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Study Guide of European Court of Human Rights

The Beginning

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#TILJUSTICE

INDEX

LETTER from SECRETARY GENERAL

Dear Participants,

As the secretary general of the conference, it is my pleasure to greet you. We are proud to already feel the excitement of hosting one of Turkey's most sought-after legal conferences in our first event of the year. Alongside our experienced team, who have been striving to create privileged events for law students in interactive settings for years, we eagerly await your presence.

The main aim of our conference is to create a shared and broad vision with law students and to provide them with the opportunity to experience professional activities within the context of the legal field during their academic lives. In our courtroom simulation, which is designed to prepare you for the profession by providing educational and instructive experiences in competition with many others interested in the field, you will find a rewarding experience.

Furthermore, I would like to emphasize that both the academic and organisational teams of the conference are working in harmony to provide you with a wonderful experience. On this occasion, I extend my thanks to my esteemed colleague and our esteemed General Director, Irmak Gül, for her incredible efforts and commitment to perfection with her teams, and I also extend the love and greetings of our valuable companion on our academic journey, Atanur Duman, to you.

Finally, on behalf of the conference, I would like to thank you for joining us in establishing the tradition of "Nemesis Court Simulations". We are proud to be with curious and distinguished law students who are passionate about their profession.

Best Regards,

Salim Can ESER

Secretary General of Nemesis Court Simulations '24

LETTER from UNDER SECRETARY GENERAL

Distinguished participants,

I'm Meral Yıldırım, a senior law student at Ankara University. I have served as the Under Secretary General of ECtHR in lots of court simulations, and I am pleased to welcome you all to this legendary conference where you may demonstrate your legal understanding and debate talents. The academic team of ECTHR chose a case that is currently actively contested. Yıldırım v Türkiye is based on the legal principles of political crimes, terrorism, confidentiality of personal datas, constitutional unity of country, freedom of assembly, and legality of penalties. Yıldırım v Türkiye is an individual application determined by the European Court of Human Rights in 2022. The issue challenged the right of states to obtain datas at state of emergency. Articles 6, 7, 8, 11 and 30 of the European Convention on Human Rights are on the table and open for your discussion!

The academic team of the European Court of Human Rights prepared this guide to help you understand the most crucial human rights violation on refugees and political groups. This guidance is expected to be read and understood by all attendees prior to the conference. Having good debate and pursuing justice requires commitment. I want to express my special thanks to our Secretary-General, Salim Can ESER and Deputy Secretary-General, Atanur DUMAN, for inviting me to this excellent court simulation. Thank you to the entire organising team and most esteemed Director General Irmak GÜL .

When the issue comes to my academic assistants; I am proud of my academic assistants, Maide Abdulhamit and Emir Esat, for their creative approaches to legal disputes and tireless attempts to advance the court. Finally, thank you, NEMESİS, for always being there for me as a family. Wishing that these three days will be in the back of your mind forever.

Yours Sincerely,

LIST OF ABBREVIATIONS

CoE	**Council of Europe**
ECHR	**European Convention on Human Rights**
ECtHR	**European Court of Human Rights**
PTO	**Pennsylvanian Terrorist Organization**
IMAHS	**Işıklı Military Aviation High School**
NIS	**National Intelligence Service**
ASOCD	**Anti-Smuggling and Organised Crime Department**
ICTA	**Information and Communications Technologies Authority**
TAF	**Turkish Armed Forces**

I. Introduction to The European Court of Human Rights

The European Court of Human Rights, commonly known as "the Court" or "ECtHR," was founded in 1959 and is one of the most important organisations for international human rights that exists. It is headquartered in Strasbourg, France. The Court is the only Council of Europe court that has the authority to carry out the European Convention on Human Rights. For each member state of the Council, there are 46 judges overall, and the rulings of the Court (*erga omnes)* may be binding on the member states of the Council of Europe.

Three primary categories may be used to divide the court's jurisdiction: interstate applications, individual applications, and advisory opinions. The majority of cases that have been submitted to the European Court of Human Rights are Individual cases, in which one individual has a human rights issue. A contracting state to the European Convention on Human Rights may still bring legal action against another for alleged violations of the Convention, notwithstanding the fact that this is relatively uncommon in practice. Additionally, under Protocol No. 16, the highest courts and tribunals of a State Party may ask the Court to provide an advisory opinion relevant to the rights outlined in the Convention or the protocols.

A. History of ECtHR

In order to put an end to the destruction that had claimed millions of lives, Europe had to establish a council following two tragic World Wars and the outbreak of the Cold War. To address this need, the Council of Europe was established by Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway, and Sweden.

The organisations in charge of overseeing human rights in Europe were established by the Council of Europe, which also drafted the European Convention on Human Rights' legal text in 1950. The Convention provides the legal foundation for the protection of human rights throughout Europe. By signing and ratifying the European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, states pledge to behave in line with human rights and freedoms.

As a consequence of articles 19 through 51 of the Convention for the Protection of Human Rights and Fundamental Freedoms, states that ratified the European Convention on Human Rights assumed obligations, which were enforced by the establishment of the European Court of Human Rights (ECtHR) on January 21, 1959.

Due to experiences and evolving viewpoints on human rights, the convention has undergone multiple revisions over time. These revisions are known as additional protocols, and the convention currently has 13 additional protocols.[1]

B. Sources of ECtHR

1. The European Convention on Human Rights

The European Convention on Human Rights (ECHR) is an international human rights treaty signed by the 46 member states of the Council of Europe (CoE).

Governments that have ratified the European Convention on Human Rights (ECHR) have legally committed to preserving particular moral standards and safeguarding individuals' fundamental liberties. Originally intended to uphold the rule of law and advance democracy in European nations, the convention has subsequently expanded to include countries all over the world. It reflects the minimal requirements for human rights that the European States could reach a consensus on over 50 years ago, and its main focus is on the defence of civil and political rights, not economic, social, or cultural rights.

The Convention secures:

[1] Weller, K., Wagner, A., Hacker, R., Harvey, P., & McCormick, P. , A Brief History Of The European Court Of Human Rights (2018, May 09).

- ➔ the right to life (Article 2)
- ➔ freedom from torture (Article 3)
- ➔ freedom from slavery (Article 4)
- ➔ the right to liberty (Article 5)
- ➔ the right to a fair trial (Article 6)
- ➔ the right not to be punished for something that wasn't against the law at the time (Article 7)
- ➔ the right to respect for family and private life (Article 8)
- ➔ freedom of thought, conscience and religion (Article 9)
- ➔ freedom of expression (Article 10)
- ➔ freedom of assembly (Article 11)
- ➔ the right to marry and start a family (Article 12)
- ➔ the right not to be discriminated against in respect of these rights (Article 14)
- ➔ the right to protection of property (Protocol 1, Article 1)
- ➔ the right to education (Protocol 1, Article 2)
- ➔ the right to participate in free elections (Protocol 1, Article 3)
- ➔ the abolition of the death penalty (Protocol 13)

2. The Protocols

Some member states of the Council of Europe signed and ratified protocols after the European Convention on Human Rights came into effect in 1953. By doing so, they made a number of rights and freedoms legally binding on themselves.

The Convention proceedings were modified by Protocols Nos. 2, 3, 5, 8, 9, 10, 11, and 14, with no new rights or freedoms added. Every Contracting Party has signed these protocols. The following are the remaining Protocols, together with the liberties and rights they uphold:

• Protocol No. 1, which came into effect on 18 May 1954: protection of property, the right to education, and the right to free elections.

•Protocol No. 4, which came into effect on 2 May 1968: prohibition of imprisonment for debt, freedom of movement, the prohibition of the expulsion of nationals, and the prohibition of collective expulsion of aliens.

• Protocol No. 6, which came into effect on 1 March 1985, is for the abolishment of the death penalty but includes an arrangement to allow the Contracting Parties to prescribe the death penalty in their legislation in a time of war or of imminent threat of war.

• Protocol No. 7, which came into effect on 1 November 1988: procedural safeguards relating to expulsion of aliens, the right of appeal in criminal matters, the right to compensation for wrongful conviction, the right not to be tried or punished twice for the same crime, and equality between spouses.

• Protocol No. 12, which came into effect on 1 April 2005: established an independent prohibition of discrimination. Unlike Article 14 of the Convention, which prohibits discrimination in the enjoyment of "the rights and freedoms outlined in the Convention", Protocol No. 12 prohibits discrimination in the enjoyment of "any right set forth by law" and not just those rights guaranteed under the Convention.

• Protocol No. 13, which came into effect on 1 July 2003: abolished the death penalty in all circumstances. Applicants should note that the Protocols mentioned above have not been ratified by all the Contracting Parties. It follows that a complaint made under an Article of one of the Protocols against a State that has not ratified that Protocol will be declared inadmissible. The table of Dates of Entry into Force of the Convention and its Protocols reproduced in "Textbox i" above should be consulted.[2]

[2] Pieter van Dijk, Godefridus J. H. Hoof, G. J. H. Van Hoof , Theory and Practise of the European Convention on Human Rights (Martinus Nijhoff Publishers, 1998) 4-5

C. Structure

The structure of the Court is mentioned between Article 19 and 51 of the European Convention on Human Rights. According to Article 20 [3] and Article 21 [4], one judge is elected from each High Contracting Party, resulting in a total of 46 judges. The judges are chosen from among individuals who meet the requirements to serve in a high court position, have good moral character, and are younger than 65. Their term of service expires after nine years of service or when they become seventy. The Plenary Court is made up of all of its members and mostly has administrative jurisdiction and missions.

According to Article 26 of the Convention[5], Once a case is brought before the court, it may primarily go through four different formations:

1. Single Judge Formation
2. Committees
3. Chambers
4. The Grand Chamber

1. Single Judge Formation

An application may be struck down or declared inadmissible by a single judge if no further investigation is required. The application is sent to a Committee or a Chamber for additional review if the single judge does not rule it out or declare it inadmissible. A single judge's decisions are final.

2. Committees

[3] European Convention on Human Rights, Article 20 *'The Court shall consist of a number of judges equal to that of the High Contracting Parties.'*

[4] European Convention on Human Rights, Article 21 *'1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence. 2. Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22. 3. The judges shall sit on the Court in their individual capacity. 4. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.'*

[5] European Convention on Human Rights, Article 26 *'Single-judge formation, Committees, Chambers and Grand Chamber'*

An application may be unanimously declared inadmissible, removed from the Court's list of cases, or declared admissible by a committee consisting of three judges. If the case is well-researched and submitted, the committee may also decide on its merits.

3. Chambers

Seven judges lead a chamber. Depending on the type of application, if a committee or a single judge cannot decide whether the application is admissible, there are two possible options moving forward.

The Chamber renders a decision on the admissibility and merits of each individual application. When it comes to interstate applications, the Chamber makes its own decisions about the application's admissibility and merits unless the Court has already rendered a decision in this regard.

1. The Grand Chamber

a. General

Article 26 of the Convention outlines the composition of the Grand Chamber, which includes the President of the Court, Vice-Presidents, Presidents of the Chambers, and elected and national judges, totaling seventeen members. Notably, National Judges will serve as *ex officio* members in cases related to their country. Furthermore, the Grand Chamber also has a minimum of three substitute judges.

The Grand Chamber never accepts direct applications and, therefore hears only a small number of cases. These cases include the ones which are referred to it by a Chamber under Article 43 [6], abandoned by a Chamber when the matter involves a significant or unusual issue which must be examined further by the Grand Chamber under Article 30 [7], or referred to it by the Committee of Ministers under Article 46 [8].

[6] European Convention on Human Rights, Article 43 *'Referral to the Grand Chamber'*
[7] European Convention on Human Rights, Article 30 *'Relinquishment of jurisdiction to the Grand Chamber'*
[8] European Convention on Human Rights, Article 46 *'Binding force and execution of judgements'*

Sections: Sections are important administrative units that are appointed for three years and are designed to reflect different legal systems, geographical backgrounds, and gender balance. They are established through a proposal by the President and the plenary Court, in accordance with the Rules of Court. The Presidents of the Sections are elected by the plenary court, following the guidelines set out in Rule 8[9]. Rule 25 requires the creation of at least four sections, and Rule 25.5 allows the plenary Court to add a new section, which it has been added[10]. As a result, the first four sections each have nine judges, while the fifth has eleven.

b. Submitting an Individual Application to the Court

Rule 47 of the Rules of Court outlines the procedure for submitting an individual application, which must be followed in detail:

1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out

(a) the name, date of birth, nationality and address of the applicant and, where the applicant is a legal person, the full name, date of incorporation or registration, the official registration number (if any) and the official address;

(b) the name, address, telephone and fax numbers and e-mail address of the representative, if any;

(c) where the applicant is represented, the dated and original signature of the applicant on the authority section of the application form; the original signature of the representative showing that he or she has agreed to act for the applicant must also be on the authority section of the application form;

(d) the name of the Contracting Party or Parties against which the application is made; (e) a concise and legible statement of the facts;

(f) a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and

[9] Rules of Court, Rule 8 *'Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections'*

[10] Rules of Court, Rule 25 'Setting-up of Sections'

(g) a concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 § 1 of the Convention.

2. (a) All of the information referred to in paragraph 1 (e) to (g) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.
(b) The applicant may however supplement the information by appending to the application form further details on the facts, alleged violations of the Convention and the relevant arguments. Such information shall not exceed 20 pages.

3.1. The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by
(a) copies of documents relating to the decisions or measures complained of, judicial or otherwise;
(b) copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;
(c) where appropriate, copies of documents relating to any other procedure of international investigation or settlement;
(d) where the applicant is a legal person as referred to in Rule 47 § 1 (a), a document or documents showing that the individual who lodged the application has the standing or authority to represent the applicant.

3.2. Documents submitted in support of the application shall be listed in order by date, numbered consecutively and be identified clearly.

4. Applicants who do not wish their identity to be disclosed to the public shall so indicate and submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.

5.1. Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless
(a) the applicant has provided an adequate explanation for the failure to comply;
(b) the application concerns a request for an interim measure;
(c) the Court otherwise directs of its own motion or at the request of an applicant.
5.2. The Court may in any case request an applicant to provide information or documents in any form or manner which may be appropriate within a fixed time-limit.

6. (a) The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court. The date of dispatch shall be the date of the postmark.
(b) Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of introduction.

7. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.[11]

b.1. General Principles

- Rule 34.1 declares English and French as the official languages of the Court and decisions of the Court are published in English and French[12].
- In the event that parties request representation, lawyers may be engaged to act on their behalf. Although lawyers are not mandated to file a complaint, it is their obligation to represent the applicant during any hearing before the Court once the application is found to be admissible.
- In general, transactions are commonly executed through written procedures, while public hearings are infrequent.

[11] Rules of Court, Rule 47 'Contents of an individual application'

[12] Rules of Court, Rule 34 *'Use of languages'*

- The submission of an application does not incur any fees. Moreover, in the subsequent stages, if there are any expenses that must be met, the applicant may avail themselves of legal aid. This will assist in covering any such costs that may be incurred.

- In legal proceedings, the Court reserves the right to remove an application from consideration if it is determined that the applicant lacks the intention to pursue their claims, if the issue has already been resolved, or if it is deemed unjustified to continue examining the application.
- In the process of analysing cases presented to a court, two fundamental stages exist. The initial stage involves determining the admissibility of the matter, which assesses whether it can be heard in court. The second stage is the principal step, which involves examining the concerns presented. The nature of the case will play a crucial role in determining the speed and duration of the proceedings.

b.2. Proceedings on Admissibility

Upon filing an application to the Court in accordance with Rule 46, the President of the Court is responsible for assigning one of its Sections and providing notification to the respondent state. It is worth noting that this represents the primary distinction between Inter-State and individual applications. Inter-State applications are reviewed directly by a Chamber, while individual applications are initially reviewed by a single judge. The President of the assigned Section shall set up a Chamber pursuant to Rule 26 where national judges of both of the applicant and respondent party shall sit as *ex officio* members of the Chamber.

Upon submission of an application by a contracting party, they will be requested to provide written observations pertaining to the issue of admissibility. This information shall also be communicated to the applicant state, who may submit a written response in kind. Prior to the determination of admissibility, the Chamber or the President of the Section reserves the right to request further written observations from relevant parties. If the respondent state puts forth claims that suggest inadmissibility of the application, they must include such claims in their written or oral observations..

The decision of the Chamber on the admissibility of the case shall be communicated by the Registrar to the applicant, concerned Contracting Parties, or Council of Europe Commissioner for Human Rights.[13]

b.3 Proceedings After the Admission of an Application

Upon a determination of admissibility by the Chamber of an application made under Article 33 of the Convention, the President of the Chamber shall establish the time limits for the preparation and submission of written observations on the merits and the presentation of additional evidence. However, both parties may jointly elect to waive this procedure, and the decision of the President shall be definitive..

b.4 Hearings

Hearings are convened by the President of the Chamber and are typically conducted in a public setting unless circumstances arise where the welfare of the society, national security, public order, privacy, moral values, or interests of minors are at risk. In such instances, the proceedings may be restricted from public view.

b.5 Grand Chamber Procedure

Any rule of procedure which is applicable to the Chamber proceedings holds true for the proceedings before the Grand Chamber as well. Moreover, the Grand Chamber is vested with appellate jurisdiction over applications of all types, as per the provisions of Article 31 of the Convention[14].

There are two types of jurisdiction for the Grand Chamber, with the first type regulated under Rule 72[15] and known as "Chamber relinquishing its power in favour of the Grand Chamber". According to this rule, a Chamber may cede its authority if an important

[13] Practical Guide on Admissibility Criteria - Council of Europe/European Court of Human Rights, 2022

[14] European Convention on Human Rights, Article 31 *'Powers of the Grand Chamber - The Grand Chamber shall (a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; (b) decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and (c) consider requests for advisory opinions submitted under Article 47.'*

[15] *Rules of Court, Rule 72 'Relinquishment of jurisdiction in favour of the Grand Chamber'*

question arises in the interpretation of the Convention or protocols or if the case outcome is likely to be in conflict with established precedent.

The second type of jurisdiction is called "referral." Article 43 allows any party to request a referral within three months of the judgement date if exceptional circumstances are present. A panel of five judges examines the request and accepts it if there is an issue with the interpretation or application of the Convention or Protocols or a matter of significant general importance. The Grand Chamber then renders a judgement. This process ensures fair and accurate treatment of cases, with only exceptional or significant cases being referred to the Grand Chamber.

2. Individual Applications

The European Court of Human Rights (ECtHR) is characterised by a crucial feature, that is, its accessibility to individuals, enabling them to directly submit applications to the Court. This process is formally referred to as an individual application, and it confers upon ordinary citizens the ability to seek justice on an international level in situations where they believe their rights have been violated by a state party to the Convention. The individual application can be filed by any person, group of individuals, or non-governmental organisation claiming to be a victim of a human rights violation committed by any of the 47 Council of Europe member states. The Court entertains a heterogeneous range of violations, including but not limited to, freedom of expression, the right to a fair trial, protection from torture or inhuman or degrading treatment, and the right to respect for private and family life.

I. CASE OF YILDIRIM V. TÜRKİYE

A. Introduction To The Case

A brief introduction of Malik Yıldırım

The applicant, Malik Yıldırım, a Turkish national, was born in 1986, in Konya, Turkiye. After getting his physics degree in Denizli Technical University (DTU), he started working as a teacher in Izmir. In 2009, he was transferred to Işıklı Military Aviation High School (IMAHS) in Bursa.

As a teacher, he is known to be a capable and dedicated teacher towards his students, as his students point out. In his private life, he is married and has two children. His religious tendencies are shown to be in line with an average Turkish citizen, as he has never shown any extremist behaviour. His correlation to PTO consists of having the ¨Kilit¨ application downloaded on his phone and having a sum of accounts in Yatırım Bank, which was shut down in 2015. Also it is noted that he attended a few communion gatherings in order to listen to conversations about Islam, also noted that nothing significant happened in said gatherings.

The proceedings began when he was suspended from civil service on 22 July 2016 by Legislative Decree no. 672, due to his suspected affiliation with PTO.

a. How the Pennsylvanian Terrorist Organization Has Come into Existence

The foundations of PTO were laid by Seyfullah Ağlayan, in Izmir in 1966. In the early 1970s Seyfullah Ağlayan and an inner circle of friends established the core cadre for the organisation. They exploited religious themes and concentrated their activities particularly on students and other youth groups aged 13-18 years.

Ağlayan communicated his views through sermons and speeches recorded and distributed on audiocassettes and videotapes. Collective gatherings and particularly summer camps were other methods used to disseminate Ağlayan's views on religion to a larger group of followers. By the end of 1970's, he had already become a leader of a distinct, cultish religious group. The organisation fed on perceptions of exclusion among Turkish society's conservative, pious section. The perception was that the traditionally secular

state had excluded religious people from politics and state institutions. The regime had to be more Islamic, but in the way Seyfullah Ağlayan understood it. He recommended a solution for achieving success that involved demonstrating patience, presenting the movement as a benevolent civil society organisation, and gradually infiltrating critical state institutions. This approach was aimed at establishing a long-term presence in key areas of government and society, so that the movement could effectively advance its agenda and bring about meaningful change. By taking a methodical and strategic approach, the movement hoped to build a robust network of allies and supporters within the government and other influential organisations, thereby increasing its chances of success over time.

In the process the movement became double-faced. The visible face was a non non-confrontational, charity-oriented, education movement. The darker face was a secretive, highly hierarchical, anti-democratic, self-styled religious formation around the persona of Seyfullah, a cult of personality. In short, the movement gradually turned from a religious movement into a secretive operational structure aimed to transform society by taking control of the Turkish state from within. As its strength grew, the organisation began to claim a messianic mission at a global level, depicting him as the "Imam of the Universe"; "the Chosen One". The evolution from a religious cult into a criminal organisation can be broadly examined in three phases:

The first phase lasted until the military coup of September 12, 1980. During this phase, special dormitory houses (Işık Evleri- "Heavenly light houses") and preparatory schools were established to recruit followers. In this phase, the organisation concentrated also on infiltrating state institutions, in particular the critical ones such as the police.

In the second phase (1980-late 1990s), the organisation doubled down on educational activities. Infiltration to public institutions in high numbers began. In order to raise revenues, the organisation turned itself into a quasi-corporation and a conglomerate (Yıldız Holding) bringing together different companies sympathetic to it. It also established a bank (Yatırım Bank) and commenced activities in areas such as health (İyilik Hospitals), transportation (MTS Logistics), and media (The Turkish newspaper,

Galaxies TV, etc) and business chambers (TSON), alongside education. Moreover, this phase was the start of the globalisation of the organisation. Following the end of the Cold War, Ağlayan expanded his network in Caucasia, Central Asia and the Balkans, and eventually established a presence in around 160 countries across the world.

The third phase began after the so-called postmodern coup of February 28, 1997, and ended with the infamous coup attempt of PTO on 15 July 2016. Faced with a judicial process incriminating him on attempting to overthrow the secular constitutional regime, Seyfullah left the country in 2 1999, and settled in the USA. This marked as one of the milestones in the internationalisation of the organisation. After departing Turkey for the United States, he adopted a new rhetoric, presenting himself and his organisation as an enlightened, pro-Western progressive and moderate manifestation of Islam; concentrated on such themes as “interfaith dialogue”.

The organisation applies a "chain of command" principle, which is the most basic governing principle in military organisations. Every thought, act or attitude that can be interpreted as non-compliance with the order of the leader is forcefully crushed. All instructions originating from Seyfullah Ağlayan are attributed sacred meaning and are fully implemented unquestioningly. Whereas he and other leading cadres exhibit great humility in addressing people in the outside world, they exert absolute authority within the organisation. PTO has two structures that are autonomous from each other: "public institutions" and "civil society". These two structures are not connected to each other hierarchically. The lower, baseline units of the organisation have a modular structure and implement a cell-type organisational model. Except for the top level that runs the organisation, each unit or cell is independent from each other. Cells have a flexible organisational character. They have high manoeuvrability and can restore themselves. In the event of a disclosure of one of the cells, the organisation can still maintain its unity. The hidden structure is based on the concept of “imam”, that is an executive within the organisation in charge of tasks assigned to him by the high-level cadres. Each imam is a leader of a unit of the organisation and many linked cells are subordinated to him. An imam ensures harmony and gives instructions to members of his linked cells. The

members of the cells, however, have no connection to each other and there is no exchange of reports or instructions between them. Reports are given bottom up, whereas instructions come top down. PTO appoints an “imam” responsible for each Turkish province and each public institution and organisation that it has infiltrated. The organisation is based on a rigid hierarchical caste system consisting of seven layers. Seyfullah Ağlayan decides upon all the movements beyond the fourth level.

First Level; "People's level": Consists of individuals who are bound with the organisation by sharing its message of compassion, as well as people that provide physical and financial support. Most of these people do not belong to the hierarchical structure of the organisation. They are usually unaware of the criminal activities of the organisation. The main factors that bind these people to the organisation are their Islamic sensitivity and their religious feelings.

Second Level; "Loyal level": This is the group that is loyal to the organisation and consists of employees, students in and graduates from Ağlayanist schools, preparatory schools, dormitories, banks, newspapers, associations and public institutions. These people take part in communal meetings, pay membership fees and are more or less familiar with the ideology and aims of the organisation. It is necessary to be a member of the organisation in order to be able to enter into this layer.

Third Level; "Ideological Structuring Level": This is the layer that has adopted the ideology of the organisation, is extremely loyal and spreads the ideas of the organisation to their surroundings.

Fourth Level; "Inspection and Control Level": It inspects the entire movement (its legal and illegal activities). Only those who rank at the top level in terms of devotion and loyalty may rise up to this level. Members of this level are chosen from among those who join the organisation at a young age. Those who join the organisation at a later age usually cannot be appointed to this level or to higher levels.

Fifth Level; "Organizer and Executive Level": Requires a high level of secrecy. This is the layer that organises and manages the parallel state structure. Only those members who are also married to someone from the organisation may rise to this level.

Sixth Level; "Privileged Level": Facilitates the communication between Seyfullah Ağlayan and his subordinates. It is responsible for assignment of duties and dismissals. They are appointed by Seyfullah Ağlayan.

Seventh Level; ("Leadership Level"): The Elite group directly connected with and appointed by Seyfullah Ağlayan (Consists of 17 leaders).
The organisation has integrated this caste system (see Figure 1) into its structures in Turkey and abroad.

Figure 1: Demonstration of PTO's organisational structure

Furthermore, there is an independent unit, which is called "private services" (mahrem hizmet -confidential activities). This unit within the organisation, which is only known by the leadership cadres, has been implemented in a deliberately opaque manner, in order to preserve the organisation and prevent the disclosure of its activities. Those in the "private

services" are specially chosen from among those who carry out the orders with absolute devotion and full submission, and without questioning the appropriateness, rationality, legality, morality or religious basis of the instructions originating from Seyfullah Ağlayan or the leadership level. Depending on the local requirements, this distinct unit can exist at every level, from continent, country, region, down to city, town, district, neighbourhood and Işık Evleri. It is present at public institutions and organisations, ministries and their local branches, municipal administrations, universities, state-owned enterprises, and in the private sector. As claimed by the Turkish National Intelligence Service, the organisation uses secretive methods for communication:

- ☐ Taking an oath that promises strict obedience and loyalty to the leader
- ☐ special encrypted communications, such as Kilit, TNG, Owl
- ☐ using "one-dollar bill"s with special serial numbers in accordance with their rank, in order to show their allegiance with the organisation
- ☐ Using code names in order not to reveal their identity
- ☐ Disseminating coded messages hidden in Ağlayan's sermons and interviews

b. PTO's Interaction with the Government and the Process of Gaining Power

As a result of the new party asserting its power as the ruling administration, Turkey's democratic process and attempts to implement inclusive governance picked up speed in the 1990s. The governing party provided avenues for religious and conservative organisations to have a greater influence in politics.

Nonetheless, PTO supporters deliberately opted not to participate in politics and to fight fairly under democratic guidelines. Conversely, they persisted in their efforts to recruit more civil servants who had a covert allegiance to MADE-UP NAME rather than to the established public authority. The organisation has intensified its efforts since the mid-2000s to quickly seize control of the governmental machinery.

To eliminate the organisation's opponents, including those in the army, members of the groups that had already attained important positions in the legal system and law

enforcement turned to criminal means. This was accomplished by the use of forged documents, falsified evidence, phoney trials, unlawful wiretapping, extortion, etc. To put it briefly, what began as a religious movement transformed into a parallel state structure that posed a serious danger to Turkey's democratic, secular, and constitutional regime. Over the last three years, the government has increased its efforts to neutralise this menace, and in the majority of state institutions, PTO's controlling power has been removed. The organisation's bloodiest and final attempt to maintain its rule in Turkey was the coup attempt on July 15.

c. PTO's Coup d'état Attempt and Events Afterwards

During the night of July 15 to 16, 2016, a faction within the Army, identifying themselves as the "Order Council," launched a brazen attempt to execute a military coup with the intent to overthrow the democratically elected parliament, government, and president of Turkey. This fateful night witnessed a series of orchestrated attacks and disruptions across key strategic locations, unleashing a wave of violence and instability.

The Order Council, comprising more than 8,000 military personnel, unleashed a barrage of attacks on critical State buildings. Among the targeted sites were the Parliament building and the presidential compound. The aggressors engaged in a relentless assault, employing various military assets, including bombing raids, targeting the very heart of the Turkish democratic institutions.

The scope of the attempted coup extended beyond political institutions. The assailants attacked the hotel where the President was staying and targeted the convoy carrying the Prime Minister. These direct assaults on the country's political leadership were met with staunch resistance from loyalist forces and the Turkish public, who vehemently opposed the unconstitutional power grab.

The Order Council not only held the Chief of General Staff hostage but also occupied numerous public institutions, including television studios. This strategic move aimed at

seizing control of the narrative, manipulating information dissemination to align with their coup agenda.

Also it is noted that many students in military school were included in this manipulative narrative. These students were instructed by their superior commanders, some of whom were directly involved with the coup attempt. As some commanders instructed the students to leave the certain sites immediately, some of them were brought into the Order Council's folds unknowingly.

The assault on public order escalated as the coup plotters blocked key transportation arteries. Tanks and armoured vehicles took positions on the bridges over the Bosphorus, hindering movement, and control was exerted over major airports in Istanbul. The intent was clear: to control the flow of people and goods, asserting dominance over the nation's infrastructure.

The violence reached alarming levels as the coup forces fired on civilians who took to the streets to oppose the attempted coup. The casualties mounted, with the government reporting that over 250 people, including civilians, lost their lives, and more than 2,000 individuals sustained injuries during the tumultuous night.

In terms of military assets, the coup attempt involved a staggering deployment of resources. Approximately 70 military aircraft, including F-16 fighter jets and helicopters, were utilised in the operation. Additionally, three ships, 246 armoured vehicles, and around 4,000 light arms were part of the arsenal used by the coup plotters. This extensive utilisation of military power underscored the gravity of the threat posed to Turkey's democratic institutions.

The day following the attempted coup, Turkish authorities swiftly pointed to the network associated with Seyfullah Ağlayan, a Turkish citizen residing in Pennsylvania, USA, as the mastermind behind the coup. Ağlayan was considered the leader of the PTO, an

organisation alleged to have infiltrated various sectors of Turkish society, including the armed forces.

Legal actions were promptly initiated to address the coup attempt and its perpetrators. On July 16, 2016, the Bureau for Crimes against the Constitutional Order at the Ankara Chief Public Prosecutor's Office commenced a criminal investigation. Subsequently, regional prosecutors' offices conducted parallel investigations into those suspected of involvement in the coup attempt and others linked to the PTO.

Responding to the unprecedented crisis, the Turkish government declared a state of emergency on July 20, 2016, initially for a period of ninety days. This state of emergency was subsequently extended on seven occasions, each extension lasting for a further ninety-day period. The extraordinary measures undertaken during the state of emergency included the passing of several legislative decrees by the Council of Ministers.

One significant legislative decree, namely Legislative Decree no. 672, enacted on September 1, 2016, resulted in the dismissal of approximately 50,875 civil servants. These dismissals were based on allegations of belonging to, being affiliated with, or being linked to terrorist organisations or groups deemed by the National Security Council to engage in activities detrimental to national security. Notably, 28,163 civil servants, predominantly teachers from the Ministry of National Education, were among those dismissed.

Similarly, Legislative Decree no. 667, which took effect on July 23, 2016, led to the closure of 104 foundations, 1,125 associations, and 19 trade unions. These organisations were deemed to belong, be affiliated with, or otherwise be linked to the PTO.

The state of emergency, along with the accompanying legislative decrees, raised concerns about human rights, due process, and the potential abuse of power. Nevertheless, these measures were seen by the Turkish government as necessary to root out individuals and entities associated with the attempted coup and the PTO network.

On July 18, 2018, the state of emergency was finally lifted, signalling a gradual return to normalcy. However, the repercussions of the attempted coup and the subsequent measures taken continue to shape Turkey's political landscape, prompting ongoing discussions about the balance between national security imperatives and the protection of fundamental rights.

d. Işıklı Military Aviation High School and Question of Involvement with the PTO

Isikli Aviation Military School, founded in 1957, stands as a distinguished institution with a storied history deeply rooted in aviation and military education. Over the years, the school has garnered a reputation for producing graduates who excel not only in the intricacies of aviation but also in the art of military strategy and leadership.

The faculty at Isikli Aviation Military School is a blend of military officers and civilian instructors, each contributing their expertise to create a holistic educational experience. The school, with its commitment to academic rigour, has consistently received positive feedback from students and alumni who have gone on to make significant contributions in both military and civilian spheres.

However, the suspicions of PTO involvement in the military schools rose during the unfortunate coup attempt in Turkey, Isikli Aviation Military School was closed for summer holidays. This, however, did not prevent the involvement of some faculty members in the events. Out of a total of 42 teachers, 14 were arrested in connection with the coup attempt. In response to this, the school administration has taken decisive action, expelling 7 of the implicated teachers and cooperating fully with the authorities to ensure a thorough investigation. However, the ex-principle of the school is still under investigation due to having and using the ¨Kilit¨ application.

Regrettably, in the aftermath of the coup attempt, Isikli Aviation Military School faced further repercussions. With a presidential decree, the institution was mandated to shut down. This development, while unfortunate, underscores the gravity of the situation and

the need for comprehensive measures to address any involvement in activities contrary to the principles of the nation.

B. Procedural Background

The case revolves around a Turkish citizen named Mr. Mikail Yıldırım, who filed an application against Turkey with the European Court of Human Rights (ECHR) on March 17, 2020, citing violations of his rights under the European Convention on Human Rights. Representing him were lawyers from Belgium and Turkey, while the Turkish government was represented by its Ministry of Justice.

Mr. Yıldırım's complaint to the European Court of Human Rights predominantly revolves around purported violations during his trial proceedings. Specifically, he contests the manner in which evidence was procured, admitted, and evaluated against him. He also raises substantive concerns regarding the autonomy and impartiality of the tribunals overseeing his case, as well as his entitlement to adequate legal representation. Additionally, he alleges irregularities pertaining to the acquisition and utilization of Kilit and Internet traffic data pertaining to his person.

Initially, the application was assigned to the Second Section of the Court. Subsequently, the second section did not search for the admissibility criterias and only revised then on May 3, 2022, the Second Section decided to relinquish jurisdiction in favour of the Grand Chamber, which was formed in accordance with the Convention's provisions and the Court's rules.

A public hearing will be held in Strasbourg on May 1, 2022, where the parties will present their arguments and evidence before the Grand Chamber.

C. Facts of the Case

a. The applicant's arrest and placement in pre-trial detention

- The proceedings began when the applicant, Malik Yıldırım, was suspended from civil service on 22 July 2016 by Legislative Decree no. 672, due to his suspected affiliation with PTO.

- On 29 July 2016, the Bursa Public's Prosecutor's Office issued a request to investigate whether the teachers, including the applicant, who were suspended from civil service in Bursa were members of the PTO, whether any criminal content was posted on their social media accounts; whether any witness statements were obtained regarding these teachers; and to identify their address and phone numbers.
- An anonymous call to the police emergency line on that same day identified the applicant and another Bursa resident as members of the PTO, according to a record found by the Bursa Security Directorate on August 18, 2016.
- On September 5, 2016, the Bursa Security Directorate submitted a report to the Bursa Public Prosecutor's Office. The report linked the applicant to the use of the Kilit application without providing information on how this connection was established. The conclusion suggested that the individuals were PTO members due to their encrypted communication via Kilit, contact with other organisation members, and some having accounts at Yatırım Bank, which were involved with the PTO. As a result, the Bursa Security Directorate requested search and seizure warrants.
- On 6 September 2016 the police conducted a search at the applicant's home. During the search the police seized one mobile phone, among other materials. No evidence of criminal activity was discovered either on the applicant or in his house and car. The applicant was placed under arrest at the end of the search and taken into police custody on suspicion of membership of the PTO.
- During the interrogation of the applicant on 8 September 2016, he stated that he had been using the same phone number for the last 10 years. He refuted any connections to associations, unions, or institutions associated with PTO and denied making any donations to such entities. Regarding allegations of depositing money in Yatırım Bank following Ağlayan's call in 2014, he denied making any deposits under such circumstances and said that he was unaware of said call. He clarified that his only involvement with Yatırım Bank was opening an account for a school project in association with the Ministry of Education in 2014 to receive remuneration. When informed by the police of his alleged use of the Kilit application, the applicant asserted he had never heard of it and had never used it. In the face of the call made against him, the

applicant maintained that the accusations were unfounded, emphasising that he was not a member of PTO.

- The applicant also denied being involved in any illegal activity during his participation in the İşlek Eğitim-Sen, an union for educators which was shut down with Legislative Decree no. 667, due to having affiliations and actions in line with the PTO. He indicated his membership was over by June 2016, a month before the coup attempt.
- On September 9, 2016, the Bursa Security Directorate submitted a report to the Bursa Public Prosecutor's Office, listing 67 individuals, including the applicant, identified as users of the encrypted communication application "Kilit". The report specified that information about the Kilit usage had been acquired "through coordination with other institutions".

b. Other reports included in the investigation file

- According to a report issued by Bursa Security Directorate, concerning the teachers who were arrested on account of their alleged usage of the Kilit application, indicated that the applicant had accessed Kilit from his phone number. The report classified the users with colour codes (blue, orange, red). The applicant was classified as an "orange" user.
  It wasn't specified as to how the data regarding the use of Kilit had been obtained, nor as to what the colour codes signified.
- Upon the Bursa public prosecutor's request on October 25, 2016, Yatırım Bank, on November 16, 2016, provided the prosecutor's office with bank account details for several suspects, including the applicant. The information revealed two accounts registered in the applicant's name at Yatırım Bank. While one of the accounts showed no activity, the other received a deposit of 3,110.16 Turkish liras (TRY) (approximately 1,020 euros (EUR) at that time) on February 28, 2014, following the alleged call by Ağlayan to support the bank. This amount was subsequently withdrawn, and a new deposit of TRY 1,520.50 (equivalent to approximately EUR 540 at the time) was made on December 12, 2014. The depositor's identity for these transactions was not specified.
- In another report that was issued by Bursa Security Directorate, by the request made to Information and Communications Technologies Authority (ICTA), Bursa representative of İşlek Eğitim-Sen union had posted on Twitter on 26 October 2012, *"The Hodjaeffendi's wisdom and virtues should be shared with the new blossoming young*

minds of our children, our hopes for future. Hereby I'd like to announce that we will start to take action as soon as possible to host our beloved Hodja in our affiliated schools.". This post had been liked by the account that was actively used during 2010-2015, which is linked to the applicant's number, also featuring his name.

c. The applicant's prosecution

- On January 6, 2017, the Bursa public prosecutor submitted an indictment to the Bursa Assize Court, against the applicant and eight other individuals in charges of belonging to the armed terrorist organisation PTO as per Article 314 § 2 of the Criminal Code. The indictment comprised three sections: the initial section offered "general information" about PTO, the second section scrutinised the organisation's activities in the context of terrorism, and the third section presented specific evidence against the accused individuals.
- The prosecutor's office highlighted that the primary communication method for the PTO organisation was through GSM lines, often registered under third-party names or PTO controlled entities to conceal the real user. The frequent replacement of GSM lines and mobile devices every three months indicated an effort to hide illegal activities. Members avoided using names in communications, preferring code names, and encrypted communication apps like Skype, TNG, WhatsApp, Viber, Line, and Kakao Talk. However, critical members eventually switched to Kilit, an Aglayan-instructed app exclusive to PTO, known for encrypted messaging and automatic message deletion. Kilit required a special installation file, obtainable only from another member, emphasising exclusive access for organisation members.
- After outlining the domestic laws concerning the concepts of "organisation" and "terrorism", the public prosecutor's office emphasised three criteria necessary to categorise a structure as a "terrorist organisation." These criteria include: (a) having a defined ideology or goal; (b) possessing an organised structure and (c) employing force and violence to achieve its objectives.
- The evidence that was raised against the applicant included the usage of Kilit app, the account at Yatırım Bank and being a member of İşlek Eğitim-Sen, an union of educators that was declared in Legislative Decree no. 667 as belonging or affiliated to the PTO.

d. Criminal proceedings against the applicant

- In a report given to the Bursa Assize Court by the Anti-Smuggling and Organised Crime Department ("the ASOCD") of the Security Directorate; which had accepted the bill of indictment filed against the applicant and set the date of the first hearing for 21 March 2017, it was given the applicant's name, ID number, GSM number and the IMEI number of his phone (hereby referred to as "the ASOCD Kilit report"). The identification date was noted and 3 October 2015, which later on explained by the government as the date in which the applicant first accessed Kilit.
- At the hearing before the Bursa Assize Court the applicant denied using Kilit and asserted innocence regarding any illegal activities associated with the mentioned organisations. The applicant's lawyer argued that there is insufficient concrete evidence to establish the accused organisation as a terrorist organisation, and questions the legality and technical adequacy of the data presented, particularly regarding Kilit.
- The lawyer requested an extension of the investigation to gather more information about the accused organisation's activities and the technical aspects of the Kilit data. The court dismissed the lawyer's request for an extension, citing existing evidence and the designation of the organisation as a terrorist group by a previous court. The public prosecutor sought the applicant's conviction based on the evidence presented, emphasising the alleged secretive nature of the organisation and the applicant's affiliation with it.
- At the end of the hearing held on 21 March 2017, the Bursa Assize Court sentenced the applicant to six years and three months' imprisonment.
- The judgement consisted of five parts; in the first part the court initially provided commentary on the definition, variations, and constituents of a terrorist organisation. Subsequently, it delved into other aspects, the formation, goals, hierarchical setup of the PTO and modes of communication, aligning with the allegations outlined in the indictment.
- In the second part of the judgement concerning the "Structure and Operations of the Organization," an outline was presented detailing the illicit tactics routinely utilised by the group to further its hidden agendas.

- The third part of the judgement provided an examination of the Kilit application. The court pointed out that the application had been subjected to technical studies, including “reverse engineering, crypto analysis, web behaviour analysis and server response codes", without providing information as to who had carried out those analyses.
- In the fourth section of the ruling, the assize court scrutinised the legal parameters surrounding armed terrorist groups in Turkey. It elucidated the core components constituting the crime of belonging to such an organisation, citing pertinent articles from the Criminal Code and the Prevention of Terrorism Act.
- In the fifth and the final part of the judgement, the assize court assessed the evidence on which it relied in convicting the applicant.
- The court concluded that the applicant was found to be part of multiple entities linked to the PTO, and had used their communication tool, Kilit. Since such tools are typically used solely within the organisation, the court determined that the applicant was involved in the PTO based on this evidence.

e. Applicant’s appeal against his conviction

- On April 3, 2017, the applicant lodged an appeal against the ruling of the Bursa Assize Court. Within this appeal, the applicant contested, among other issues, what he considered to be the retroactive designation of PTO as an armed terrorist organisation.
- According to intelligence reports from the National Intelligence Service (hereby referred to as NIS), PTO aimed to seize state institutions and replace the constitutional order. However, in its 50-year history, the organisation, which the applicant referred to as a "structure," had not been linked to such actions.
- Regarding the evidence concerning his use of the Kilit application, the applicant contended that the Kilit data was not obtained in accordance with the procedures outlined in Articles 134 and 135 of the CCP.
- According to information from the NIS, an intelligence operation was conducted to obtain the data from the application's main server in Lithuania; however, the technical specifics of how the data was accessed and analysed remained undisclosed.
- The applicant added that according to the NIS technical analysis report, the Kilit application had been downloaded some 500,000 to 1 million times from open sources, yet

there had been no judicial examination to determine who had downloaded it for organisational purposes and for other reasons.

- In conclusion, the applicant contended that the trial court's verdict did not comply with procedural rules and the principle of the rule of law. The applicant argued it was rendered without a thorough investigation and without seeking input from qualified and unbiased experts.

f. Proceedings before the Ankara Regional Court of Appeal

- The Ankara Regional Court of Appeal, in its preliminary report dated May 10, 2017, requested information from the ASOCD regarding various aspects of the Kilit application, including its characteristics, usage conditions, and distinguishing features.
- They also asked the Information and Communications Technologies Authority (ICTA) to provide data on the usage of Kilit IP addresses and communication records during a specified period.
- On June 3, 2017, the ASOCD issued a "Kilit Identification Report" stating that the applicant was identified as a user of Kilit based on the database provided by the NIS. The report mentioned the applicant's position in the subscriber list, the GSM number used, the IMEI number of the device, the first connection date, and the absence of any disclosed content of communication.
- On June 12, 2017, the ICTA submitted the requested communication records to the court. Subsequently, an expert report by a digital forensics expert was prepared, incorporating all available information in the case file, and submitted to the appeal court on June 29, 2017.
- The expert report confirmed the applicant's usage of the Kilit application through their specified GSM line and identified their Kilit user-ID number. (Expert Reports do not constitute evidence according to Turkish Criminal Procedure Law, it is a subsidiary source.)
- It revealed that the GSM line had been used with three different IMEI numbers, including the one associated with the Kilit application.
- The report also detailed communication records, including calls, SMS, MMS, and GPRS records, mostly involving individuals believed to be related to the applicant. Notably, it highlighted communication with a Kilit server IP number on several occasions.

g. Hearing held on 9 October 2017 and the ruling of the Ankara Regional Court of Appeal

- At the hearing held on 9 October 2017, the applicant and his lawyer reiterated their previous defence statements. The lawyer further indicated that they did not accept the digital forensics expert's report, which was based on unlawfully obtained evidence, and requested the court to obtain a fresh report from a committee of three experts.
- The court dismissed the applicant's request for a new expert report. It also upheld the applicant's conviction.
- The court reviewed at the outset the different forms of organised crime under Turkish law and discussed the distinguishing factors of the offence of "membership of an armed organisation". The appeal court specified that the individual must nevertheless have made a specific material or moral contribution to the organisation's existence or reinforcement to be counted as a "member".
- Readiness of the suspected member to execute all instructions and orders given within the context of the organisational hierarchy, without questioning and with absolute submission was a distinctive factor in the determination of membership of an organisation.
- The appeal court also noted that the offence of membership of an armed organisation required a specific intent besides general intent.
- Regarding the consideration about PTO the court noted that the aim of this organisation was not to come to power through legitimate methods, but to dissolve the Parliament, the government and the other constitutional institutions by using force and violence, as demonstrated by the attacks carried out against several symbolic State buildings, including the Parliament building and the presidential compound, with heavy weaponry.
- In the context of lawfulness of the Kilit evidence, National Intelligence Service had collected the relevant data in pursuance of its duties and powers under sections 4 (1) and 6 (1) of the Law on Intelligence Services. The acts undertaken to identify and assess the use of Kilit had therefore been lawful.
- The appeal court then addressed the probative value of evidence demonstrating a person's use of Kilit and held as follows:

  … where it is established on the basis of concrete evidence that this communication network is one that was set up to commit crimes and is used exclusively by the members

of an organisation, the joining and use of that network ... for communication with the knowledge that must be taken as evidence of connection with the organisation, even if the contents of the communication are not discovered.

- The downloading of the application was not sufficient to be able to use it for messaging; knowledge of the user-specific ID number assigned automatically by the system and the approval of the other party was required to engage in communication, which was in conformity with the cell-like structure of the organisation.
- Kilit was offered for the exclusive use of the members of the PTO armed terrorist organisation and had been used by its members since early 2014, as revealed by the members themselves.
- The first-instance court disregarded the defendant's denial-oriented pleas and found that [he] was a member of the armed terrorist organisation PTO.

h. Applicant's appeal against the judgement of the Ankara Regional Court of Appeal and the judgement of the Court of Cassation

- The applicant denied having taken part in any activities – legal or illegal – of the PTO, and argued that his membership of that organisation had not been established on the basis of clear, definite and unambiguous evidence.
- He further claimed that the domestic courts had failed to demonstrate the factual basis of their findings and that their reasoning failed to make a connection between the evidence and the verdict.
- The applicant stressed that according to the well-established case-law of the Court of Cassation, the offence of membership of an armed terrorist organisation could only be committed by participating in the hierarchy of an organisation intentionally, embracing its end goals and activities, and required a continuous, diversified and uninterrupted link to the organisation, as well as concrete acts aimed at ensuring its sustainability. None of these had been made out in his case.
- The National Intelligence Service had shared with the judicial authorities a total of three user lists on different dates, and the names of the users in the three lists did not match. No technical explanation had, however, been provided as to why some persons who appeared in the initial list did not figure in the other lists.

- The fact that the Ankara Magistrates' Court had subsequently issued an authorisation on 9 December 2016 for the examination of the material handed over by the NIS did not retrospectively "regularise" that evidence as argued by the lower courts, bearing in mind particularly that he had been arrested for use of Kilit three months before the magistrate's order.
- The Kilit reports subsequently issued by the law enforcement authorities were similarly lacking in important respects, as it was unclear by whom, and on the basis of what authority and criteria, those reports had been prepared, and whether their accuracy had been verified and why he had been classified as an "orange" user.
- His right to freedom of association, given in particular the absence of any evidence of illegal activity on the union's part, was violated, he argued.
- Accusations regarding Yatırım Bank were similarly groundless. That bank had been founded on 24 October 1996 and, until the revocation of its operation licence on 23 July 2016, it had operated in accordance with the relevant legal framework. At no point in that 20-year period had its banking operations been restricted or banned, and none of his interactions with that bank had been carried out with the intention of committing a crime.
- The applicant argued that independence and impartiality of the judiciary had been undermined by the recent changes in the structure and composition of the Court of Cassation and the possibility of removal of judges from duty by decision of the High Council of Judges and Prosecutors under Article 3 of Legislative Decree no. 667 which he argued was contrary to the principle of the irremovability of judges.
- On 30 October 2018 the Court of Cassation upheld the applicant's conviction, without commenting on his requests for further clarification or action.

i. ***Proceedings before the Constitutional Court***

- On 13 December 2018 the applicant lodged an individual application with the Constitutional Court, in which he mainly invoked the arguments previously made during the criminal proceedings and raised the complaints under Articles 6, 7, 8 and 11 of the Convention that he subsequently brought before the Court.
- Once again, he drew attention that irregularities in the proceedings had infringed some of his procedural rights, such as the right to adversarial proceedings and equality of arms, and the right to a reasoned decision.

- The applicant also argued that as a result of the restrictions introduced by Article 6 § 1 (d) of the Legislative Decree no. 667, all his meetings with his lawyer had either been held in the presence of a prison officer, or recorded, which destroyed the essence of his right to avail himself of the assistance of a lawyer within the meaning of Article 6 § 3 (c) of the Convention.
- The applicant also complained, in a general manner, of a lack of independence and impartiality on the part of the Turkish courts, mainly on account of the systemic disregard of the principle of the irremovability of judges.
- He underlined that the first act of violence attributed to this organisation was the coup attempt of 15 July 2016 and contended that the absence of knowledge regarding the "terrorist" nature of the PTO would exclude the establishment of the specific intent required for the offence of membership of an armed terrorist organisation.
- Lastly, he added that none of his aforementioned objections and arguments had been considered by the courts in duly reasoned judgments, which also amounted to a violation of his right to a fair trial.
- On 26 November 2019 the Constitutional Court summarily dismissed the applicant's individual application as inadmissible, finding that his complaints were manifestly ill-founded and failed to comply with the other admissibility criteria.

a. ***Subsequent developments***

- On 7 October 2020 the ASOCD issued the detailed "Findings and Evaluation Report" in respect of the applicant's Kilit user profile, including his user ID number (408783), username and password and the date of his last connection (31 January 2016).
- User ID 408783 had sent one message over the application on 20 June 2015 to a teacher, which read "Hello, I am Malik Yıldırım", and had received one message on 18 February 2016 from another teacher, which read "Hello teacher".
- In the press statements issued at the close of its meetings held between February 2014 and October 2015, the National Security Council noted the PTO among the threats posed to the national security of Türkiye, and referred to this organisation in the following terms:
    - "the structure threatening public peace and national security" (26 February and 30 April 2014);

- "the illegal structure within the State" (26 June 2014);
- "the parallel State structure and illegal formations" (30 December 2014);

In the first meeting it held following the coup attempt on 20 July 2016, the National Security Council stated that the attempt had been instigated by the members of the PTO who served in the Turkish armed forces.

- According to "Technical Analysis Report" prepared by the NIS:
  - Kilit was first released on the Google Play store in early 2014 and had remained there until early 2016 with different versions, during which period it was installed more than 100,000 times;
  - The application allowed for instant messaging, voice calls, group messaging, file sharing and email correspondence, all encrypted;- Following the downloading of the application, a username/user code and cryptographic password was created; this information was transmitted to the application's server in encrypted form, so as to protect the user's information and communication security;
  - 215,092 registered users had been identified on the server;
  - unlike similar global and commercial applications, no system for verifying the user account – such as by authentication via SMS or email – was provided, which was intended to ensure anonymity and to render user identification more difficult;
  - Registration in the system was not sufficient to communicate with other users, nor was it possible to search and add users by their names; individuals could only contact one another after adding each other's usernames/codes, which suggested that the application was designed to allow communication only in conformity with the cell-like structure of the organisation;
  - After its removal from the Google Play and Apple application stores, Kilit could still be installed from APK4[16] download sites and according to the statistics available on those sites, the application had been downloaded 500,000 to 1 million times;
  - The developer and publisher of the application had no professional references for his previous work and, unlike similar messaging applications, the application had

[16] "APK", which stands for "Android Package Kit", is the file format for applications used on the Android operating system.

not been commercially promoted, nor had any efforts been made to increase its user base or to give it commercial value; the aim of Kilit had rather been to limit the number of users with an emphasis on anonymity;

- The application had a feature which deleted the messages and other content stored on the devices automatically, which ensured the privacy of communications even if the user omitted to delete any compromising exchanges;

- As stated in "Analysis Report on Intra-Organisational Communication Application" prepared by the ASOCD:
    - Although all versions of the application were available on various application stores and websites, the members of the organisation were urged to download the Kilit application from USB keys or via Bluetooth, so as to ensure organisational secrecy;
    - It was physically impossible for a non-member to use the Kilit application;
    - The information obtained about the organisation from the application was consistent with the information gathered from other sources.
- Kilit data had been obtained from two different sources: (i) the raw log data obtained by the NIS from the Kilit server; and (ii) the CGNAT data (pertaining to the Internet traffic information) showing connections made to the Kilit IPs from Türkiye.
- The report explained that it was not possible to sort the raw data on a user ID basis without first processing them.
- "Expert Report on the Kilit application" prepared by independent cyber security experts argued that:
    - Kilit application used advanced encryption methods and that it was an anonymity-oriented messaging application, which enabled communication without leaving a digital fingerprint that could be detected by the law-enforcement authorities.
    - The application intended to serve not the general public but a specific purpose.
    - The absence of online searches suggested that this application was used by a specific group of people and that those people possessed detailed information on how the application worked and shared it with prospective users.

    - The figure “215,092” found in the NIS report indicated not the actual number of users, but the number of registrations with the application.
- “The Technical Report” prepared by IntaForensics claimed that:
    - It would appear that anonymity as much as security was a primary goal for Kilit.
    - Application was used by a specific group of people and that the developer had no commercial concerns.
- A report from 11 October 2021 found that the IP addresses in the applicant's CGNAT data were within blocked ranges. The report did not provide information for verification or description of the technical analysis, making it difficult to scrutinise the methods used. Legal forensics experts from Türkiye noted these issues were common for applications without a large user base.
- On 9 June 2021 Christopher James, a Turkish and American dual national who was identified as the licence owner of Kilit was arrested and taken into police custody at Istanbul Airport.
- He explained that, as a student, he had studied and briefly worked in the private tutoring centres owned by the PTO and had also frequented their student houses.
- In December 2013, Christopher James met with A.C. in Istanbul, who told him that he was in the process of developing some mobile applications but had encountered problems in uploading them to the application stores due to problems related to payment. A.C. requested to use Christopher James’ card and also obtained his contact and identity information to complete the upload process. At their next meeting in March 2014, A.C. told him about the Kilit application that he had uploaded to the application stores, with the use of his credit card, identity and communication details.
- When they met again in August 2015, A.C. asked him to stop the payments for the domain name, reportedly because the number of downloads had dropped. He therefore stopped payment in October 2015.
- He stated that from what he heard after the coup attempt, the NIS had discovered the Kilit application in July 2015, which was probably why A.C. wanted to stop the flow of information over Kilit after that time.

1. **Relevant Domestic Law**
2. **Applicable Law**
    a. **European Convention On Human Rights**

- **Article 6 of European Convention on Human Rights: Right to Fair Trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

3.Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

- **Article 7 No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the

time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

- **Article 8 of European Convention on Human Rights: Right to respect for private and family life**

  1.Everyone has the right to respect for his private and family life, his home and his correspondence.

  2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- ***Article 11 Freedom of assembly and association***

  1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

  2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

- **Article 30 Relinquishment of Jurisdiction to the Grand Chamber**

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgement previously delivered by the Court, the Chamber may, at any time before it has rendered its judgement, relinquish jurisdiction in favour of the Grand Chamber.

- **Article 34 of European Convention on Human Rights: Individual Application**

  "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."
- **Article 41 Just satisfaction**

  If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

International Covenant on Civil and Political Rights (1966)

Article 15

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed."

Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (Turkey is a party to the convention since 13 February 2018)

Article 2 – Participating in an association or group for the purpose of terrorism

“1. For the purpose of this Protocol, ‘participating in an association or group for the purpose of terrorism’ means to participate in the activities of an association or group for the purpose of committing or contributing to the commission of one or more terrorist offences by the association or the group.

2. Each Party shall adopt such measures as may be necessary to establish ‘participating in an association or group for the purpose of terrorism’, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law”.

D. Domestic Law

Key points concerning related legislation and provisions:

Based on the provided information, here are the key points regarding relevant laws and provisions:

1. Constitutional Provisions:

- Article 15 allows for the partial or complete suspension of fundamental rights and freedoms during times of war, mobilization, or emergency, provided that obligations under international law are not violated.
- Article 36 guarantees the right to litigation and a fair trial before the courts.
- Article 38 prohibits punishment for acts that were not criminal offenses at the time committed and prohibits retroactive penalties.
- Article 90 § 5 states that international agreements prevail over conflicting domestic laws concerning fundamental rights and freedoms.

2. Code of Criminal Procedure (Law no. 5271):

- Article 134 allows for the search, copying, and seizure of computers, computer programs, and logs during criminal investigations under certain conditions.

- Article 135 allows for interception, wiretapping, and recording of communications under strict conditions and only for specific offenses, including offenses against the Constitutional order.
- Article 206 prohibits the use of evidence obtained unlawfully.
- Article 217 grants judges the discretion to evaluate evidence freely.

3. Law on Intelligence Services of the State and the National Intelligence Agency (Law no. 2937):

- Empowers the National Intelligence Agency to collect intelligence through various methods, including technical and human intelligence.
- Allows for interception, wiretapping, and evaluation of signal information in cases of serious threats to national security or the democratic rule of law.

4. Relevant Domestic Laws Governing Organized Crime and Terrorism:

- Criminal Code and Prevention of Terrorism Act define and punish offenses related to terrorism, membership in armed organizations, and forming organizations with criminal intent.

5. Domestic Law Concerning the Judiciary:

- Legislative Decrees nos. 667 and 685 introduced measures for the dismissal of judges and prosecutors considered affiliated with terrorist organizations.
- Law no. 6723 amended laws regarding the judiciary, including the Court of Cassation Act.

6. Other Relevant Domestic Law:

- Legislative Decree no. 667 introduced restrictions on the right to legal assistance for persons detained in relation to certain offenses during the state of emergency.

E. Case-Law

a. The United Nations

- In the decision *Nicholas v Australia* adopted during its 80th session, the United Nations Human Rights Committee indicated that, for a conviction to be entered in relation to any criminal offence, the prosecution must demonstrate that every element of that offence has been proven to the necessary standard.
- The United Nations Working Group on Arbitrary Detention ("the WGAD") adopted an opinion (no. 42/2018) in respect of a person who had been detained on suspicion of membership of the PTO on the basis of, *inter alia*, his alleged use of the Kilit application.
- The Working Group criticised the government for failing to prove that Mr. Yayla's use of the Kilit application constituted illegal activity. Even if he did use it, which he denies, it would likely fall under his freedom of opinion and expression. Individuals are often associated as sympathisers or supporters without awareness of violent intentions. The Working Group finds such detentions arbitrary, suggesting a pattern of targeting individuals linked to the group without evidence of active involvement in criminal activities.

b. Court of Cassation

- On 24 April 2017 the Sixteenth Criminal Division of the Court of Cassation ("the Sixteenth Criminal Division") delivered a judgement, whereby it convicted two judges, namely M.Ö. and M.B., of membership of the PTO and abuse of office. In reaching this verdict, the high court relied on the use of the Kilit messaging system by the judges concerned. It noted that for a structure to be classified as an "armed terrorist organisation", it would not only have to fulfil the criteria set out under Article 220 of the Criminal Code in relation to the offence of "forming an organisation with the aim of committing a criminal offence", but also had to embrace the aims and methods indicated in sections 1 and 7 of the Prevention of Terrorism Act. It stressed that the requirement of use of "force and violence" in section 7 of the relevant Act did not necessarily mean the actual use of force and violence, and that an existing threat that such force and violence

may be used would suffice. The Court further maintained that the armed terrorist organisation had to be in possession of a sufficient amount of arms to carry out its aims.

- The Court found in the judgement of the plenary criminal divisions that
    - PTO aims at ensuring social transformation by taking whole sub-elements of the State under its control and seizing the system as well as by using the public power it has gained; and which also performs espionage activities.
    - The members of the organisation who have entered into public service at the TAF, the Security Directorate and [the NIS] ..., as a "soldier" of the PTO, undergo an ideological training according to which they are ready to employ their weapons and their authority to use force in line with the instructions given by their hierarchical superior…

c. Constitutional Court

- On 4 June 2020 the Plenary of the Constitutional Court delivered a judgement in the case of *Ferhat Kara*, which concerned the alleged violation of the right to a fair trial. Thel Court stressed that the PTO was an organisation based on confidentiality and, for that reason, it favoured communication through encrypted programs, such as Kilit, where face-to-face communication was not possible. The Constitutional Court then went on to provide a chronological account of how the Kilit program had been identified, notified to the judicial authorities and processed by the latter.
- The Constitutional Court cited previous investigations and prosecutions against the clandestine activities of the PTO, including those against suspected members before the coup attempt in 2013, and the 2015 proceedings against police officers who allegedly refrained from preventing Hrant Dink's murder.

F. Procedural Issue To be Answered

- Are there any legal boundaries that prevent the ECtHR Grand Chamber from looking into a case? If there are, what are those limits?

G. Merit Issues To Be Answered

- What are the limits of defining someone as a terrorist?
- Can the article on aiding terrorism be extended to include mobile applications and online behaviour?
- Even if there is a terrorist organization, can someone predict a coup?
- If there are suspicious movements on the majority of the bank accounts indicated, Can depositing money to a legally established bank be accepted illegally ?
- If the Jamaat has a sui generis structure, can its members be considered as members of an armed terrorist organization?
- Is the way in which the data on the use of the 'Kilit' application was obtained lawful?
- If the association has been used for purposes other than its intended purpose, does it violate the freedom of association if membership of an association or trade union is used as a basis for membership of a terrorist organisation, even though it operates under the supervision and inspection of the state?

Further Readings

- PENAL CODE OF TURKEY
- KİŞİSEL VERİLERİ KORUMA KURUMU | KVKK | Personal Data Protection Law
- When can personal data be processed? - European Commission
- Data and Information Management | UNHCR
- Grand Chamber Decisions of Rejection of Referral

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