* and *Encü and others v. Turkey*, Updated Action Plan, DH-DD(2023)45, 10 January 2023.

[15] ByLock Prosecutions and the Right to Fair Trial in Turkey: The ECtHR Grand Chamber's Ruling in *Yüksel Yalçınkaya v. Türkiye*, https://www.statewatch.org/media/4200/sw-echr-yalcinkaya-bylock-report.pdf

[16] Ibid.

V. A Brief Response to the State Party's Action Plan dated 5 August 2024[17]

32. In this submission, we present our preliminary observations on the State party's action plan. Detailed observations will follow shortly as a separate submission.

33. It is regrettable that the State party's Action Plan is an unfortunate attempt to rewrite the Grand Chamber's decision and the well-established facts behind the Yalçınkaya decision.

34. It is also regrettable that, despite the ten-month gap between the Yalçınkaya judgment and the Action Plan, the State party has not provided a single domestic court decision invoking and applying the Yalçınkaya judgment in its case. On the contrary, in this submission, we provide a judgment of the Ankara Regional Court of Appeal, which explicitly refused to apply the Yalçınkaya ruling to its case and convicted 19 lawyers under article 314 of the Penal Code on the grounds of using ByLock, membership of an association closed by emergency decree and the identity of their clients.

35. In its Action Plan, the State party states that "the issue that led the Court to find a violation was the fact that established judicial practice had not been properly followed in the particular case of the use of ByLock. (§29)" And it argues that there is no systemic problem with respect to Article 7, but only that the Kayseri Assize Court misapplied the law and jurisprudence. In so doing, the State party acts as if the decision of the Kayseri Assize Court had not been upheld by the Regional Court of Appeal, the Court of Cassation and the Constitutional Court.

36. The State party acts as described above despite the fact that the Grand Chamber has already found a systemic problem in the evaluation of ByLock by the Turkish courts and ordered the adoption of general measures. The State party, on the other hand, instead of presenting an action plan with meaningful general measures, attempts to reargue the case before the Committee of Ministers.

37. In paragraph 51 of the Action Plan, the State Party states "Thus, the Court of Cassation ensured a judicial practice where all the necessary elements of criminal intent, continuity, diversity, the intensity of the accused's activities, and hierarchical link for the offense of membership of an armed terrorist organization are inquired." It argues there is no automatic presumption of guilt.

[17] DH-DD(2024)882: Communication from Türkiye.

38. However, in several decisions, the Court of Cassation held:

> "In order for the crime of membership in an armed organization to occur, an organic bond with the organization and the existence of acts and activities that require continuity, diversity, and intensity are required as a rule. However, the perpetrators of crimes that can only be committed by members of the organization even if they do not have the characteristics of continuity, diversity, and intensity due to their nature, the way they are committed, the severity of the damage and danger caused, and their contribution to the purpose and interests of the organization must also be accepted as members of the organization."[18]

39. In another case, for instance, the Gaziantep Regional Appeal Court[19] held:

> ".... From the collected evidence, the defence of the defendant and the entire file scope; the defendant, as explained in the above-mentioned decisions of the Court of Cassation; It is established that the defendant committed the crime of being a member of an armed terrorist organization by intensely using the encrypted communication network Bylock, which is exclusively used by members of the FETÖ/PDY armed terrorist organization due to its creation, inclusion, use and technical features, and by engaging in actions and activities that require continuity, diversity and intensity by being included in the hierarchical structure of the armed terrorist organization, and it is concluded and decided that the defendant should be sentenced for the imputed crime and the verdict is as follows." This decision was upheld by the Court of Cassation's 16th Criminal Chamber. (Appendix)

40. Thus, if the accused is found to be a ByLock user, the criteria of continuity, diversity, and intensity are not required for a conviction. There is an automatic presumption of guilt as held by the Grand Chamber.

41. If there is no misconception or misrepresentation by the State Party about the cases mentioned in the Action Plan, these cases may only be seen as an aberration from the standard practice of the Turkish judiciary which has already been ruled by the Grand Chamber to have violated Articles 7 and 6 of the Convention.

42. Paragraphs 58 and 120 of the Action Plan show the State party's disregard for the Grand Chamber's decision, as they state that no general measure is necessary to

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[18] 16th Criminal Chamber, Docket No: 2019/2397, Decision No. 2021/1977, Date. 8.3.2021

16th Criminal Chamber, Docket No: 2017/4012, Decision No. 2018/755

16th Criminal Chamber Docket No: 2017/1809 Decision No. 2017/5155 Date. 26.10.2017

3rd Criminal Chamber Docket No: 2021/2112 Decision No. 2021/9937 Date. 4.11.2021

[19] Its jurisdiction covers provinces of Malatya, Kilis, Gaziantep, Adiyaman, Urfa, Maras.

comply with the Yalçınkaya judgment. This is despite the fact that the Grand Chamber found a systemic problem and since then the Court communicated 3,000 similar applications to the State Party.

43. Finally, not only the European Court of Human Rights but also the UN Human Rights Committee reached a similar conclusion with regard to the Turkish authorities' approach to Bylock in conjunction with Article 314 of the Penal Code.

44. In the complaint filed by an individual who was convicted of membership in an armed terrorist organization as per Article 314 of TPC for alleged use of the Bylock application and holding a deposit account at Bank Asya, the UN Human Rights Committee found that Turkey violated Article 15(1) ICCPR, namely no punishment without law.[20]

45. The Committee found: "… the principle of legality in the field of criminal law … requires both criminal liability and punishment to be limited to clear and precise provisions in the law at the time the act or omission took place. … The Committee observes that article 314, paragraph 1 of the Turkish Penal Code, defines the crime of membership of an armed terrorist organization as "any person who establishes or commands an armed organization with the purpose of committing the offences listed in parts four and five of this chapter". In light of this broad definition, and in the absence of information from the State party regarding the existence of domestic legal provisions which clarify the criteria used to establish the acts constitutive of the crime defined under article 314, paragraph 1, of the Penal Code, the Committee cannot conclude that the author's alleged use of the Bylock application and Bank Asya account amounted to sufficiently clear and predictable criminal offenses at the time the acts took place. The Committee considers that, as a matter of principle, the mere use or download of a means of encrypted communication or bank account cannot indicate, in itself, evidence of membership of an illegal armed organisation, unless supported by other evidence, such as conversation records. 49 In the absence of documentary evidence provided by the State party, the Committee finds, in these circumstances, that the rights of the author under article 15(1) have been violated."

[20] The UN Human Rights Committee, Mukadder Alakuş v Turkey, CCPR/C/135/D/3736/2020, 26 July 2022

VI. Conclusion and Recommendations

46. Adequate, timely, and effective implementation of the Yüksel Yalçınkaya judgment is of paramount importance. As indicated by the ECtHR, it concerns more than 8,000 pending applications and a potential 100,000 new applications.

47. The State party has so far failed to take the general measures required by the Court. What is worse, it argues no general measures are needed.

48. Finally, we respectfully submit the following recommendations:

a) We recommend the Committee Minister schedule the monitoring of the implementation of this judgment as soon as possible, preferably at the next session in September 2024.

b) We recommend the Committee of Ministers to request from the State party the following:

(i) Turkey should immediately cease the arrests and prosecutions of alleged members of the Gulen movement for the offence of membership in an armed terrorist organization, based on the use of evidence such as an encrypted messaging application called "ByLock", etc., without establishing the material and mental elements of the offence in an individualized manner.

(ii) Turkey should immediately cease the crackdown on the legal profession based on the use of ByLock, membership of certain NGOs, and the identity of their clients, and to reverse the convictions of the Ankara lawyers and acquit them.

(iii) Turkey should amend Article 314 of the Turkish Penal Code in line with the findings of the European Court of Human Rights in the case of *Demirtas v. Turkey (2)* (§§ 280 and 337) and *Yalçınkaya* (§§ 393 and 396).

(iv) Turkey should take general measures to ensure the retrial of individuals convicted for using ByLock, whether or not their convictions are final. To this end, Turkey should amend Articles 308 and 311 of the Code of Criminal Procedures.

(v) Turkey should provide a copy of the digital ByLock data used against Yüksel Yalçınkaya to the defendant in the retrial that has begun in Kayseri Assize Court, and all other ongoing trials.

(vi) Turkey should provide the total number of people convicted for using ByLock, with a breakdown before and after the Yalçınkaya ruling.

(vii) Turkey should adopt a new mechanism or scheme to ensure that judicial authorities comply with the ECtHR rulings.

The Arrested Lawyers Initiative

Human Rights Solidarity

The Italian Federation for Human Rights

Appendices:

1) Partial copy of the decision of Ankara Regional Appeal Court's 22nd Criminal Chamber, Docket No: 2022/311, 27 December 2023

2) Partial copy of the decision of Gaziantep Regional Appeal Court decision and document showing it has been upheld by the Court of Cassation.