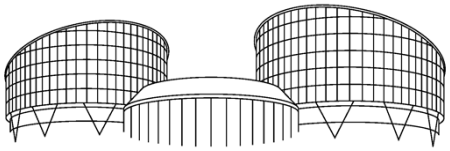

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF İLERDE AND OTHERS v. TÜRKİYE

(Applications nos. 35614/19 and 10 others)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Conditions of detention - mainly overcrowding - in various prisons in the country • Individual outdoor yard (annexed to each cell and available during daylight hours) and sanitary facilities excluded from calculation of floor space for each applicant • Violation in relation to applicants with personal space below 3 sq.m. • No violation in respect of those with personal space between 3 and 4 sq.m and above 4 sq.m. • Sleeping on a mattress on the floor taken alone or in conjunction with other material aspects of detention not amounting to degrading or inhuman treatment
Art 8 • Family life • Placement of an applicant in a penal facility located far away from his family's place of residence • Lack of alternative measures to make up for fewer visits
Art 35 § 1 • Exhaustion of domestic remedies • Compensation claim before the administrative courts ineffective remedy in case circumstances due to fault-based liability approach

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 December 2023

FINAL

08/04/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of İlerde and Others v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Egidijus Kūris,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 35614/19, 5885/20, 6489/20, 7540/20, 10977/20, 11422/20, 14798/20, 16554/20, 16577/20, 18001/20 and 40294/20) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by ten Turkish nationals ("the applicants") on the various dates indicated in the appended table;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning Article 3 of the Convention in respect of all applications and Article 8 of the Convention in respect of applications nos. 6489/20 and 18001/20, and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 14 November 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applications concern the alleged inadequate conditions of the applicants' detention, in particular overcrowding. The applicants complain of a violation of Article 3 of the Convention. Two applications also concern the placement of applicants in remote penal facilities, which allegedly resulted in those applicants receiving fewer visits from their families, and therefore the applicants in these two cases complain of a further violation of Article 8 of the Convention.

THE FACTS

2. A list of the applicants is set out in the Appendix.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the cases, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

I. BACKGROUND INFORMATION

5. At the time of the events giving rise to the present applications, the applicants were detained in closed penal institutions, either awaiting trial or pending appeal proceedings concerning terrorism-related offences in connection with the attempted coup of 15 July 2016.

6. As a result of the high number of arrests made in relation to the attempted coup of 15 July 2016, a surge in the prison population in various prisons across the country was observed.

7. A number of restrictions, including the banning of sports and social and educational out-of-cell activities, were put in place for remand prisoners (prisoners who had not been convicted with final effect), in accordance with written instruction no. 89112 of the Central Prison Administration Division in the Ministry of Justice (*Ceza ve Tevkifevleri Genel Müdürlüğü* – "the Central Prison Authority") of 28 July 2016.

II. CONDITIONS OF DETENTION OF THE INDIVIDUAL APPLICANTS

8. The prisons forming the subject matter of the present cases are designed as multiple-occupancy units. Except for the Silivri L-Type Prison (see paragraph 67 below), each unit is built as a duplex, where one floor is a dormitory containing bunk beds and the other floor is a common area featuring a small kitchenette, tables and chairs and also separate sanitary facilities. The units have their own individual outdoor yard at the disposal of detainees during daylight hours. Both floors in the unit have windows, which are the main source of ventilation.

9. In their observations, the Government provided the Court with general information with respect to the prisons where the applicants had been detained, as well as tables in which specific details relating to each applicant's detention were indicated, including the measurements of the relevant cells where they had been detained. In the relevant tables, the Government further provided the minimum and maximum living space available to each applicant, depending on how many people they had been detained with in the relevant period. In calculating this space, the Government appear to have added up the square metres (sq. m) of the dormitory, common living area, outdoor yard and sanitary facilities, and divided the total sum by the respective minimum and maximum number of detainees in a given period. The Government submitted that the applicants had had access to both cold and hot water daily, with most prisons capping hot water usage at 50 litres per prisoner per day and providing hot water for a limited amount of time

during the day. No such restriction was in place for cold water, except in the cases of Kocaeli no. 1 T-type, İzmir Menemen T-type and Silivri no. 6 L-type Prisons, where cold water usage was capped at 350, 150 and 200 litres respectively per prisoner per day. The Government further provided the Court with photographs of the cells and outdoor yards which had been taken after notice of the applications had been given to them. Some applicants contested the information submitted by the Government, as well as the methodology used by them to calculate the living space per prisoner, whereas other applicants maintained their complaints without specifically contesting the information submitted by the Government. In describing the facts with respect to each applicant below, the Court has taken note of the parties' submissions and indicated, where relevant, such disagreements.

10. The Government further noted that prisoners were responsible for keeping their unit clean, and to that end basic cleaning materials were provided to them by the prison administration free of charge. They also noted that prisoners could obtain cleaning materials by placing an order with the prison canteen. The applicants Metin Kolotooğlu, Onur Yörük and Deniz Aktaş, who complained of a lack of hygiene in particular facilities, contested this information and submitted that either the prison administrations in question had never provided them with cleaning materials, or these materials had been insufficient.

A. Application no. 35614/19 (Ahmet İlerde)

11. The applicant was detained in İzmir Menemen T-Type Prison from 3 March 2017 to the day when he was released, 21 March 2019.

12. In a written statement signed by the applicant and 19 other detainees on 2 October 2017, the applicant noted that in the unit where they were detained there were only 7 bunk beds, therefore 14 individual bunks in total; however, there were currently 20 persons in the unit and therefore he and several other detainees were taking it in turns to sleep on mattresses on the floor.

13. On 2 January 2018 the applicant made a complaint to the enforcement judge, submitting that he was detained in a unit measuring approximately 40- 50 sq. m and originally designed for 10 persons. He had been detained with 20 to 25 persons on average since his arrival and was therefore sleeping on the floor on a rota basis – three groups in his unit were taking it in turns to sleep on the floor. He further complained that as a result of overcrowding, he did not have a locker in which to put his clothes and belongings. He submitted that the conditions of his detention amounted to degrading treatment.

14. The enforcement judge forwarded the applicant's complaint to the Menemen prison administration board, which noted, in a decision of 3 January 2018, that it was aware that certain detainees were sleeping on mattresses on the floor on account of the prison being full beyond its capacity.

In that connection, the original capacity of the prison had been 930 detainees, but that had increased to 1364 detainees as a result of the situation following the coup. Detainees who did not have an individual mattress on a bunk bed were given mattresses so that they could sleep on the floor, and as far as possible, the administration tried to balance out the population in a unit when space became available in other units.

15. On 7 February 2018 the enforcement judge set aside the decision of the prison administration board, noting that detainees could not sleep on the floor because the prison was operating beyond its capacity. The judge ordered the prison administration to comply with his decision.

16. As a result of an objection by a public prosecutor, the Karşıyaka Assize Court quashed the decision of the enforcement judge by holding that the prison administration's decision was in accordance with the law, given that the relevant burden was shared between all the prisoners in a unit and each person was expected to take turns sleeping on the floor for a short period of 15 days. That decision was final.

17. On 7 May 2018 the applicant lodged an individual appeal with the Constitutional Court, reiterating his complaints under Article 3 of the Convention and submitting that the inadequate conditions of his detention persisted.

18. On 6 March 2019 the Constitutional Court dismissed the applicant's individual appeal by using a summary formula, noting that there appeared to be no violation of Article 3 of the Convention.

19. Before the Court, the applicant complained of overcrowding and having to sleep on a mattress on the floor. In their observations, the Government noted that the applicant had never had less than 4 sq. m of personal space, and even though the applicant had occasionally had to sleep on a mattress on the floor, this situation had been temporary, and in any event at all times he had had his own mattress. Lastly, the Government submitted that the applicant had been allowed to participate in a sports activity once a week for one hour.

20. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard[1]	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds

[1] In the Government's initial observations, they indicated that the outdoor yards of units in Menemen T-Type Prison measured 34.68 sq. m. In their further observations, they corrected this to 18.24 sq. m. Adjustments to the table were therefore made by the Court, taking this correct number into account.

B-8	06/03/2017-31/01/2018	14	25	331	18.24	44.88	28.32	10.08	8.43	4.72	7
A-201	31/01/2018-22/02/2018	14	25	22	18.24	44.88	28.32	10.08	8.43	4.72	7
A-301	22/02/2018-06/11/2018	14	25	257	18.24	44.88	28.32	10.08	8.43	4.72	7
A-10	06/11/2018-28/01/2019	14	25	83	18.24	44.88	28.32	10.08	8.43	4.72	7
A-25	28/01/2019-21/03/2019	14	25	52	18.24	44.88	28.32	10.08	8.43	4.72	7

21. The applicant did not raise a specific objection to the measurements provided by the Government.

B. Application no. 5885/20 (Ruhi Hallaçoğlu)

22. The applicant was detained in Osmaniye no. 1 T-Type Prison from 6 February 2017 until his release on 25 February 2020.

23. On 7 March 2017 the applicant made a complaint to the Osmaniye enforcement judge, submitting, *inter alia*, that he was in an overcrowded unit and was not allowed to exercise.

24. In a decision of 31 March 2017 the Osmaniye enforcement judge dismissed the complaint, noting that the prison administration dealt with the placement of detainees in the prison concerned and that overcrowding was related to the situation following the coup. With respect to the applicant's complaint that he was not allowed to exercise or participate in sports activities, the judge referred to the legislative provisions which gave the prison administration the discretion to decide whether and to what extent prisoners could have the benefit of group sports activities, and to a written instruction of the Central Prison Authority to that effect, which related to detainees who were considered to be members of FETÖ/PDY (an armed terrorist organisation described by the Turkish authorities as FETÖ/PDY – "Fetullahist Terror Organisation/Parallel State Structure") (see paragraph 7 above). The judge noted that several factors demonstrated that the prison administration had not used its discretion in an arbitrary manner when it had decided to restrict group sports activities, such as the necessity of keeping FETÖ/PDY detainees separate from others, the current overcrowding situation and the lack of staff. Lastly, the judge noted that the outdoor yard in the applicant's unit was available for individual exercise.

25. On 4 May 2017 the Osmaniye Assize Court upheld the decision of the Osmaniye enforcement judge, without providing further reasoning.

26. On 20 July 2017 the applicant addressed a petition to the Central Prison Authority, complaining of overcrowding in Osmaniye no. 1 T-Type Prison. He noted that he was currently sharing a unit with 25 persons and the conditions of his detention had become unbearable in the summer heat.

27. On 26 July 2017 the Osmaniye prison administration sent the applicant's petition to the Central Prison Authority, enclosing a cover letter.

In it, it noted that, as was the case with other prisons across the country, it too was faced with an increasing number of incoming detainees. Having regard to the Ministry of Justice's instruction to keep FETÖ/PDY detainees separate from other detainees, they were being placed in single, 3-person or 7-person cells. The prison's current capacity was 1446 inmates and units were being filled beyond their capacity.

28. On 28 July 2017 the Central Prison Authority replied to the applicant, noting that prisons were designed and constructed in accordance with the relevant recommendations of the Committee of Ministers of the Council of Europe. The sudden surge in detentions had resulted in overcrowding in certain prisons, but the situation was being managed with transfers.

29. On an unspecified date in 2018 the applicant addressed another petition to the Central Prison Authority, noting that there had been no improvements to the overcrowding situation. The Central Prison Authority, in its reply of 7 June 2018, reproduced the same reasons which it had given in its letter of 28 July 2017.

30. On 25 November 2019 the Constitutional Court declared an individual appeal lodged by the applicant with respect to his conditions of detention inadmissible. It used a summary formula and made reference to its case-law relating to Mehmet Hanifi Baki and İbrahim Kaptan (see paragraphs 128-129 and 130-131 below).

31. The applicant complained of overcrowding before the Court. The Government submitted that the applicant had stayed in the facility in question for approximately 3 years and had had a minimum of 3.98 sq. m of personal space and a maximum of 9.22 sq. m. The Government submitted that the applicant had not been allowed any out-of-cell activities except for watching films, but they did not specify the frequency of this activity.

32. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
Temporary	06/02/2017-07/02/2017	15	15	1	45.56	44.70	44.70	3.32	9.22	9.22	-
A-38	07/02/2017-07/05/2018	12	25	60	33.44	39.27	24.37	2.50	8.30	3.98	7
C-14	07/05/2018-25/02/2020	16	25	30	33.44	39.27	24.37	2.50	6.22	4.33	7

33. The applicant did not raise a specific objection to the measurements provided by the Government.

C. Application no. 6489/20 (Davut Tek)

34. The applicant was detained in Nevşehir E-Type Prison from 10 September 2016 to 30 November 2016. He was then transferred to İzmir Menemen T-Type Prison and shortly thereafter to İzmir no. 2 T-type Prison. His application concerns the conditions of his detention in Nevşehir E-Type Prison and also his transfer to the prisons in İzmir, which was approximately 1000 km away from his family residence. The transfer made it difficult for his family to visit him and therefore allegedly violated his right to respect for his family life.

35. The applicant was admitted to Nevşehir E-Type Prison on 10 September 2016 at 2 a.m., with 60 other detainees. The admission procedure and relevant checks lasted 10 hours, during which time he waited with the other 60 detainees in a closed room, standing up and without any sleep. He was then placed in unit C-11, where he was detained with 32 persons for the remainder of his detention. There were only 16 beds, therefore he shared a bed with another detainee (M.Y.) for 83 days.

36. On various dates between 21 February 2018 and 20 April 2018 the applicant filed four criminal complaints with the Nevşehir public prosecutor. He complained of (a) the ill-treatment he had suffered upon his admission to Nevşehir E-Type Prison; (b) overcrowding in unit C-11 of that prison; (c) insufficient hot water; (d) having to wash clothes by hand; and (e) long queues for the sanitary facilities.

37. The public prosecutor initiated an investigation by requesting information from the prison administration with respect to the applicant's complaints. With respect to his ill-treatment complaint concerning the day of his admission to Nevşehir E-Type prison, the prison administration stated that since the admission room was not spacious, the incoming detainees had been asked to wait in the room designated for weekly visits, and the admission procedure had taken up to 15 minutes for each detainee. Regarding the overcrowding complaint with respect to unit C-11, the administration noted that the prison had more than double the number of detainees it was supposed to accommodate, as a result of the attempted coup of 15 July 2016. The prison administration routinely asked the Central Prison Authority for extra bunk beds, mattresses, bedding and sheets, and distributed those swiftly when they arrived. With respect to the adequacy of the sanitary facilities, the administration noted that each unit had one toilet and one shower, that hot water was provided on the basis of a weekly schedule, and that detainees were responsible for keeping the unit clean; they washed their clothes by hand using the sanitary facilities, but bedsheets and covers were washed by the prison services periodically.

38. On 11 June 2018 the public prosecutor issued a decision not to prosecute, on the basis of the reasons provided by the Nevşehir prison administration.

39. An objection by the applicant against the decision of the public prosecutor was rejected by the Nevşehir Magistrate's Court by a final decision of 1 August 2018.

40. Furthermore, in a final decision of 9 July 2018 Karşıyaka assize court dismissed the applicant's complaint regarding, *inter alia,* significantly fewer visiting opportunities from his family members stemming from the authorities' decision to place him 1000 km away from his family's residence.

41. On 18 November 2019 the Constitutional Court declared inadmissible an individual appeal lodged by the applicant with respect to his overcrowding complaint and his Article 8 complaint relating to visiting rights. It did so by reference to, *inter alia*, its decision in the case of Müjdat Gürbüz (see paragraph 132 below).

42. In the meantime, when the applicant was transferred from Nevşehir E-Type Prison to İzmir Menemen and then to İzmir no. 2 T-Type Prison, he made repeated requests to the Central Prison Authority to be transferred to a prison close to his family. He explained that his wife and young child were in Kocaeli and, as they did not have a car, they had to travel 9 hours one-way to visit him, and their journey involved three different connections. His mother, who had a disability and suffered from diabetes, lived in Kayseri, and she had to travel for 15 hours to be able to visit him. He therefore asked to be transferred to a prison in Kocaeli, or alternatively to Maltepe in Istanbul. He appended a disability report on his mother and a record confirming his wife's place of residence to his petition.

43. On 29 May 2019, 18 July 2019, 12 September 2019 and 12 November 2019 respectively the applicant's requests to the Central Prison Authority for a transfer were refused, on the basis that the prisons which he had requested lacked space.

44. It appears that the applicant did not make another appeal to the Constitutional Court with respect to his transfer requests. On the other hand, he filed a complaint with the Ombudsman Institution of the Republic of Türkiye ("the Ombudsman") on 24 July 2019, reiterating the practical and financial difficulties involved for his family in visiting him in İzmir, and he asked to be transferred to a penal facility in Kocaeli or Istanbul.

45. In a decision of 11 November 2019, which made recommendations but also dismissed parts of the applicant's complaint, the Ombudsman noted that there would be an interference with the right to respect for family life if an administration were to place a detainee in a penal facility that was too far away from his family and that placement resulted in him or her having fewer visits. The Ombudsman noted that the domestic legislation did not have a mandatory provision obliging an administration to place detainees in facilities close to their homes. Despite the absence of such a mandatory provision, he noted that in practice, an administration considered the requests of prisoners to be transferred to a facility closer to their home under Article 53 of Law no. 5275, and there was secondary legislation which regulated voluntary

transfers. Nevertheless, when prisoners who asked to be transferred in order to be closer to their family's place of residence could not be transferred, owing to reasons relating to security or a lack of space, the legislation did not provide for alternative measures, such as providing those prisoners with longer visiting hours to make up for the fewer visits they enjoyed. The Ombudsman therefore recommended that a provision be included in the relevant legislation for this purpose.

Referring to the Court's findings in *Vintman v. Ukraine* (no. 28403/05, 23 October 2014), the Ombudsman noted that refusing transfer requests on the grounds of a lack of available space in facilities which were closer to detainees' families and the prevention of prison overcrowding could be regarded as pursuing a legitimate aim in this regard. However, even in such circumstances, an administration could not simply avoid the obligation to consider placing a detainee in other facilities which were relatively closer to his family. In the applicant's case, having regard to the reasons advanced by the Central Prison Authority, the Ombudsman noted that the rejection of his transfer requests had been justified. However, the Ombudsman noted that the Central Prison Authority had failed to comply with the principle of good governance, because it had not indicated the legal avenues which the applicant could resort to should he wish to challenge the decisions rejecting his transfer requests. The Ombudsman further recommended that the administration reconsider the applicant's transfer request in the event that a space in a facility closer to his family became available.

46. Regarding the applicant's conditions of detention at Nevşehir E-Type Prison, the Government submitted that the applicant had stayed there for only 53 days and had shared accommodation with 27 people at most; he had had 3.72 sq. m of personal space, which had increased to 4.08 sq. m later. The Government confirmed that no out-of-cell activities had been made available to the applicant during that period.

47. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
C-11	10/09/2016-30/11/2016	31	34	53	37.50	42	42	5.10	4.08	3.72	13

48. The applicant firstly noted that the Government had not submitted any observations with respect to the day when he had been admitted to Nevşehir E-Type Prison, where he had been made to stand for 10 hours, waiting with around 60 other detainees in a room measuring 20 sq. m with no windows; he had had 0.3 sq. m of personal space during those 10 hours. Regarding the

conditions of his detention in cell C-11, the applicant agreed with the measurements provided by the Government, but disputed the methodology used by them to calculate his personal space. Relying on the photographs submitted by the Government, he submitted that the space under the stairs which amounted to 2 sq. m should be subtracted from the overall space, as a person could not stand up straight in that area. Relying on the Court's case-law, he also noted that the sanitary facilities should not have been included in the calculation. Moreover, the applicant argued that the outdoor yard, which was not available during the evening and night, should likewise not have been included in that calculation. The applicant noted that if the Court were to disagree, the outdoor yard should only be counted in the calculation of a detainee's personal space during daylight hours. Accordingly, he submitted that during daylight hours he had had a minimum of 2.72 sq. m of personal space and a maximum of 2.98 sq. m; during the evening and night he had had a minimum of 1.61 sq. m of personal space and a maximum of 1.77 sq. m, depending on the number of people detained in the cell as submitted by the Government. He also noted that it was impossible for 34 detainees to all have their own beds in the dormitory, which measured 42 sq. m, and in any event the Government had noted that there were 13 bunk beds, amounting to 26 individual beds. The applicant therefore maintained that he had had to sleep with another detainee (M.Y.).

49. Lastly, the applicant pointed out further aggravating circumstances of the physical conditions of his detention. Contrary to the Government's argument, the outdoor yard hardly afforded a real opportunity for outdoor exercise, given that detainees dried their laundry (which they washed by hand) in that space. In addition, there had been no out-of-cell activities. He also contended that according to the Government, the detainees had been provided with hot water 3 days a week for a total of 9 hours per week; this meant that each detainee had had hot water for 15 minutes each week – 540 minutes divided by 34 detainees – which had also been very insufficient.

D. Application no. 7540/20 (Aşkın Şanlı)

50. The applicant was detained in Kocaeli no. 1 T-Type Prison from 30 January 2017 until his release on probation on 5 October 2020.

51. On 21 June 2018 the applicant lodged a complaint with the Kocaeli enforcement judge, submitting, *inter alia*, that he was in an overcrowded unit which measured 65 sq. m and housed up to 30 detainees, and that the insufficient number of toilets and showers in the unit resulted in long queues.

52. On 31 August 2018 the Kocaeli enforcement judge dismissed the applicant's complaint, noting that the failed coup attempt had resulted in a surge in the number of detainees and that the prison administrations had no means by which they could decrease the prison population.

53. On 30 October 2018 the applicant lodged an individual appeal with the Constitutional Court, reiterating his complaints under Article 3 of the Convention and submitting that the inadequate conditions of his detention persisted.

54. On 22 July 2019 the Constitutional Court dismissed the appeal as manifestly ill-founded, using a summary formula based on its case-law relating to Mehmet Hanifi Baki (see paragraph 128-129 below).

55. The applicant complained before the Court of overcrowding and the insufficient number of toilets and showers in Kocaeli no. 1 T-type Prison. The Government conceded that the applicant had had less than 3 sq. m of personal space at times, for periods lasting 1 to 72 days. However, they argued that those periods had been short compared with the overall duration of the applicant's detention, and given that there had been sufficient ventilation and hot water 3 days a week, and that detainees could use the sanitary facilities in private, they considered that the conditions of the applicant's detention had been adequate. The Government further submitted that the applicant had been allowed to participate in an out-of-cell educational activity and to watch films, but they did not specify the duration or frequency of those activities.

56. The Government noted that each unit in Kocaeli no. 1 T-Type Prison had one toilet, one bathroom and two washbasins. They submitted that a detainee in the cells in which the applicant had stayed would have had about 45 minutes per day on average to use the sanitary facilities.

57. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows. The Government did not submit any data for the period from 1 March 2019 until the applicant's release date.

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
B-12	31/01/2017-08/06/2018	17	31	1	32.50	28	22	1.3	4.93	2.70	8
C-17	08/06/2018-01/11/2018	20	27	4	32.50	28	22	1.3	4.19	3.10	8
C-4	01/11/2018-01/03/2019	21	33	1	32.50	28	22	1.3	3.99	3.10	8

58. The applicant did not raise a specific objection to the measurements or information about particular periods provided by the Government.

E. Application no. 10977/20 (Kemalettin Erel)

59. The applicant was detained in İzmir Menemen T-Type Prison from 28 July 2016 until his release on 9 July 2018.

60. On an unspecified date the applicant complained to the Menemen enforcement judge of, *inter alia*, the overcrowded conditions of his detention, and notably a decision of the Menemen prison administration of 7 July 2017 to increase the capacity of the units in the prison by adding additional beds.

61. On 21 December 2017 the Menemen enforcement judge dismissed the complaint, noting that the situation following the coup had resulted in prisons having to receive more detainees even when they were already at capacity, and that the prison administration informed the relevant authorities about this situation from time to time, but the determination of the capacity of a prison and the transfer of prisoners was not within the purview of a prison administration.

62. On 6 March 2018 the applicant lodged an individual appeal with the Constitutional Court, complaining, *inter alia*, that he was in a unit with 20 other detainees and had to sleep on the floor.

63. On 22 July 2019 the Constitutional Court dismissed the appeal, using a summary formula based on its case-law relating to Mehmet Hanifi Baki and İbrahim Kaptan (see paragraphs 128-129 and 130-131 below).

64. The applicant complained before the Court of overcrowding and having to sleep on a mattress on the floor. The Government submitted that during his detention at Menemen T-Type Prison the applicant had had a minimum of 4.06 sq. m of personal space and a maximum of 7.25 sq. m. They also noted that the applicant had been allowed to participate in a sports activity once a week for one hour.

65. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
A-201	28/07/2016-19/09/2016	14	25	79	18.24	44.88	28.32	10.08	7.25	4.06	7
A-308	19/09/2016-09/07/2018	14	25	658	18.24	44.88	28.32	10.08	7.25	4.06	7

66. The applicant objected to the measurements submitted by the Government. He firstly argued that since the Government had submitted that the mattresses in question were 90 cm wide and 190 cm long, on the basis of the configuration of the mattresses shown in the photos submitted by the Government, the dormitory could not be more than 6 metres by 6 metres, therefore 36 sq. m; in addition, the space under the stairs, which, according to him, measured around 5 sq. m, had to be subtracted from that total. Secondly, he argued that the information submitted by the Government about the number of bunk beds in the dormitory (7 bunk beds, therefore

14 individual beds) was wrong, as there had been 8 bunk beds. As a result, the minimum number of detainees should have been indicated as being 16. The applicant noted that the addition of the eighth bunk bed had meant that there was barely any space to walk around. In this connection, the applicant argued that the Government's submission about detainees having their own individual mattresses, even if they had been on the floor, had been incorrect. According to him, since there had been insufficient space to put mattresses on the floor in the dormitory area when the unit population had increased to 25 detainees, the detainees, including himself, had been obliged to take it in turns to sleep. He further argued that it had not been possible to put mattresses in the common area, as this had been prohibited by the prison administration. The applicant also generally objected to the fact that the Government had submitted pictures of an empty cell, when in reality the space became dramatically smaller when detainees' belongings and mattresses were spread out on the floor. The applicant also objected to the measurements of the common area which had been provided. According to him, the long end of the room had 13 tiles and the short end had 9. Those tiles were standard size tiles, measuring 35 cm by 35 cm each. Therefore, the common area had to measure 13.23 sq. m. Also, while it was true that the unit had 2 toilets, the toilet area was no bigger than 2.50 sq. m. The shower area was no bigger than 1 sq. m. On the basis of his arguments, the applicant submitted that he had had a minimum of 2.99 sq. m of personal space and a maximum of 4.72 sq. m. As regards the outdoor yard, the applicant stated that this area was used to store drinking water and dry laundry, since detainees did their laundry by hand in the in-cell sanitary facilities, so in practical terms, it was not a place that could be used for exercise. He further disputed that cleaning materials were given out by the prison administration. The applicant maintained that he had not had the benefit of social, sports and educational activities. In this regard, the applicant emphasised that he had spent his entire time in overcrowded conditions, without any out-of-cell activities.

F. Applications nos. 11422/20 and 40294/20 (Metin Kolotooğlu)

67. The applicant was detained in Silivri no. 6 L-Type Prison from 21 February 2017 to 18 December 2020. Silivri no. 6 L-Type Prison is configured slightly differently from T-type prisons, in that rather than having a common dormitory, each unit features several individual rooms, one common area, shared sanitary facilities and an outdoor yard. The applicant's first application before the Court is related to the conditions of his detention in units A6 and A9 of that prison, and his other application concerns the conditions of his detention in the other cells set out in the table below.

68. The applicant complained firstly to the Silivri prison administration and then to the Silivri enforcement judge that extra bunk beds had been put in the individual rooms in his unit and new detainees had been placed there,

noting that the unit, which had originally been designed for 7 detainees, held up to 33 people. The Silivri enforcement judge dismissed the complaint on 27 February 2018, noting that the prison administration had a discretion as regards the placement of detainees within the prison complex, and that the discretion had not been used in an arbitrary manner.

69. On 3 April 2019 the applicant made another complaint to the enforcement judge, reiterating his complaints of overcrowding and noting that the number of people in unit A3 had increased to 41. He further complained of a lack of hygiene, insufficient ventilation, infrequent changes of laundry and restrictions on buying bottled water (each prisoner could buy only 15 litres per week).

70. On 6 August 2019 the Silivri enforcement judge dismissed the complaint, noting that the original capacity of the unit had been 28 inmates – not 7, as claimed by the applicant – and as a result of the surge in new detainees and convicted prisoners, it had been increased to 44. Having noted that, the enforcement judge considered that the prison administration could not do anything about the surge in the number of incoming detainees. As regards laundry, the judge noted that there was a laundry service which could be requested via the prison canteen – clothes could be washed once a week and bedding twice a month. On that note, it dismissed the complaint as manifestly ill-founded. As regards the amount of bottled water a prisoner was allowed to buy from the canteen, the judge noted that the prison administration's practice of putting restrictions on how much a prisoner could buy was not against the law, in so far as the administration had noted that prisoners were collecting and storing plastic bottles in cells and outdoor yards, and this presented a difficulty when security searches were being conducted.

71. The applicant lodged separate individual appeals regarding both decisions of the enforcement judge with the Constitutional Court, which rejected the appeals on the basis of its case-law relating to Mehmet Hanifi Baki and İbrahim Kaptan (see paragraphs 128-129 and 130-131 below).

72. The applicant complained before the Court of overcrowding, noise, a lack of hygiene, an insufficient number of toilets and showers, insufficient ventilation and restrictions on water. The Government submitted that during his detention at Silivri no. 6 L-Type Prison the applicant had had a minimum of 6.22 sq. m of living space at his disposal, and a maximum of 11.59 sq. m. The relevant units were equipped with six windows, which allowed for ventilation and natural light, and each unit had two bathrooms, two toilets and washbasins. Each inmate had at least 1 hour and 10 minutes per day on average to use the sanitary facilities. As regards the alleged lack of hygiene, the Government referred to the fact that prisoners were responsible for keeping their unit clean, and certain amounts of basic cleaning materials such as bleach and washing-up liquid were supplied free of charge for this purpose; prisoners could purchase additional cleaning agents from the canteen. The

Government also noted that rubbish was collected daily. With respect to water, they submitted that 250 litres of water (200 litres of cold water, plus 50 litres of hot water) per person were provided daily to each unit. Hot and cold water was provided daily to every cell, without interruption. Lastly, without indicating the frequency and duration of the activities in question, the Government noted that the applicant had had the benefit of sports activities outside the unit, but no educational or cultural activities had been permitted.

73. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
A-9	22/02/2017-08/02/2018	22	26	288	65	83.72	100.91	5.38	11.60	9.81	21
A-6	08/02/2018-04/04/2018	33	40	50	65	83.72	100.91	5.38	7.73	6.38	21
A-7	04/04/2018-13/08/2018	40	41	90	65	83.72	100.91	5.38	6.38	6.22	21
A-3	13/08/2018-18/12/2020	31	38	500	65	83.72	100.91	5.38	8.23	6.71	21

74. Regarding the measurements submitted by the Government, the applicant said that he was not in a position to verify them, therefore he requested that the Court seek such verification from an independent observer. In any event, he maintained that he had had less than 3 sq. m of personal space. Moreover, in terms of hygiene and laundry, the sanitary facilities had been severely inadequate and unable to meet the needs of all inmates. Considering that the unit population had peaked at 41 prisoners at times, he maintained that odours, long queues and unhygienic conditions had aggravated the conditions of his detention. As regards the outdoor yard, he noted that this space had only been available during daylight hours, so it should not be included in the calculation. On the basis of the foregoing, he submitted that he had spent 16 hours a day in the unit with 40 other detainees, without any opportunity for social, cultural or educational activities, which had therefore amounted to treatment contrary to Article 3 of the Convention.

G. Application no. 14798/20 (Onur Yörük)

75. The applicant was detained in İzmir no. 4 T-type Prison from 27 February 2017 to 27 March 2020.

76. On 18 June 2018 he lodged a complaint with the prison administration of İzmir no. 4 T-type Prison, submitting, *inter alia*, that the unit in which he was detained was overcrowded owing to there being 25 detainees in the unit, which had resulted in his personal space being reduced to 2 sq. m. He also

submitted that one sanitary facility was insufficient, given the number of people in the cell, and that limiting the provision of hot water to certain hours made it impossible for everyone to have the benefit of it. He therefore asked for those conditions to be improved, and to have the benefit of educational, social and sports activities which other prisoners (who had not been detained or convicted in relation to FETÖ/PDY offences) enjoyed.

77. On 20 June 2018 the prison administration dismissed the complaint, noting that it was a known issue that prisons were operating beyond their capacity, and that it was not within its powers to remedy the problem. Referring to the Ministry of Justice's directive of 28 July 2016 (see paragraph 7 above), it noted that prisoners detained or convicted in relation to FETÖ/PDY offences were not allowed to have the benefit of educational or other social activities.

78. On 14 August 2018 the Karşıyaka enforcement judge endorsed the conclusions of the prison administration with respect to the conditions of the applicant's detention.

79. In an individual appeal which the applicant lodged with the Constitutional Court, he submitted that on account of overcrowding he was sleeping on a mattress on the cold floor on a rota basis. On 19 December 2019 the Constitutional Court rejected the appeal as manifestly ill-founded, using a summary formula which made reference to its case-law relating to Mehmet Hanifi Baki and Müjdat Gürbüz (see paragraphs 128-129 and 132 below).

80. The applicant complained before the Court of overcrowding, having to sleep on a mattress on the floor, cold and a lack of hygiene. The Government noted that the applicant had never had less than 4 sq. m of personal living space. Although there had been only one sanitary facility, each prisoner had used that facility for 55 minutes per day on average. The Government accepted that the applicant had had to sleep on the floor, but argued that this had been temporary, and that at all times he had had access to a mattress. Furthermore, they submitted that the applicant had eventually been able to participate in out-of-cell activities. Specifically, he had pursued a distant learning course, participated in a weekly sports activity and attended folk dance courses. The Government did not make submissions regarding the applicant's complaint of being exposed to the cold.

81. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
A-12	27/02/2017-27/03/2020	18	25	10	35	45	32.50	4.00	6.47	4.66	7

82. The applicant disagreed with the Government's manner of calculating space and their argument that he had never had less than 4 sq. m of personal space. In this connection, he argued that the cell's outdoor space should not be included in the calculation of personal space. The applicant submitted that the Government had accepted that he had slept on the floor, and this in itself was sufficient to find a violation of Article 3 of the Convention. The applicant stressed that sleeping, eating and socialising had been confined to the cell, and he had had no opportunity to participate in educational, social and sports activities outside of the cell.

H. Application no. 16554/20 (Harun Altun)

83. The applicant was detained in Düzce T-type Prison from 29 August 2016 until his release on 28 December 2018.

84. On an unspecified date the applicant asked the administration of Düzce T-type Prison to take measures to decrease the number of prisoners in his cell. Referring to the situation following the coup, the prison administration acknowledged that the prison was operating beyond its capacity and it was doing all it could to manage the situation by carrying out transfers from time to time. The applicant objected to that decision before the Düzce enforcement judge, submitting that he was in a cell with 26 other detainees, yet the cell had originally been designed for 10 prisoners.

85. On 4 July 2018 the enforcement judge dismissed the applicant's complaint, endorsing the decision of the prison administration.

86. In an individual appeal before the Constitutional Court, the applicant submitted that contrary to what had been argued by the prison administration, no transfers had been carried out at Düzce T-type Prison. Providing dates and the number of people present in the cell on those dates, he argued that the conditions in his cell (B-17) amounted to treatment contrary to Article 3 of the Convention.

87. On 17 December 2019 the Constitutional Court declared his appeal inadmissible, using a summary formula which made reference to its case-law relating to Mehmet Hanifi Baki (see paragraphs 128-129 below).

88. The applicant complained before the Court of overcrowding. The Government argued that during the two years and four months when the applicant had been detained in the prison, he had had a minimum of 3.84 sq. m of living space and a maximum of 4.99 sq. m. They submitted that the applicant could participate in indoor and outdoor sports activities at the prison one day a week.

89. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
B-17	29/08/2016-21/05/2018	20	26	126	32.50	44.30	18.30	4.68	4.99	3.84	8
A-9	21/05/2018-28/12/2018	20	26	15	32.50	44.30	18.30	4.68	4.99	3.84	8

90. The applicant objected to the information supplied by the Government regarding the number of prisoners present in cells B-17 and A-9. As he had noted in his appeal before the Constitutional Court, he maintained that the cell in which he had been detained had accommodated: 25 prisoners on 30 May 2017; 27 prisoners on 7 August 2017; 27 prisoners on 5 September 2017; 26 prisoners on 2 October 2017; 26 prisoners on 6 December 2017; 23 prisoners on 18 April 2018; 25 prisoners on 11 July 2018; 23 prisoners on 15 August 2018; 23 prisoners on 7 September 2018; and 23 prisoners on 17 September 2018. Therefore, the maximum number of prisoners had not been 26, as argued by the Government, but 27. He also argued that he had had less than 3 sq. m of personal space throughout his detention in Düzce T- type Prison, and had not had the benefit of any social, educational or cultural out-of-cell activities. The applicant argued that the photographs provided by the Government demonstrated the severity of the overcrowding. He also noted that the common area had not been sufficiently large to accommodate all 23-27 prisoners at the same time, so when food had been served it had become cold by the time he could eat it, which was a further aggravating factor in his view.

I. Application no. 16577/20 (Kahraman Yıldırım)

91. The applicant has been detained in Kocaeli no. 2 T-type Prison since 15 December 2016, and is currently a convicted prisoner.

92. On 9 July 2018 the applicant complained to the Kocaeli enforcement judge of overcrowding. He submitted that upon his arrival in Kocaeli no. 2 T- type Prison he had been placed in unit B-11, which had contained 20 to 25 prisoners, despite the fact that it had originally been designed to hold 8 prisoners. He noted that he had had 1.5 sq. m of personal space. He went on to add that on 5 February 2018 he had been transferred to unit A-22, which had originally been designed for 3 prisoners, but there too he had suffered from overcrowding because he had been detained with 16 other prisoners. Lastly, he noted that he had complained to the administration of Kocaeli no. 2 T-type Prison of overcrowding twice, but his complaints had gone unanswered. The applicant appended a decision of the prison administration of 13 June 2018, which had been rendered in respect of an overcrowding

complaint submitted by another inmate from unit A-22. In that decision, the prison administration had noted that the prison had 20 units designated for detainees charged with the offence with which the applicant had been charged, some with a capacity of 3 prisoners and others with a capacity of 16. However, the administration noted that 15 to 20 inmates were currently staying in 3-person rooms, and that there were around 26 to 28 inmates in 16- person rooms. In addition, the capacity of the prison was 1000, but currently 1600 prisoners were being held.

93. On 31 August 2018 the Kocaeli enforcement judge dismissed the applicant's complaint, referring to the surge in the prison population in the aftermath of the attempted coup, and also to the fact that it was not within the competence of the prison administration to decrease the prison population.

94. An individual appeal by the applicant to the Constitutional Court was dismissed as manifestly ill-founded, by reference to that court's case-law relating to Mehmet Hanifi Baki (see paragraphs 128-129 below).

95. The applicant complained before the Court of overcrowding and insufficient ventilation. The Government noted that over a three-year period at Kocaeli no. 2 T-type Prison the applicant had had a minimum of 3.87 sq. m of living space and a maximum of 14.05 sq. m. The cells in question had had windows, and prisoners had had at least 55 minutes per day on average to use the facilities. The Government submitted that the applicant had participated in an out-of-cell musical activity, without indicating its frequency or duration.

96. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
A-22	05/02/2018-11/02/2019	8	15	35	25	32	23.30	3.06	10.42	5.56	16
B-6	11/02/2019-05/04/2019	21	21	83	34	43.90	32	2.47	5.35	5.35	18
B-11	15/12/2016-05/02/2018	8	27	145	34	43.90	32	2.47	14.05	4.16	18
C-4	18/03/2021	25	26	75	34	43.90	32	2.47	4.49	4.32	18
C-5	05/04/2019-18/03/2021	19	29	58	34	43.90	32	2.47	5.91	3.87	18

97. The applicant's observations included photographs and a list of names of people he had been detained with in cell B-11. He also relied on the prison administration's decision of 13 June 2018, which showed the state of the overcrowding (see paragraph 92 above). He contested the figures supplied by the Government. The Government had submitted that cell B-11 had accommodated 8 people at least and 27 at most. However, the applicant stated that there had been 8 prisoners in the cell for only one week (the first week

commencing 15 December 2016), then the number of people in the cell had increased to 17; on 28 December 2016 it had increased to 24, and then on 25 April 2017 to 29. The applicant further submitted that there had been only 8 bunk beds, not 16, as submitted by the Government. He also took issue with the manner in which the Government had calculated surface areas. He noted that, in accordance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), sanitary facilities could not be included. In his view, the outdoor area of a cell should also not be included, since it was not available in the evening and at night. He also noted that the measurements of the living areas could not be verified. Moreover, the fact that the personal space of a prisoner in the dormitory alone was less than 1.5 sq. m should be taken into account. As regards cell A-22, he submitted that he had been detained for 372 days with 9 to 15 inmates. He submitted a photograph of the sanitary facilities in that cell, showing a squat toilet and a shower side by side without any separation, and stated that there had been long queues to use the sanitary facilities. There had not been 16 bunk beds in the cell, as submitted by the Government, but 6, and he had slept on the floor. He maintained that he had been detained in cell B-6 for 55 days with 21 to 24 inmates, and in cell C-5 for 714 days with 23 to 29 inmates. He submitted a photograph of the dormitory in that latter cell, featuring bunk beds placed next to each other without any space in between. He had been detained in cell C-4 for 134 days with 23 to 29 inmates. He stated that in cells C-4 and C-5 he had slept on the floor in between the bunk beds, and there had been no space to move around. In this connection, submitting a photograph of the sleeping arrangements in those cells, he pointed out a space in the centre of the room which was no bigger than a mattress and was surrounded by bunk beds placed next to one another with no gap in between. He also took issue with the way in which the Government had calculated the 55 minutes per day on average which each prisoner had taken to use the sanitary facilities. He indicated that the Government must have taken night-time into consideration, which was unreasonable, as inmates had had more need of the facilities during the day, when they had been active. The applicant also disagreed with the contention that the ventilation in the units had been sufficient; the ventilation in the units with 6 windows, which had accommodated 23 to 29 prisoners in one room, had been insufficient, and the night-time odour and lack of oxygen had been unbearable. Lastly, he challenged the Government's submissions which restricted the period complained of to three years, on the basis that he had been kept in overcrowded cells for 55 months. He asked the Court to take into account that he had not been allowed to participate in any out-of-cell activities during his detention, except for a period of two months when he had learned to play the *bağlama* (a type of guitar).

J. Application no. 18001/20 (Deniz Aktaş)

98. The applicant has been detained in Kocaeli no. 2 T-type Prison since 14 December 2016, and is currently a convicted prisoner.

99. On an unspecified date the applicant complained of the conditions of his detention to the administration of Kocaeli no. 2 T-type Prison. He noted that he had first been detained in cell B-11, which had originally been designed for 8 people, but he had been detained with 25 to 30 other prisoners. He submitted that he had been transferred to cell A-22, which was half the size of cell B-11 and had originally been designed for 3 people, but he had been detained in that cell with 16 prisoners, all sharing one sanitary facility. The prison administration forwarded the applicant's complaint to the Kocaeli enforcement judge, who subsequently requested observations from the prison administration. The prison administration observed that the prison's normal capacity was 1000 prisoners, but the current prison population was 1626 inmates; 28 to 30 convicts were detained in cells designed for 12 and 16 people, and 6 to 7 persons were detained in cells designed for 3 people. The prison administration submitted that as a result of overcrowding, many prisoners were sleeping on the floor. In order to manage the daily increase in the number of detainees, the administration periodically asked the Central Prison Authority to allow transfers to other prisons, but all of the cells in Kocaeli no. 2 T-type Prison were overcrowded. The applicant noted that the indication that 6 to 7 prisoners were detained in 3-person cells was a clerical error on the part of the prison administration. He submitted a decision of the same prison administration of 13 June 2018 in respect of one of his cellmates from cell A-22, in which it had acknowledged that 3-person cells were now holding 15 to 20 prisoners.

100. On 31 August 2018 the Kocaeli enforcement judge dismissed the applicant's complaint, noting that there was no practice whereby the number of convicted prisoners and detainees in a prison could be decreased.

101. On 4 November 2019 the Constitutional Court dismissed an individual appeal by the applicant regarding overcrowding, on the basis of its case-law relating to Mehmet Hanifi Baki (see paragraph 128-129 below).

102. During his detention in Kocaeli no. 2 T-type Prison, the applicant also lodged requests with the Central Prison Authority to be transferred to a prison near or in Ankara. Those requests were rejected on 12 March and 14 September 2018 respectively, on account of those prisons being unavailable because they lacked space.

103. The applicant complained to the Court under Article 3 of the Convention of overcrowding, having to sleep on a mattress on the floor, inadequate hygiene and having to queue for 45 minutes to use the toilets.

104. The Government submitted that at all times the applicant had had more than 4 sq. m of personal living space. As regards the alleged lack of hygiene, the Government noted that prisoners had been responsible for

keeping the cell clean and that rubbish had been collected three times a week. As regards the allegations that the lavatory facilities had been insufficient and, in particular, that prisoners had had to queue to use them, they noted that one squat toilet and a separate shower area had been available, and that the applicant had never had less than 55 minutes per day on average to use them. The Government did not submit any observations with respect to the applicant's complaint that he had slept on a mattress on the floor on a rota basis. Lastly, they submitted that the applicant had participated in an out-of-cell musical activity, without indicating its frequency or duration.

105. According to the Government, the surface area of the unit in sq. m and other relevant details were as follows:

Cell no.	Detention period	Min. number of detainees	Max. number of detainees	Days with max. number of detainees	Outdoor Yard	Dormitory	Common area	Sanitary facilities	Personal space with min. number of detainees	Personal space with max. number of detainees	Number of bunk beds
A-22	05/02/2018-11/02/2019	8	15	85	25	32	23.30	3.06	10.42	5.56	16
A-23	26/02/2021-29/03/2021	6	7	25	25	32	23.30	3.06	13.89	11.91	16
A-25	12/02/2021-26/02/2021	8	8	14	25	32	23.30	3.06	10.42	10.42	16
B-11	14/12/2016-05/02/2018	8	27	157	34	43.90	32	2.47	14.05	4.16	18
C-4	11/02/2019-12/02/2021 *and* 26/02/2021-29/03/2021	19	26	285	34	43.90	32	2.47	5.91	4.32	18

106. The applicant contested the measurements of the Government. He argued, without producing a supporting document, that on the website of the Central Prison Authority, 8-person cells in T-type prisons were defined as having a dormitory area of 28 sq. m, a common living area of 32.50 sq. m and an outdoor area of 35 sq. m. The applicant further argued that in their observations, the Government had submitted that the dormitory area in Kocaeli no. 1 T-type Prison, which was only 500 metres away from his prison, was 28 sq. m, despite the likelihood that both prisons had been constructed according to the same plan. He also contested the Government's indication as to the maximum number of people detained in cell B-11. Submitting a list of names of the people with whom he had shared that cell, he noted that in reality, the maximum number had been 29. He also contested that there had been 18 bunk beds, as argued by the Government. He stated that simple maths would demonstrate that it was impossible to put 18 bunks in the dormitory area. Submitting photographs, he argued that bunk beds had been pushed close together and a third mattress had been squeezed in between so that detainees could avoid sleeping on the floor. In another photograph, he

showed a mattress which was tied by ropes to the legs of the bunk beds surrounding it so that it would be lifted off the floor. He submitted that in reality, until 26 February 2021 there had been 8 bunk beds in cell B-11, and 8 bunk beds in cell C-4. On that date he had been released, but he noted that another bunk bed had been put in cell C-4, so there had been 9 bunk beds in total. He also argued that the outdoor yard should not have been included in the calculation of detainees' personal living space, noting that this space had not been available all the time, and sometimes had not been available at all owing to bad weather. Lastly, he submitted that one sanitary facility for 25 to 30 prisoners had been insufficient.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Law no. 5275 of 13 December 2004 on the enforcement of sentences and preventive measures

107. Law no. 5275 sets out the rules with respect to the enforcement of sentences and detention in prisons. It contains no specific provisions regarding placing remand prisoners in prisons. The situation is different for convicted prisoners. In accordance with sections 24, 49 and 69 of Law no. 5275, convicted prisoners are grouped and placed in prisons according to their age, sex, the length of the prison sentence imposed, the nature of the offence of which they have been convicted and other relevant criteria (see *X v. Turkey*, no. 24626/09, § 23, 9 October 2012). Apart from this, it must be noted that while the provisions set out in the law refer to "convicted prisoners", most of those provisions are applicable (save for section 54(1) below), *mutatis mutandis*, to remand prisoners in prisons, unless otherwise stated (section 116). Those provisions, in so far as relevant, read as follows:

Section 53(1)

Transfer types

"Convicted prisoners may be transferred to another institution at their own request, or for reasons relating to mass referral, discipline, order and security, illness, training, education, or the location of an offence or trial."

Section 54(1)

Transfer at the request of a convicted prisoner

"The following conditions must be fulfilled in order for a convicted prisoner to request a transfer to another institution:

(a) a request must be filed with the prison administration and indicate a choice of at least three ... prisons;

(b) [the prisoner must] consent to paying transfer fees in advance;

(c) [the prisoner must] have more than three months of imprisonment [left to serve];

(d) [the prisoner must] possess a good behavioural record and not have a[n active] disciplinary record;

(e) the institution requested must have space available ...

..."

Section 56

Transfer for compelling reasons

"Convicted prisoners may be transferred to other suitable prisons outside the jurisdiction area [of the trial court] which are determined by the Ministry of Justice, for compelling reasons such as security and order, natural disaster, fire, major repairs, a lack of space in the [prisoners'] current prison, or other significant reasons."

Section 63

Accommodation and bedding

"(1) A convicted prisoner who is considered dangerous shall be accommodated only in rooms for one or three persons, and other convicted prisoners shall be accommodated in rooms where a number of prisoners may be accommodated as determined by the prison administration, taking into account the physical structure, capacity and security requirements of the institution.

(2) Each convicted prisoner shall be provided with a standard bed and a sufficient amount of bedding suitable for the local climate.

...

(4) Considering the climatic conditions in the rooms and sections, sufficient space, light, heating, ventilation and hygiene must be ensured."

Section 67

Television and Radio

"(1) When there is a central broadcasting system in the prison, a convicted prisoner has the right to watch radio and television broadcasts which depend on this system.

(2) In prisons that are not equipped with a central broadcasting system, [a prisoner may] watch television and listen to the radio using independent antennas, and measures to prevent broadcasts which are not useful from being watched or listened to may be implemented. These devices are purchased by the institution on behalf of the convicted prisoner, on condition that the price [of the device] is paid by him or her.

...

(4) these rights may be restricted by the prison administration in respect of dangerous convicted prisoners and those who have been convicted of organised crime."

Section 87

Sports

"(1) In order to ensure the social, mental and physical development of convicted prisoners, they shall be allowed to participate in sports, physical education and entertaining activities as much as their physical and mental state of health allows, and the space and means [to do this] shall be provided to the extent possible.

(2) Convicted prisoners who do not work outdoors or who are in closed penal institutions shall be given the opportunity to walk around outdoors for at least one hour a day, in so far as weather conditions permit. During this time, [prisoners may] also participate in individual sports. Convicted prisoners in open penal institutions and children's education centres may participate in activities outside the institution."

Section 88

Library and Courses

"(1) A convicted prisoner may attend courses organised by the administration outside working hours and [at times] determined [by the administration], and may use the library. Programmes in this regard are determined by the management of the institution, taking into account the recommendations of experts and the wishes of the convicted prisoner.

..."

Section 113

Remand prisoners

"Depending on [room] availability, detainees shall be housed in separate rooms depending on the types of offences [of which they have been accused] and the security risk they present. Those who are on bad terms and those who were accomplices in committing an offence shall not be housed in the same rooms, and measures shall be taken to prevent them from contacting each other."

B. Law no. 4675 on Enforcement Judges

108. Sections 1 and 4 of Law no. 4675 give enforcement judges the power to rule on complaints concerning, *inter alia*, prison authorities' decisions or actions concerning the execution of sentences, including the placement, transfer and accommodation of convicted prisoners and remand prisoners in prisons or detention centres; prisoners' complaints with respect to heating, clothing, food, and hygiene; prisoners' physical health and mental well-being; the communication of detainees and prisoners with the outside world; and the imposition of disciplinary sanctions. Complaints may be lodged directly with the enforcement judge by way of a petition, or through the office of the public prosecutor or the administration of the prison or detention centre. Applications not lodged with the enforcement judge shall be sent to him or her at once, and within three days at most (section 6). Furthermore, section 6 provides that an enforcement judge must make a decision on the basis of the case file, after obtaining the written opinion of the relevant public prosecutor and without holding a hearing. The enforcement judge may conduct an examination *ex proprio motu* or request further information from the parties if the interests of justice so require. An objection against the decision of an enforcement judge may be lodged with the nearest assize court. An assize court examines objections on points of fact and law without holding a hearing, and its decisions are final.

C. Regulation no. 26131 on the management of prisons and the execution of sentences and preventive measures, published in the Official Gazette of 6 April 2006

109. In accordance with Regulation no. 26131, each prison has an administration and observation board ("the prison administration"), which is composed of the prison governor, the deputy governor, an administration officer, an in-house doctor, a psychologist, a social worker, a teacher, an enforcement officer and a technician chosen by the prison governor (section 34(1)). The powers of the prison administration are enumerated as follows:

Section 40(1)

"[The prison administration has the power]

(a) to group together convicted prisoners according to the types of offences [of which they have been convicted], with a view to determining the manner of execution of [their sentences] and the regime of rehabilitation appropriate to them;

(b) to determine the rooms in which convicted prisoners will be detained after their admission to [penal] institutions;

(c) to group together convicted prisoners who are detained in [penal] institutions;

(d) to change the rooms in which convicted prisoners are staying;

(e) to evaluate convicted prisoners' individual compliance with the rehabilitation programmes prepared by the psycho-social assistance service, and their results;

(f) to take decisions regarding the determination of which convicted prisoners are able to participate in activities where they have the benefit of sports fields, multipurpose rooms, libraries and business workshops within the scope of improvement programmes, and which convicted prisoners are to be employed in the internal services of the prison;

(g) to decide on the restriction of the right of convicted prisoners who are dangerous or who are members of an organisation to have telephone calls, [listen to] radio [broadcasts], [watch] television broadcasts and [use] internet facilities;

(h) to take decisions with respect to convicted prisoners who are in open prisons and who may participate in social, cultural and sports activities such as education, afforestation, landscaping and cleaning, assistance after natural disasters, [and] theatre activities outside of the prison;

(i) to determine the types and quantities of items that convicted prisoners detained in open institutions and educational centres can keep in their rooms and annexes;

(j) to take decision[s] on good conduct that will form the basis for [a prisoner's] conditional release and the regime to be applied as regards the execution of a sentence; [and]

(k) to fulfil other duties assigned by the legislation.

..."

110. In accordance with the regulation, prisoners are responsible for keeping their living quarters clean, and the prison administration provides them with the necessary materials.

D. Ministerial Circular no. 165 of 5 June 2015 on prison transfers

111. Despite the relevant provisions of Law no. 5275, which provide that only convicted prisoners may ask for transfers, Ministerial Circular no. 165 makes no such distinction, and states that remand prisoners may also ask to be transferred, subject to conditions.

E. Presidential Decree no. 1 on the Organisation of the Presidency, published in the Official Gazette on 10 July 2018

112. Section 43(1)(h) provides that the Central Prison Authority is the competent body to carry out transfers of convicted prisoners and remand prisoners.

F. Administrative Procedure Act (Law no. 2577)

113. Law no. 2577 provides for two types of actions before administrative courts: an action for annulment can be brought by anyone whose personal interests have been violated as a result of an unlawful administrative act, and an action for a full remedy can be brought by anyone seeking compensation as a direct result of an administrative act or action (section 2). Law no. 2577 also gives litigants the option to lodge an action for annulment first, and then an action for a full remedy (section 11).

II. RELEVANT PRACTICE OF DOMESTIC COURTS

114. The Government provided the Court with the following case-law examples with respect to domestic courts' practices.

A. The Court of Jurisdictional Disputes

Case of A.K. (E.2020/428; K.2020/653)

115. A remand prisoner in Kocaeli no. 2 T-type Prison brought an action for a full remedy before the Kocaeli Administrative Court, seeking compensation in respect of non-pecuniary damage on the basis that the prison administration had arbitrarily refused to let him accept gifts such as books, clothing and photographs which had been brought by his visitors. That court rejected the case on the grounds of a lack of jurisdiction, noting that enforcement judges were competent to rule on such claims on account of the powers granted to them under section 4 of Law no. 4675. In accordance with

that ruling, the prisoner in question lodged his claim with the Kocaeli enforcement judge. That judge rejected the case on the grounds of a lack of jurisdiction, noting that there was nothing arbitrary in the prison administration's practice of refusing to allow the offering of gifts during prison visits, in so far as security and order within the prison were concerned. As a result, the enforcement judge considered that the non-pecuniary damage allegedly suffered by the prisoner was not a matter which came under the jurisdiction of the ordinary courts, such as the execution of sentences and prison regimes, and therefore could only be the subject of an administrative law action. Following that ruling, the prisoner in question applied to the Court of Jurisdictional Disputes, with a view to seeking a ruling on which court had jurisdiction in respect of the case.

116. In a decision of 26 October 2020, the Court of Jurisdictional Disputes ruled that enforcement judges, or civil courts, under the umbrella of civil jurisdiction, were competent to rule on complaints against prison practices, on the basis of section 4 of Law no. 4675. Therefore, it set aside the Kocaeli enforcement judge's decision.

117. On remittal, the Kocaeli enforcement judge refused the case again on the grounds of a lack of jurisdiction. He noted that enforcement judges were competent to examine complaints against the decisions and practices of prison administrations, but could not rule on compensation claims. In that connection, he dismissed the prisoner's complaint that the prison administration's practice of not allowing the offering of gifts during visits was unlawful and arbitrary. He noted, on the contrary, that the practice was in accordance with the law and proportionate. However, he also noted that the litigant was free to seek compensation before a civil court for the losses he had allegedly suffered as a result of this practice, on the basis of general provisions rather than Article 141 of the Code of Criminal Procedure (unlawful pre-trial detention).

B. Administrative courts

1. Transfer requests

118. In the context of an appeal on points of fact and law with respect to two cases where prisoners had requested to be transferred to other prisons close to their families, the Ankara Regional Administrative Court quashed favourable decisions by first-instance administrative courts, noting that all the prisons to which those prisoners had requested to be transferred were operating beyond their capacity; the occupancy rates there ranged from 157% to 182%, and were higher than those in the prisons where the prisoners making the requests were currently held.[2] It therefore noted that the Central

[2] Decisions of 17 March 2021 E.2021/1220; K. 2021/861 and of 29 March 2021 E.2021/361; K. 2021/1071.

Prison Authority's decision to refuse the transfer requests had been in accordance with the law and public order.

2. Conditions of detention in prisons

(a) Case of F. Kayacan

119. The case concerned a remand prisoner's conditions of detention in Konya E-type Prison, where he was transferred on a temporary basis from Sincan F-type Prison on account of the former's proximity to the location of his trial. After an unspecified period of time he was transferred back to Sincan F-type Prison. He lodged a compensation claim with the Konya Administrative Court, submitting, *inter alia*, that he had been held in severely overcrowded and unhygienic conditions in Konya E-type Prison, that he had suffered health problems, and that as a result of overcrowding he had been deprived of the opportunity to prepare for his trial, because it had always been loud in the cell and prisoners did not have a quiet place to read and write. In a decision of 13 June 2019 the Konya Administrative Court dismissed the claim on the merits, finding firstly that the prison in question had an infirmary with a full-time general practitioner and a part-time dentist which was open 24 hours a day, and there was no information on file as to whether Mr Kayacan had developed health problems and whether he had sought to go to the infirmary. With respect to the overcrowding complaint, the court noted that there had been a surge in the prison population across the country, and this fact could not be imputed to prison administrations and staff, as it was something over which they had no control. With respect to the noise complaint, the court noted that Mr Kayacan had not asked to be moved to a solitary cell. Overall, the administrative court concluded that the conditions of his detention had not gone beyond that inevitable element of suffering and humiliation connected with detention. The decision became final on appeal, on 10 September 2020.

(b) Case of F.B. Okur

120. This case also concerned a remand prisoner's conditions of detention in Konya E-type Prison; her detention there lasted approximately one month until her release on acquittal. Ms Okur lodged a claim with the Minister of Justice for payment of a specific sum in respect of non-pecuniary damage which she had suffered in Konya E-type Prison and during her transfer to Ereğli Prison; she argued that she had been detained with 23 to 24 other prisoners in a cell originally designed for 4 prisoners and had had to sleep on a mattress on the floor on a rota basis, and sometimes she had even had to share a mattress with another prisoner. She further claimed that hot water had only been provided for 2 hours a day, which had been insufficient to meet the needs of all the prisoners. Furthermore, the cell had been infested with rats and insects, there had been no proper ventilation, and lights had been left on

24 hours a day. During her transfer to Ereğli Prison, she had had to travel while handcuffed in a van without any ventilation. When her claim was rejected, she lodged an action for annulment with the Konya Administrative Court. In a decision of 31 May 2019 the Konya Administrative Court dismissed the case, after requesting information from the Konya prison administration. The court firstly reiterated the principle that administrative authorities were required to compensate aggrieved parties for losses arising from fault or negligence on the part of authorities which provided a public service. In that connection, a prison administration could be held liable, provided that there was a causal connection between the loss and the service-related fault or failing. In that case, the administrative court noted that the unit in which Ms Okur had been detained in Konya E-type Prison had contained bunk beds for 4 prisoners, one toilet and one shower, as well as a kitchen counter and a sink. She had stayed in that unit for about a month, and the number of prisoners in the unit had ranged from 6 to 21. For a period of 5 consecutive days that unit's population had ranged from 16 to 18 prisoners, but then it had dropped to 6 prisoners, and for the remaining 19 days its population had been between 5 and 9 prisoners. The court further noted that Ms Okur had been provided with at least one hour of outdoor time per day, and that the prison administration carried out disinfection and pest control in the detention facility every month. As regards her complaint of degrading treatment experienced during her transfer to Ereğli Prison, the court noted that the journey had lasted two hours and according to the records before it, there had been no problem with the ventilation system of the van. The court went on to add that Ms Okur had not complained to the relevant enforcement judge, the public prosecutor or the Ministry of Justice of inadequate conditions of detention or her transfer, and therefore she had also failed to give the authorities the opportunity to investigate and address her complaints.

The decision became final on appeal, on 10 September 2020.

(c) Case of S. Ekim

121. This case concerned a prisoner's action for a full remedy; he claimed compensation in respect of non-pecuniary damage for a prison administration's decision not to allow him to participate in social and sports activities. The prisoner noted that he had firstly complained to the relevant enforcement judge, who had dismissed his claim; however, on appeal, the relevant assize court had set aside the prison administration's impugned decision. From that moment on he had been able to participate in social and sports activities. However, he maintained that he had suffered psychological distress during the 4 months when the restriction had been in place, and therefore requested compensation for unlawful acts of the prison administration. In a decision of 3 February 2020 the Bolu Administrative Court dismissed the case, noting that the circumstances of the case did not

call for an award of compensation, as the service fault in question had not been of sufficient gravity (*ağır hizmet kusuru*).

There is no information in the observations of the Government as to whether that decision became final.

(d) Case of M. Aydoğan

122. This case concerned a convicted prisoner's request for compensation on account of his permanent facial disfigurement due to an infection he caught in prison which was not treated in the correct medical facility, owing to a series of incoherent decisions taken by the prison administration. In a decision of 20 November 2017 the Bursa Administrative Court found that the administration had been responsible for a service fault because it had not ensured the prisoner's medical treatment at a facility recommended by doctors. Referring to the Court's judgments in the cases of *Mouisel v. France* (no. 67263/01, ECHR 2002-IX); *Sakkopoulos v. Greece* (no. 61828/00, 15 January 2004); *Mozer v. the Republic of Moldova and Russia* [GC] (no. 11138/10, 23 February 2016); *Aleksanyan v. Russia* (no. 46468/06, 22 December 2008); and *Elefteriadis v. Romania* (no. 38427/05, 25 January 2011), the Bursa Administrative Court further noted that the prisoner's suffering on account of the failure of the prison authorities to provide him with adequate medical care had amounted to a violation of Article 3 of the Convention, and ordered the administration to pay him compensation in respect of non-pecuniary damage.

There is no information in the observations of the Government as to whether that decision became final.

(e) Case of M. Yiğit

123. The case concerned an action for a full remedy brought by the father of a convicted prisoner who had died in prison on 7 April 2020 owing to a respiratory infection. In a decision of 2 June 2022 the Ordu Administrative Court noted that the prisoner in question had developed complications while being held in a multi-occupancy cell, and that the prison administration had transferred him to a public hospital where he had been hospitalised and had later died. The court further noted that there was a pending criminal investigation in respect of the first doctor who had examined the prisoner, and the question of fault-based liability could only be established in connection with the outcome of that investigation. Nevertheless, the State had positive obligations under Article 2 of the Convention to protect those under its care, such as prisoners, from risks to their lives, and irrespective of whether the risk to a person's life was caused by his or her actions. The Bursa Administrative Court therefore ordered the administration to pay compensation in respect of pecuniary and non-pecuniary damage on the basis of no-fault liability on the part of the State.

There is no information in the observations of the Government as to whether that decision became final or not.

3. Conditions of police custody

(a) Case of Cüneyt Durmaz

124. This case concerned the conditions of Mr Durmaz's detention in police custody. His detention lasted 9 days and he alleged, *inter alia*, that during that time he had been held in a room measuring 10 sq. m with 11 people. After his release he lodged an individual appeal with the Constitutional Court under Articles 3 and 13 of the Convention. While his appeal was pending before that court, he also lodged a criminal complaint with a public prosecutor's office, requesting that an investigation be carried out in respect of the police officers in question. The public prosecutor's office rejected the complaint, and that rejection was upheld by a magistrate's court. Mr Durmaz then filed an action for a full remedy with the Ankara Administrative Court, claiming compensation for the conditions of his detention in police custody; that court rejected the action for lack of jurisdiction.

125. After a decision by the Constitutional Court of 15 December 2021 (see paragraphs 134-135 below), the case was remitted to the Ankara Administrative Court. On 20 April 2022 the Ankara Administrative Court dismissed the case, finding Mr Durmaz's allegations unsubstantiated and in any event not supported by any evidence. The Ankara Administrative Court's ruling was upheld by the Ankara Regional Court in its decision of 23 November 2022.

(b) Case of S. Kaya

126. This case concerned a six-day period during which Mr S. Kaya had been held in police custody. He claimed that he had been held in degrading conditions which had included the unlawful use of handcuffs; inadequate ventilation, food and hygiene; and the confiscation of his mobile phone in the absence of the relevant safeguards. A first-instance court rejected his compensation claim for lack of jurisdiction, noting that police custody was within the remit of a public prosecutor in the context of an investigation which fell under the jurisdiction of the ordinary courts. Following an appeal by Mr S. Kaya, the Konya Regional Administrative Court quashed the first-instance's court ruling, noting that a distinction had to be made between acts by a public prosecutor in the context of an investigation which fell under the jurisdiction of the ordinary courts, and acts by administrative officers and/or public officers which went against the directions of the public prosecutor or were carried out without his knowledge or written instruction. According to the Konya Regional Administrative Court, the latter type of act could trigger the administration's liability and would therefore come under the jurisdiction

of administrative courts. The appeal court therefore remitted the case for reconsideration.

No information was provided with respect to the outcome of the remittal proceedings.

4. Conditions of detention in removal centres

127. The Government submitted case-law examples from different administrative courts in actions for a full remedy lodged by foreigners regarding the material conditions of their administrative detention in removal centres. The persons in question had complained of matters such as overcrowding, the quality of drinking water and food, hygiene conditions, passive smoking, and a lack of fresh air and outdoor time. At the time they had lodged their applications with the administrative courts, those litigants had no longer been in administrative detention, either because their detention had been declared unlawful by magistrates' courts or the Constitutional Court, or because they had already been deported. In decisions issued between 2020 and 2022 the administrative courts had observed that the Constitutional Court, contrary to its earlier case-law, had changed its position, starting with its decision of 30 November 2017 with respect to administrative courts being able to provide an effective remedy by granting compensation to those who complained of material conditions of detention in administrative detention centres. In those cases, regional administrative courts quashed the decisions of first-instance courts which had ruled that they lacked jurisdiction and remitted the cases to be considered on the merits. There were also two examples of rulings from first-instance courts which had awarded compensation in respect of non-pecuniary damage to litigants on account of the conditions of their administrative detention falling short of the standards of Article 3 of the Convention.[3] In their examination, those courts had relied on domestic audit reports as well as the CPT's findings.

C. The Constitutional Court

1. Case of Mehmet Hanifi Baki

128. The individual appeal in this case concerned complaints of overcrowding, insufficient access to hot water and a lack of ventilation brought by a remand prisoner who was held in Osmaniye no. 1 T-type Prison at the time of the events. The Osmaniye enforcement judge and the relevant assize court dismissed the prisoner's complaints on account of the surge in the prison population owing to the situation following the coup. The Constitutional Court requested information from the Osmaniye prison administration with respect to the material conditions of the units in which

[3] See decisions of 25 May 2022 and 23 June 2022 of the Bursa Administrative Court in the cases with docket numbers E.2021/657; K. 2022/527 E.2021/585; K. 2022/646, respectively.

Mr Baki had been held. Accordingly, the prison administration submitted that he had been detained in cell A-38, which had a total surface area of 106 sq. m, comprising a common area of 32.4 sq. m, a dormitory of 32.4 sq. m and an outdoor yard of 33.75 sq. m. The average population in that cell had been 25 prisoners, leaving each prisoner 4.25 sq. m of personal space. The cell had had 8 bunk beds and therefore 9 prisoners had had to sleep on mattresses on the floor, and in practice all prisoners had taken turns so that no one had been permanently obliged to sleep on the floor. However, the prison administration was unable to say how many days Mr Baki had spent sleeping on a mattress on the floor. The cell had one toilet, one shower and two washbasins, and accordingly prisoners had one hour a day on average to use the toilet and the shower, and two hours a day to use the washbasins. Hot water was provided for three hours a day on three days of the week and one hour for the other two days with 100 litres per prisoner. Moreover, 180 litres of water, which could be used for drinking or other purposes, were provided to each prisoner daily. The prison administration also noted that the outdoor yard was at the disposal of prisoners every day during daylight hours. However, it was acknowledged that the prison was nevertheless operating beyond its original capacity of 700 prisoners, and that it had had 1446 prisoners on 29 July 2017, but this number had dropped to 1055 at the time when this information had been provided to the Constitutional Court.

129. On 27 June 2018 the Constitutional Court dismissed the application as manifestly ill-founded. It noted at the outset that Mr Baki's complaints of the inadequate conditions of his detention were related to material conditions, more specifically overcrowding, and not any intentional treatment on the part of the authorities that could be characterised as degrading or ill-treatment. As regards insufficient hot water and a lack of ventilation, the Constitutional Court found that the allegations were unfounded, having regard to the information submitted by the prison authority in question. It also noted that prisoners were not subject to any restrictions with respect to the use of sanitary facilities, that the sanitary facilities were separated from the living quarters and therefore provided privacy, and that it had not been claimed that they were dirty or otherwise unsuitable for use. As regards ventilation and the use of the outdoor yard, the Constitutional Court considered that Mr Baki's complaint in that regard was related to overcrowding, inasmuch as he had complained that each prisoner's personal space in that area had been drastically reduced, as all the prisoners had wanted to use the outdoor space at the same time. The Constitutional Court found that the argument was not convincing, given that the outdoor yard was at the disposal of prisoners during daylight hours, which meant that not all prisoners had to use that space at the same time. As regards Mr Baki's complaint that he had had to take it in turns to sleep on a mattress on the floor and had not had a dedicated space in which to put his belongings on account of overcrowding, the Constitutional Court considered that the attempted coup of 15 July 2016 had resulted in a

sudden and unforeseeable increase in the prison population. Faced with this surge, the prison authorities had taken measures to increase the capacity of the cells by adding additional bunk beds and lockers and providing mattresses to be put on the floor. It was true that the situation had lasted a while, but the prison population had started to decrease as a result of transfers to other prisons and the release of some remand prisoners, it being understood that the situation was entirely due to the context following the coup. Furthermore, relying on the measurements and method of calculation submitted by the prison administration, the Constitutional Court noted that Mr Baki's living space had measured 4.25 sq. m, which it found to be an acceptable standard. While the prison administration had acknowledged that the prisoners in his unit had been taking it in turns to sleep on mattresses on the floor, the Constitutional Court did not find that this fact amounted to degrading or inhuman treatment, considering that there had been no allegation that Mr Baki had not had an individual and clean mattress for his own use, or that he had had to wait while others were sleeping. The situation had been described as prisoners sleeping on the floor on a rota basis rather than taking it in turns to sleep. Lastly, the court did not find that the fact that Mr Baki had not had a locker of his own was capable of raising an issue under Article 3 of the Convention. One of the judges of the Constitutional Court dissented, noting that in the present case the applicant had been in an overcrowded unit for more than a year, and that prisoners in that unit, including the applicant, had slept on the floor, sometimes even in front of the sanitary facilities, and this, in his view, constituted degrading treatment.

2. Case of İbrahim Kaptan

130. The individual appeal in this case concerned the restrictions in Menemen T-type Prison with respect to sports, social and educational activities for remand prisoners charged with FETÖ/PDY offences (see paragraph 7 above). Mr Kaptan unsuccessfully complained to the administration of Menemen T-type Prison and the relevant enforcement judge and assize court to set aside those restrictions, which, in his view, amounted to treatment contrary to Article 3 of the Convention. A year after he had lodged his individual appeal with the Constitutional Court, the prison administration put an end to those restrictions, having regard to the number of prisoners detained in relation to FETÖ/PDY charges at that time, their behaviour, and security and order in the prison.

131. In a decision of 18 July 2018 the Constitutional Court dismissed the individual appeal as manifestly ill-founded. The court firstly noted that the impugned measures, which had been taken in the aftermath of the coup, had not been contrary to domestic law, and given the large number of FETÖ/PDY remand prisoners at the time, they had been aimed at preventing potential communication in relation to terrorism, thereby ensuring the security of criminal investigations and preserving order and security in the prison. The

court noted that Mr Kaptan had not been able to participate in out-of-cell sports activities – which had otherwise been available to other remand prisoners not detained in connection with FETÖ/PDY charges – and had not been allowed to use the prison library. However, the Constitutional Court found that the restrictions had not met the minimum threshold of severity under Article 3 of the Convention, given that they had been temporary, lasting a little over two years, and that during that period Mr Kaptan could have at least one hour of outdoor time in the yard per day, and had not been restricted in obtaining books and periodicals from outside the prison.

3. Case of Müjdat Gürbüz

132. The individual appeal in this case concerned restrictions with respect to, *inter alia*, the taking or exchanging of photographs in the prison in question, and the covering of the outdoor yard with wire mesh suspended overhead. In a decision of 23 May 2018 the Constitutional Court found the relevant part of the complaint under Article 3 of the Convention inadmissible for being manifestly ill-founded, noting that the restrictions in question had been aimed at preventing potential communication between detainees and members of the terrorist organisation FETÖ/PDY inside and outside the prison.

4. Case of Hasan Çift

133. The individual appeal in this case concerned an overcrowding complaint brought by a remand prisoner. In a decision of 21 January 2021 the Constitutional Court observed that Mr Çift had raised his overcrowding complaint directly with the relevant enforcement judge, who had rejected the complaint because he had not complained to the prison administration first. In that connection, the Constitutional Court noted that the enforcement judge had forwarded his complaint to the prison administration, but Mr Çift had not followed up on his complaint and had instead lodged an individual appeal. Considering that the prison administration and subsequently the enforcement judge were better placed to improve the conditions of Mr Çift's detention, the Constitutional Court declared the appeal inadmissible on account of non-exhaustion of remedies.

5. Case of Cüneyt Durmaz no.2

134. The background of the case is summarised in paragraph 124 above; the case concerned Mr Durmaz's conditions of detention while he was in police custody for 9 days. On 15 December 2021 the Plenary of the Constitutional Court delivered its decision on the admissibility and merits of the case. The Constitutional Court firstly noted that while Mr Durmaz's individual appeal had been pending before it, the administrative courts had rejected his action for a full remedy on the grounds of a lack of jurisdiction.

In that connection, it noted that his complaint under Articles 3 and 13 of the inadequate conditions of his detention in police custody was two-fold: he had complained that there was no preventive remedy that would allow for any improvement in the conditions, and that there was no compensatory remedy that would provide compensation for the damage associated with such ill-treatment. Moreover, the Constitutional Court held that in the context of conditions of detention, in order to be considered effective, the domestic remedy in question had to be capable of ameliorating the conditions complained of, as well as providing the victim with an enforceable right to compensation for the damage that he or she had suffered because of those conditions. The court noted that preventive and compensatory remedies had to be complementary to be considered effective in this domain. In view of the special importance attached to the prohibition of ill-treatment, a remedy capable of rapidly bringing the ongoing violation to an end was of the greatest value and, indeed, indispensable. However, once the impugned situation had come to an end because that person had been released or placed in conditions that met the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that had already taken place. This would be the case, for example, when a person was released from police custody and placed in pre-trial detention in a detention centre or prison. The Constitutional Court noted that the use of a compensatory remedy would be considered sufficient in such circumstances, since it would be futile for an applicant to seek a preventive remedy, in view of the brevity of his or her detention in police custody, and in the event of the person's immediate transfer to pre-trial detention, a complaint before an enforcement judge could also be made should he or she consider the detention conditions in that place inadequate.

135. Having regard to the foregoing principles, the Constitutional Court reiterated that in an earlier case it had already deemed that an action for a full remedy before administrative courts was capable of providing an effective remedy for applicants who complained of their detention conditions in a police station. In so far as the management, supervision and operation of a police station constituted a public service, complaints of the inadequate material conditions of a police station and the public service provided therein were examined by administrative courts. However, given that Mr Durmaz's action for a full remedy had been rejected by the Ankara Administrative Court for lack of jurisdiction, the Constitutional Court held that it could not declare the case inadmissible on the grounds of non-exhaustion. By the same token, it found the administrative court's decision incorrect, and noted that the administrative court should have examined the case on the merits. It therefore held that there had been a violation of Article 3 in conjunction with Article 13 of the Convention and remitted the case for re-examination (see paragraph 125 above for a summary of the remittal proceedings before the Ankara Administrative Court).

III. RELEVANT INTERNATIONAL MATERIAL

136. In its report on a visit carried out in 2017 (CPT/Inf (2020) 22), the CPT made the following observations with respect to the prisons it had visited, which did not include the prisons where the applicants were held (footnotes omitted, emphasis in the original):

> "84. The size of Turkey's prison population has continued to grow at an alarming rate and, at the time of the 2017 visit, reached approximately 221,000, compared to some 132,000 at the time of the CPT's last periodic visit in 2013. In particular, the number of remand prisoners had risen from some 25,000 to 83,000 (i.e. about 38% of the total prison population). In the meantime, the official capacity of the prison estate had been increased to 202,676 places (as compared to 147,266 in 2013).
>
> In this context, the CPT is very concerned to note that most of the prisons visited during the 2017 visit were grossly overcrowded (see paragraphs 92 and 93). The overcrowding had a negative impact on many aspects of life in the establishments, often leading to extremely cramped accommodation, limited access to out-of-cell activities and overburdened health-care services.
>
> ...
>
> 92. The CPT was concerned to note that, in order to cope with the ever-increasing prison population, the dormitories in the aforementioned prisons were usually accommodating a much larger number of inmates than their original design capacity. This resulted in serious overcrowding in prisoner accommodation at Batman M-type Prison and Diyarbakır, Siirt and Trabzon E-type Prisons. By way of example, at Siirt Prison, a single-level dormitory measuring some 36 m2 was holding 19 inmates. At Batman, the delegation saw a dormitory of some 35 m2 (combined floor space of the two levels, excluding the sanitary annexe), which was accommodating 16 prisoners. Another dormitory in this prison, measuring some 75 m2, was holding 34 inmates.
>
> ...
>
> Furthermore, in each of the prisons visited, many dormitories were holding more prisoners than the number of beds available; as a result, inmates often had to sleep on mattresses placed on the concrete floor. Moreover, in some dormitories, there was not even a sufficient number of additional mattresses to provide every prisoner with an individual sleeping place. For instance, at Batman, the delegation saw a two-level dormitory with 33 prisoners, which was only equipped with 14 beds (in seven double bunks). The mattresses placed on the floor (including at the door to the sanitary annexe and under the staircase) on both levels provided for an additional 13 sleeping places. As there was no floor space left for more mattresses, six prisoners were obliged to take the 'day shift' in order to sleep.
>
> A number of other adverse effects of this state of affairs were also in evidence (e.g. insufficient numbers of chairs, tables and lockers; 30 to 40 inmates having to share one toilet; etc.). It should be highlighted that the deleterious effects of overcrowding were further exacerbated after the locking of the courtyard door in the evening as well as during inclement weather.
>
> 93. In the CPT's view, such a state of affairs is not in compliance with the State's duty of care *vis-à-vis* persons it has deprived of their liberty, which includes the obligation to provide them with adequate living conditions and it can easily raise issues under Article 3 of the European Convention on Human Rights (inhuman and degrading treatment).

...

95. In each of the prisons visited, the delegation received many complaints from inmates that they had to pay for bed linen as well as for basic hygiene items and cleaning products for their dormitories, while the vast majority of them did not have any opportunity to earn money in prison. The delegation also noted that, at Diyarbakır and Trabzon E-type Prisons, in-cell showers were not functioning and prisoners had to wash themselves with water collected in buckets. Further, at Siirt and Trabzon, hot water was only available once or twice a week for a couple of hours (during which prisoners had to wash themselves and their clothes), which posed a particular problem in dormitories with large numbers of inmates.

The CPT recommends that steps be taken in the establishments visited and, where appropriate, in other prisons in Turkey to ensure that all prisoners are provided free of charge with bed linen as well as with essential personal hygiene items (including sanitary towels for women) and materials for cleaning their dormitories. Steps should also be taken at Diyarbakır, Siirt and Trabzon E-type Prisons to ensure that prisoners are able to take a hot shower at least twice a week.

...

99. One of the negative consequences of overcrowding in the prisons visited was reduced communal activities provided to inmates. With the exception of a small number of prisoners working in the establishments' general services (kitchen, food distribution, etc.), as well as in workshops available in some of the prisons, hardly any purposeful out-of-cell activities were offered to inmates, apart from one-hour sports sessions which took place at best three times a month and a limited range of vocational courses. Moreover, at Batman M-type Prison and Diyarbakır, Siirt and Trabzon E-type Prisons, inmates accused or convicted of offences related to terrorism were generally not allowed to engage in any kind of organised communal activity.

...

101. ... *The CPT calls upon the Turkish authorities to take steps at Batman M-type Prison, Diyarbakır D- and E-type Prisons and Siirt and Trabzon E-type Prisons (and in all other prisons in Turkey where a similar situation prevails) to improve substantially the regime of activities for all inmates, regardless of their legal status and criminal charges involved. The aim should be to ensure that all prisoners are able to spend a reasonable part of the day outside their dormitory, engaged in purposeful activities of a varied nature (such as work, preferably with vocational value, education and sport).*"

137. Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006, at the 952nd meeting of the Ministers' Deputies and revised and amended by the Committee of Ministers on 1 July 2020 at the 1380th meeting of the Ministers' Deputies, in so far as relevant at the time of the present cases, reads as follows:

"Part II

Conditions of imprisonment

...

Allocation and accommodation

17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

17.2 Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.

17.3 As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.

18.1. The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2. In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3. Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

18.4. National law shall provide mechanisms for ensuring that these minimum requirements are not breached by the overcrowding of prisons.

18.5. Prisoners shall normally be accommodated during the night in individual cells except where it is preferable for them to share sleeping accommodation.

18.6. Accommodation shall only be shared if it is suitable for this purpose and shall be occupied by prisoners suitable to associate with each other.

18.7. As far as possible, prisoners shall be given a choice before being required to share sleeping accommodation.

18.8. In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

a. untried prisoners separately from sentenced prisoners;

b. male prisoners separately from females; and

c. young adult prisoners separately from older prisoners.

18.9. Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

18.10. Accommodation of all prisoners shall be in conditions with the least restrictive security arrangements compatible with the risk of their escaping or harming themselves or others.

Hygiene

19.1 All parts of every prison shall be properly maintained and kept clean at all times.

19.2 When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4 Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5 Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6 The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.

...

Clothing and bedding

...

21. Every prisoner shall be provided with a separate bed and separate and appropriate bedding, which shall be kept in good order and changed often enough to ensure its cleanliness.

...

Prison regime

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction.

25.3 This regime shall also provide for the welfare needs of prisoners.

...

Work

26.1 Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.

26.2 Prison authorities shall strive to provide sufficient work of a useful nature.

...

Exercise and recreation

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities.

Education

28.1 Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

..."

THE LAW

I. JOINDER OF THE APPLICATIONS

138. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

139. In their observations submitted in respect of applications nos. 5885/20 and 18001/20, the Government argued that the applicants in those cases had failed to appoint a representative, and unless the President of the Section had granted leave to those applicants to represent themselves before the Court, the Court should not examine their cases. Accordingly, the Government invited the Court to strike the applications out of its list of cases, under Article 37 § 1 (a) of the Convention.

140. The Court notes that at the time the Government were given notice of the applications, the President of the Section granted leave to the applicants who were not represented by a lawyer to present their own case before the Court, in application of Rule 36 § 3 of the Rules of Court. That being the case, the objection raised by the Government must be dismissed.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

141. The applicants complained that their conditions of detention in the relevant prisons had violated their right not to be subjected to inhuman or degrading treatment, as provided for in Article 3 of the Convention, which reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. Exhaustion of domestic remedies

142. The Government raised a number of objections regarding non-exhaustion of domestic remedies.

(a) Failure to make a complaint to the prison administration board in respect of applications nos. 5885/20, 7540/20 and 16577/20

(i) The parties' submissions

143. The Government argued that inasmuch as the applicants Ruhi Hallaçoğlu, Aşkın Şanlı and Kahraman Yıldırım had not raised their complaints before the respective prison administrations first, but had instead lodged their complaints directly with enforcement judges, their applications should be declared inadmissible for non-exhaustion of domestic remedies. In this connection, they referred to the Constitutional Court's case-law in this regard (see paragraph 133 above).

144. The applicant Kahraman Yıldırım disagreed with the Government, arguing that he had in fact complained of overcrowding to the relevant prison administration first, but since it had not responded, he had lodged a complaint with the enforcement judge, who had examined his complaint on the merits. Likewise, the Constitutional Court had not relied on its case-law relating to Hasan Çift, but had declared his application inadmissible as manifestly ill-founded, with reference to Mehmet Hanifi Baki.

The other applicants did not comment on this point.

(ii) The Court's assessment

145. The Court refers to the general principles on the exhaustion of domestic remedies set out in the cases of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Gherghina v. Romania* ([GC] (dec.), no. 42219/07, §§ 83-88, 9 July 2015).

146. The Court reiterates that, whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it normally requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic courts, at least in substance and in compliance with the formal requirements and time-limits laid down in the domestic law. However, non-exhaustion of domestic remedies cannot be held against an applicant if, in spite of his or her failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the

complaint (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010, and *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 53, 20 January 2020). As a rule, it would be unduly formalistic to require applicants to exercise a remedy which the relevant domestic authorities would not oblige them to exhaust (see *Vučković and Others*, cited above, § 76, and *Ulemek v. Croatia*, no. 21613/16, § 77, 31 October 2019).

147. In the present cases, the Court notes that the applicants in question raised their complaints regarding their detention conditions before the relevant enforcement judge and assize court, and then finally before the Constitutional Court. None of those domestic courts considered that the applicants had not complied with the requirement to first raise a complaint with the prison administration. Moreover, all of those domestic courts examined the substance of the applicants' complaints. In these circumstances, it cannot be said that the applicants failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention. It follows that this part of the Government's objection must be dismissed.

(b) Failure to make a complaint to the prison administration board and the enforcement judge in application no. 6489/20

(i) The parties' submissions

148. In respect of the applicant Davut Tek, the Government argued that he had not complained to the prison administration board and the enforcement judge of the conditions of his detention, specifically the alleged overcrowding, but had instead lodged a criminal complaint with a public prosecutor. They submitted that a criminal complaint was not an effective remedy in this context. In their view, the fact that the Constitutional Court had rejected the applicant's individual appeal with reference to the case of Müjdat Gürbüz, which did not concern overcrowding, was further proof that the applicant had failed to raise his complaint under Article 3 of the Convention correctly at national level.

149. The applicant submitted that he had duly lodged a criminal complaint with the Nevşehir public prosecutor, complaining of the inhuman treatment he had suffered during his admission process at Nevşehir E-Type Prison and the overcrowding in cell C-11. Neither the public prosecutor nor the magistrate's court had refused his complaint on the grounds of a lack of jurisdiction. Furthermore, the Constitutional Court had examined his complaint in its decision regarding Article 3 of the Convention and had not found it inadmissible for non-exhaustion of remedies. Lastly, the applicant argued that the Government had not demonstrated the effectiveness of a complaint to an enforcement judge by producing a ruling by an enforcement judge which had redressed a complaint relating to overcrowding.

(ii) The Court's assessment

150. The Court reiterates that the only remedies to be exhausted are those which are effective. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 94, 10 January 2012).

151. With respect to complaints under Article 3 of inhuman or degrading conditions of detention, two types of relief are possible: improvement in these conditions and compensation for any damage sustained as a result of them. Therefore, for a person held in such conditions, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under Article 3. However, once the impugned situation has come to an end because this person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place. In other words, in this domain, preventive and compensatory remedies have to be complementary to be considered effective (ibid., §§ 96-98 and 214).

152. The Court notes at the outset that the applicant Davut Tek, unlike the remaining applicants, did not make use of the complaints procedure before the relevant enforcement judge, but lodged a criminal complaint with the public prosecutor with respect to his overcrowding complaint. Following the dismissal of his complaint, he lodged an individual appeal with the Constitutional Court, which declared his complaint manifestly ill-founded on the basis of its case-law relating to Müjdat Gürbüz. The Court therefore notes that none of the domestic courts examining the substance of the applicant's complaint made a finding to the effect that he had pursued a futile remedy.

153. While the Government argued that the complaints procedure before an enforcement judge was the effective preventive domestic remedy in this context, the Court is not convinced of its effectiveness in practice. Firstly, as the decisions rendered by the relevant enforcement judges in the applicants' cases demonstrate, the enforcement judges considered that it was not within a prison administration's purview to decrease the prison population, and that moreover the overcrowding situation stemmed from the systemic problem related to the surge in the prison population following the coup, it being understood that transferring prisoners to another cell or another detention facility – as set out in the legislation (see paragraphs 107; 108 and 111-112 above) – was not viable. In any event, the Court observes that where the nature of overcrowding stems from a systemic issue and authorities are faced

with a large number of simultaneous requests, measures which assist only individual complainants at the expense and to the detriment of other detainees, rather than addressing the system as a whole, may not be considered effective (see, *mutatis mutandis*, *Ananyev and Others*, cited above, § 111; *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, § 63, 10 March 2015; *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, § 104, 8 December 2015; and *Torreggiani and Others v. Italy*, nos. 43517/09 and 6 others, § 54, 8 January 2013; compare and contrast *Stella and Others v. Italy* (dec.), nos. 49169/09, and ten others, §§ 50-52, 16 September 2014). Secondly, whilst the national legislation allowed enforcement judges to take decisions with respect to prisoners' accommodation, transfers and other material conditions of detention, it did not contain a specific minimum standard with respect to floor space which would allow enforcement judges to assess in concrete terms whether prisoners had adequate living space in the light of other cumulative conditions (see Rule 18.3 and 18.4 of the European Prison Rules in paragraph 137 above, and *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 203, 27 January 2015). Thirdly, the Government have not provided the Court with examples of decisions of an enforcement judge offering relief in this particular context, when the nature of the problem stemmed from the sudden and unexpected surge in the prison population due to the high number of arrests related to the coup attempt of July 2016 and was therefore systemic. In these circumstances, the Court considers that the complaints procedure before an enforcement judge, which it has previously considered to be an accessible remedy and *a priori* capable of providing redress for inadequate material conditions of detention (see *Sakin v. Turkey* (dec.), no. 20616/13, §§ 33-35, 28 June 2016), proved ineffective in the circumstances pertaining to the present applicants. In view of this finding, and having further regard to the Constitutional Court's conclusion (see paragraph 41 above), the applicant Davut Tek's application cannot be declared inadmissible on account of his failure to make use of the complaints procedure before an enforcement judge.

(c) The applicants' failure to apply to civil or administrative courts for compensation

(i) The parties' submissions

154. The Government initially argued that the applicants had not sought compensation from civil courts of general jurisdiction in respect of damage resulting from prison practices. To prove the effectiveness of that remedy, they referred to the judgment of the Court of Jurisdictional Disputes in the case of A.K. (see paragraphs 115-117 above), which concerned a claim relating to the allegedly arbitrary practice of a prison administration with respect to the offering of gifts during prison visits. According to the Government, the absence of a civil court's decision awarding compensation was not indicative of that remedy's ineffectiveness in practice. What was

decisive, in their view, was the finding by the Court of Jurisdictional Disputes that civil courts had jurisdiction to examine claims with respect to prison practices and award damages where such claims were well-founded.

155. In their further observations, the Government argued that the applicants had also failed to bring actions for a full remedy before administrative courts. To prove the effectiveness of that remedy, they relied on the Constitutional Court's decision in the case of Cüneyt Durmaz (no. 2) (see paragraphs 134-135 above), as well as decisions of administrative courts given in similar contexts (see paragraphs 118-127). Relying on the cases of *Mironovas and Others* (cited above, § 85), and *Ščensnovičius v. Lithuania* (no. 62663/13, §§ 71-73, 10 July 2018), as well as the principle of subsidiarity, the Government further argued that once the impugned situation had come to an end because a person had been released or placed in conditions that met the requirements of Article 3, he or she should use a compensatory remedy. In that connection, they noted that the applicants Ahmet İlerde, Davut Tek, Kemalettin Erel and Harun Altun had not been detained in the relevant prisons at the time of lodging their complaints with the Court. However, they had not attempted to seek compensation before administrative courts. As for the remaining applicants, the Government considered that they too should have attempted to make use of actions for a full remedy before administrative courts, because by the time their applications had been lodged with the Court, and in any event when their applications had been pending before the Court, either the material conditions of their detention had improved, or, for those who had been convicted, their detention regime had changed to that of convicted prisoners.

156. The applicants maintained that they had used all available remedies, including an individual appeal before the Constitutional Court, but they had not been effective. Furthermore, they considered the Government's argument to the effect that both civil courts of general jurisdiction and administrative courts had jurisdiction to grant compensatory relief in this context was inconsistent and confused, and in any event indicative of ambiguity in domestic practice. The applicants further submitted that the Constitutional Court's decision in the case of Cüneyt Durmaz no. 2, which required persons detained in allegedly inadequate conditions of detention in police custody to bring an action for a full remedy before administrative courts, was strictly related to conditions of detention in police custody, where the brevity of the period of detention rendered the pursuit of a preventive remedy redundant. However, their cases concerned longer periods of detention and, more importantly, their objective throughout the domestic proceedings had been to obtain a preventive remedy in order to put a stop to the ongoing violations. Moreover, even if the Constitutional Court's decision in the case of Cüneyt Durmaz no. 2 were to be regarded as setting a new precedent in domestic practice in this regard, it could not apply to their situation, because that decision had been rendered after they had lodged their applications with the

Court. Lastly, they noted that the Constitutional Court had dismissed their individual appeals regarding the inadequate conditions of their detention as manifestly ill-founded. After those decisions by the Constitutional Court, none of the domestic courts could grant them compensation.

(ii) The Court's assessment

(α) General Principles

157. The Court reiterates that where the fundamental right to protection against torture and inhuman and degrading treatment is concerned, preventive and compensatory remedies must be complementary in order to be considered effective. The existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 of the Convention. Indeed, the particular importance attached by the Convention to that provision requires, in the Court's view, that the States Parties establish, over and above a compensatory remedy, an effective mechanism in order to put a rapid end to any such treatment. Were it otherwise, the prospect of future compensation would legitimise particularly severe suffering in breach of this core provision of the Convention (see *Ananyev and Others*, cited above, § 98, and *Yarashonen v. Turkey*, no. 72710/11, § 61, 24 June 2014).

158. In this context, the Court reiterates that for a person held in conditions incompatible with the requirements of Article 3 of the Convention, a remedy capable of rapidly bringing the ongoing violation to an end is of the greatest value and, indeed, indispensable in view of the special importance attached to the right under that Article. However, once the impugned situation has come to an end because this person has been released or placed in conditions that meet the requirements of Article 3, he or she should have an enforceable right to compensation for any breach that has already taken place (see *Neshkov and Others*, § 181, and *Ulemek*, § 71, both cited above).

159. For the purposes of the exhaustion of domestic remedies under Article 35 of the Convention, the Court has held that, in the absence of a preventive remedy providing for an effective avenue which the applicants could and should have used during their detention, the use of a compensatory remedy after unsatisfactory conditions of detention have ended is normally an effective remedy (see, for example, *Bizjak v. Slovenia* (dec.), no. 25516/12, § 28, 8 July 2014, and *J.M.B. and Others v. France*, nos. 9671/15 and 31 others, § 163, 30 January 2020). However, where an effective preventive remedy has been established, applicants in detention, as a rule, cannot be dispensed from the obligation to use it. In other words, before bringing their complaints to the Court, they are first required to properly use the available and effective preventive remedy and then, if appropriate, the relevant compensatory remedy (see *Sukachov v. Ukraine*, no. 14057/17, § 113, 30 January 2020, and *Ulemek*, cited above, §§ 86-88).

160. The Court further reiterates that the issue of whether domestic remedies have been exhausted is normally determined by reference to the date when the application was lodged with the Court (see *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts)). In this connection, the situation of a person who was detained under circumstances which he or she deemed contrary to Article 3 of the Convention and who apprised the Court after his or her release is different from the situation of an individual who is still in detention and under the circumstances of which he or she complains (see *Igbo and Others v. Greece*, no. 60042/13, § 28, 9 February 2017). The Court's case-law in this area indicates that where an applicant complains that he or she was detained in breach of domestic law and where the detention has come to an end, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy which needs to be pursued if its effectiveness in practice has been convincingly established (see, among other authorities, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 207-8, 22 December 2020).

(β) Application of those principles

161. Turning to the present cases, the Court notes at the outset that there is confusion in domestic law and practice as to which type of proceedings – administrative or civil – are to be pursued when lodging a compensation claim against the prison authorities. On the one hand, the Court of Jurisdictional Disputes held that civil courts of general jurisdiction were competent to examine compensation claims against the acts of prison authorities (see paragraphs 115-117 above), whereas, on the other hand, a number of administrative courts have examined various claims – some including allegations of overcrowding – in situations where claimants had been deprived of their liberty (see paragraphs 118-127 above). Moreover, the Constitutional Court considers that administrative courts can award compensation *ex post facto* in the context of administrative detention and police custody. Be that as it may, to be considered effective, the remedy in question must lead to the improvement of the situation and not only compensation for the damage sustained, except where the brevity of an applicant's stay in inadequate conditions of detention renders the preventive effect futile (see *Orchowski v. Poland*, no. 17885/04, § 108; *Torreggiani and Others*, cited above, § 50; *Vasilescu v. Belgium*, no. 64682/12, § 70 and § 128, 25 November 2014; and *Ulemek*, cited above, § 88). Thus, irrespective of whether civil or administrative courts are competent to examine compensation claims with respect to conditions of detention, the Court observes that the compensatory remedy in question does not have a preventive component, in the sense that it does not lead to the improvement of the conditions of detention of those claimants who continue to be detained in such conditions; it was not demonstrated before the Court that the domestic

courts – whether civil courts of general jurisction or administrative courts – imposed (or could impose) immediate measures in the form of injunctions or otherwise in order to change a situation (see *Orchowski*, cited above, § 108; see also, *mutatis mutandis*, *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, § 114, 20 October 2011, and *Singh and Others v. Greece*, no. 60041/13, § 37, 19 January 2017).

162. Given that the applicants, except for Ahmet İlerde, Davut Tek, Kemalettin Erel and Harun Altun, were still detained in allegedly inadequate conditions in the relevant prisons at the time of their applications to the Court, the Court finds that the institution of compensation proceedings could not have remedied their situation.

163. As regards those applicants who were no longer detained at the time of their applications to the Court, the use of a compensatory remedy would only have been required if such a remedy had been effective at the relevant time. In this respect the Court notes that the Government have not demonstrated the existence of any settled domestic practice regarding such compensatory remedy before civil courts of general jurisdiction, but was able to mention only one case, a case which does not relate strictly to material conditions of detention. The Court is therefore not convinced that the remedy in question was effective in the circumstances of these applicants' cases.

164. As regards an action for a full remedy before an administrative court (see paragraphs 118-127 above), the Court notes that the examples cited by the Government, which related to compensation claims before administrative courts about material conditions of detention, are from 2019-2021 and postdate the facts of the cases and the dates when the applications were lodged with the Court. However, the Court reiterates that for a remedy to be considered effective in practice, the case-law examples provided by the Government must in principle be well established and date back to the period before the application was lodged. More importantly, the administrative courts in the cases cited by the Government appeared to make a distinction between fault-based liability and no-fault liability (see also *Salih Çellik* (dec.), no. 62349/11, § 12 and § 21, 10 September 2019) and refused compensation when they identified the problem as stemming from a systemic issue (see, in particular, the example in paragraph 119 above). However, the Court has noted that for a compensatory remedy to be effective in relation to overcrowding in particular, claimants should not be required to establish that specific officials have engaged in unlawful conduct. Poor conditions of detention are not necessarily due to the failings of individual officials, but are often the product of more wide-ranging factors (see *Neshkov and Others*, cited above, § 184), especially when the nature of the problem is systemic, as in the present applications. Therefore, the requirement of administrative courts that an award of compensation be conditional on the existence of a service fault on the part of the administration is ill-suited in this context. Also, it does not appear that when examining claims of this type, the administrative

courts in question reviewed the facts in accordance with the principles and standards laid down by this Court in its case-law (see *Muršić v. Croatia* ([GC], no. 7334/13, §§ 137-41, 20 October 2016). The Court refers to its findings in paragraph 153 regarding the absence of a concrete domestic rule governing the minimum floor space per prisoner, an absence which appears to have contributed to administrative courts deviating from the Court's case-law principles with respect to the methodology for assessing overcrowding complaints. To illustrate this point, in the example provided by the Government regarding a compensation case concerning conditions of detention involving alleged overcrowding, the administrative court did not calculate the amount of floor space that had been available to that claimant, and therefore failed to conduct an examination based on such an amount, taken alone or together with other aspects of detention, in order to determine whether there had been a violation of Article 3 (see paragraph 120 above). In view of these combined shortcomings, the Court concludes that a compensation claim before administrative courts could not be considered effective in the circumstances of the present applicants' cases.

165. Lastly, the Court reiterates that the applicants' complaints as to the conditions of their detention were initially raised with a view to obtaining preventive relief before the first-instance courts, and subsequently before the Constitutional Court. None of those courts explicitly or implicitly acknowledged that the conditions of detention had been inadequate with respect to Article 3 of the Convention. Accordingly, in the light of the decisions given by the national courts, in particular the Constitutional Court, which held that the relevant complaints were manifestly ill-founded, the Court considers that a compensation claim before the administrative courts was bound to fail (see, *mutatis mutandis*, *Selahattin Demirtaş (no. 2)*, cited above, § 210).

2. Other grounds of inadmissibility

166. The Government considered the applications of those applicants whose living space had been more than 4 sq. m to be manifestly ill-founded and maintained that the other material conditions of their detention had not attained the threshold of severity under Article 3 of the Convention.

167. In the Court's view, the Government's preliminary objection essentially relates to the merits of the case. The Court also finds that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

168. The parties maintained their accounts as summarised in paragraphs 11-106 above.

2. The Court's assessment

(a) General principles

169. The Court notes that the relevant principles of its case-law in relation to overcrowding were recently set out in *Muršić* (cited above, §§ 137-41). In particular, when the personal space available to a detainee falls below 3 sq. m of floor surface in multi-occupancy accommodation in prisons, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises (ibid., § 137). The burden of proof is on the respondent Government, who could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space (ibid., §§ 137-138). The strong presumption of a violation of Article 3 will normally be capable of being rebutted only if the following factors are cumulatively met:

(1) the reductions in the required minimum personal space of 3 sq. m were short, occasional and minor;

(2) such periods were accompanied by sufficient freedom of movement outside the cell and adequate out-of-cell activities; and

(3) the applicant was confined in a detention facility that could generally be described as appropriate, and there were no other aggravating aspects of the conditions of his or her detention (ibid., § 138).

170. In cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue, the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances, a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention (ibid., § 139). Where a detainee had at his or her disposal more than 4 sq. m of personal space in multi-occupancy accommodation in prison, and where therefore no issue with regard to the question of personal space arises, other aspects of physical conditions of detention remain relevant for the Court's assessment of the adequacy of an applicant's conditions of detention under Article 3 of the Convention (ibid., § 140). Those aspects include access to outdoor exercise, natural light or air, availability of ventilation, adequacy of heating arrangements, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements. The length of an individual's detention under specified conditions must also be taken into account (see, for example, *Story and Others v. Malta*, nos. 56854/13 and 2 others, §§ 112-113, 29 October 2015).

171. In particular, the Court has on many occasions held that a period of outdoor exercise which is very short constitutes a factor which worsens an applicant's situation, confined as he is to his cell for the remainder of the day with no freedom of movement (see, for example, *Canali v. France*, no. 40119/09, § 50, 25 April 2013). In *Ananyev and Others* (cited above, §§ 150-152) the Court referred to the relevant CPT standards, in accordance with which all prisoners, without exception, must be allowed at least one hour of exercise in the open air every day, and preferably as part of a broader programme of out-of-cell activities, bearing in mind that outdoor exercise facilities should be reasonably spacious and, whenever possible, offer shelter from inclement weather. In this connection, the Court found that a yard which was just two sq. m larger than the cells, surrounded by three-metre-high walls and covered by metal bars and a thick net suspended overhead did not afford any real possibility for exercise (see *Moiseyev v. Russia*, no. 62936/00, § 125, 9 October 2008, and *Sukachov*, cited above, § 94, regarding the size of the exercise yard; and contrast with *Muršić*, cited above, §§161-163, where the Court noted that an outdoor recreation area – measuring 305 sq. m and including a lawn, areas of asphalt and protection from inclement weather, and equipped with various recreational facilities such as a gym, a basketball court and a ping-pong table – was spacious and appropriate, and therefore took this as a factor capable of significantly alleviating the impact of the scarce allocation of personal space). Indeed, in accordance with the relevant international standards, prisoners should be able to spend a reasonable part of the day outside their cells, engaged in purposeful activity of a varied nature (work, recreation, education). Regimes in establishments for sentenced prisoners should be even more favourable (see *Muršić,* cited above, § 133, with further references). As regards sanitary and hygiene facilities, the Court reiterates that access to decent toilets when required and the maintenance of proper conditions of hygiene are of paramount importance for human dignity, and that inmates should have ready access to sanitation which protects their privacy (see *Ananyev and Others*, cited above, §§ 156-157).

172. Lastly, for the purposes of its assessment under Article 3, the Court finds it important to clarify the methodology for calculating the minimum personal space allocated to a detainee in multi-occupancy accommodation. Drawing from the CPT's methodology on the matter, the Court considers that an in-cell sanitary facility should not be counted in the overall surface area of a cell. On the other hand, the calculation of the available surface area in the cell should include the space occupied by furniture. What is important in this assessment is whether detainees could move around within the cell normally (see *Muršić*, cited above, § 114).

(b) Application of those principles

173. In the present cases, the Court notes that the methodology for calculating the floor space in cells and the figures submitted by the

Government are disputed by some of the applicants. Furthermore, the number of detainees in the cells occupied by the applicants was indicated by the Government's references to the minimum and maximum number of detainees, but those figures were not supported by a prison register and the periods when the number of inmates was below the maximum number were not indicated. Moreover, information provided by the Government as regards the participation of some applicants in educational, sports and cultural out-of-cell activities was not supported by documentary evidence. Likewise, the Government did not furnish the Court with floor plans with respect to the prisons in question, except for Menemen T-Type and Kocaeli no. 2 T-type Prisons. The Court further notes that there are no CPT reports with respect to the specific prisons in question. At the same time, domestic authorities in the present cases acknowledged that those prisons were operating beyond their capacity, and CPT reports with respect to prisons that are not the subject of the present applications noted the general problem of overcrowding in the aftermath of the attempted coup. Lastly, as regards the submissions of certain applicants disputing the measurements provided by the Government, the Court notes that they are not precise and are not based on objective and concordant proof. Therefore, they are also not sufficient for the Court to set aside the information provided by the Government. Despite these shortcomings, the Court has sufficient material before it to decide the cases.

174. The Court firstly has to determine the methodology for calculating floor space, taking into account the specificities of the prisons in question, notably the outdoor yards attached to the cells, to which the applicants had unrestricted access during daylight hours.

175. The Court has already held that in-cell sanitary facilities should not be counted in the measurement of a cell's total surface area (see *Muršić*, cited above, § 114). Therefore, the area containing such facilities, which the Government included in their calculation of the minimum and maximum space available to the applicants, must be deducted. As regards outdoor yards, the present cases appear to be the first in which the Court has been called upon to give an indication as to whether such spaces should be counted in the calculation of personal living space. While it is evident that the outdoor yards attached to cells provide areas for prisoners to have access to open air and natural light, and, weather permitting, are spaces in which they can spend time, they cannot be considered to constitute living areas in the sense of accommodation where people may shelter, live and sleep. Therefore, the Court considers that such spaces may not be included in the calculation of personal living space. However, the availability of unrestricted access to an outdoor yard during daylight hours is a weighty factor which should be assessed when considering overall material conditions of detention.

176. The figures submitted by the Government must therefore be revised in the light of the foregoing methodology, by excluding the sanitary facilities and outdoor yards from the calculation of overall space.

177. According to the information submitted by the Government, the applicant Ahmet İlerde had a minimum of 2.92 sq. m and a maximum of 5.22 sq.m of living space at his disposal in various cells in Menemen T-type Prison (see paragraph 20 above). When revising these figures in accordance with the methodology indicated by the Court (see paragraph 176 above), it follows that for 745 days, which is the total number of days indicated by the Government where the applicant was detained with the maximum number of people, he had less than 3 sq. m of personal space.

178. The applicant Ruhi Hallaçoğlu had a minimum of 5.95 sq. m of living space at his disposal on the one day when he was held in a temporary unit, a minimum of 2.54 sq. m and a maximum of 5.3 sq. m of living space in unit A-38, and a minimum of 2.54 sq. m and a maximum of 3.97 sq. m of living space in unit C-14 in Osmaniye no. 1 T-type Prison, where he was detained for 1113 days (see paragraph 32 above). The Government only indicated the number of days (90 days) when the number of detainees in the relevant cells had risen to 25 detainees. However, the Court notes that when the relevant number of detainees in the cells was 24, 23 and 22, the applicant still had less than 3 sq. m of living space. Therefore, although it is not possible for the Court to determine exactly when and for how long the applicant had less than 3 sq. m of living space, it is evident that the number of days was higher than the one indicated by the Government.

179. For 82 days the applicant Davut Tek had between 2.47 sq. m and 2.62 sq. m of living space at his disposal in unit C-11 at Nevşehir E-type Prison (see paragraph 47 above). The Government made no submissions regarding the day of the applicant's admission to Nevşehir E-type Prison, when he was allegedly made to stand for about ten hours in very crowded conditions, nor did they put forward any rebuttals concerning the fact that the applicant had to share his bed in unit C-11 with a cellmate.

180. For a continuous period of 760 days, the applicant Aşkın Şanlı had between 1.61 sq. m and 2.94 sq. m of living space at his disposal in the three cells in which he was held at Kocaeli no. 1 T-type Prison (see paragraph 57 above).

181. The applicant Kemalettin Erel had 2.90 sq. m of living space at his disposal for 737 days. The rest of the time, the amount of living space available to him fluctuated between 3.05 sq. m and 5.22 sq. m (see paragraph 65 above).

182. The amount of living space available to the applicant Metin Kolotooğlu fluctuated between 4.50 sq. m and 8.39 sq. m in Silivri L-type Prison (see paragraph 73 above).

183. The amount of living space available to the applicant Onur Yörük fluctuated between 3.10 sq. m and 4.3 sq. m in İzmir T-type Prison (see paragraph 81 above).

184. The amount of living space available to the applicant Harun Altun fluctuated between 2.40 sq. m and 3.13 sq. m in Düzce T-type Prison, where

he was held for 852 days (see paragraph 89 above). In view of the fact that the Government gave only the minimum and maximum number of detainees held with the applicant in the same unit over a particular period, it is not possible for the Court to indicate exactly for how many days the applicant had more than 3 sq. m of personal space. From the figures submitted, it seems that when there were 20 detainees in the cell, the applicant had only 3.13 sq. m of personal space at his disposal, and whenever that number increased, he had less than 3 sq. m of personal space (ibid.).

185. The amount of living space available to the applicant Kahraman Yıldırım fluctuated between 2.61 sq. m and 9.48 sq. m (see paragraph 96 above). Again, it is not possible for the Court to calculate precisely the number of days during which the applicant had less than 3 sq. m of living space. However, on the basis of the information before it, the Court notes that when the applicant was in units A-22 and B-6 for 371 days and 53 days respectively (ibid.), he always had more than 3 sq. m of living space, assuming that he was detained with a maximum number of 24 inmates in unit B-6, as he alleged. On the contrary, when the applicant was in unit B-11 for 417 days, he had a minimum of 2.81 sq. m of personal space when there were 27 prisoners in the cell – or 2.61 sq. m, if it is assumed that the cell population peaked at 29 prisoners, as alleged by the applicant – and a maximum of 9.48 sq. m. when the cell population dropped to 8 prisoners (ibid.). The Government indicated that the cell had contained the maximum number of prisoners for 145 days (ibid.). That number reflects only the situation when the number of inmates in the cell reached 27. However, when there were 25 and 26 inmates in the cell, the applicant would also have had less than 3 sq. m of personal space (ibid.). However, the Court has no information on the basis of which it can calculate how many days such a situation lasted.

186. As regards units C-4 and C-5, in which the applicant was held for 714 days, he had between 2.65 sq. m and 3.99 sq. m of living space (see paragraph 96 above). Again, the Court is unable to determine the exact number of days when the applicant had less than 3 sq. m of living space. However, it is evident that this figure would be more than 133 days, contrary to the position submitted by the Government.

187. The amount of living space available to the applicant Deniz Aktaş fluctuated between 2.81 sq. m and 9.48 sq. m in Kocaeli no. 2 T-type Prison (see paragraph 105 above). He had less than 3 sq. m of living space when he was detained in units B-11 and C-4, where, respectively, he had 2.81 sq. m for 157 days, and 2.91 sq. m for 285 days (ibid.). In unit B-11, when the unit population was 26 prisoners (ibid.), the applicant had less than 3 sq. m of living space as well, but since the number of days during which the applicant shared the unit with this number of inmates was not provided to the Court, it is unable to make a definitive finding in this regard.

(i) Conclusion in respect of applicants who had less than 3 sq. m of personal space

188. Having regard to its above findings in respect of the applicants Ahmet İlerde (see paragraph 177 above), Ruhi Hallaçoğlu (see paragraph 178 above), Davut Tek (see paragraph 179 above), Aşkın Şanlı (see paragraph 180 above), Kemalettin Erel (see paragraph 181 above), Harun Altun (see paragraph 184 above), Kahraman Yıldırım (see paragraphs 185- 186 above) and Deniz Aktaş (see paragraph 187 above), who had less than 3 sq. m of living space during the periods specified above, the Court notes that a strong presumption of a violation of Article 3 arises. Accordingly, the question to be answered is whether there were factors capable of rebutting that presumption (see paragraph 169 above). As to the first of those factors, which need to be cumulatively met, the Court notes that the periods of detention during which those applicants had insufficient personal space were of a considerably long duration. Such periods cannot be considered "short, occasional and minor", and cannot therefore rebut the presumption of a violation of Article 3 (see *Muršić*, cited above, §§ 151-52, where even a significantly shorter period of 27 days could not be used to rebut the presumption; *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, § 188, 29 January 2019; and *Petrescu v. Portugal*, no. 23190/17, § 106, 3 December 2019). It follows that there is no need to examine the remaining factors.

189. The Court finds that the conditions of those applicants' detention subjected them to hardship going beyond the unavoidable level of suffering inherent in detention. There has accordingly been a violation of Article 3 of the Convention.

(ii) Conclusion in respect of applicants who had between 3 sq. m and 4 sq. m of personal space

190. In respect of the applicants who had between 3 sq. m and 4 sq. m of living space at their disposal, that is to say, Onur Yörük (see paragraph 183 above) and Ruhi Hallaçoğlu, Kemalettin Erel, Harun Altun, Kahraman Yıldırım, and Deniz Aktaş for the relevant periods of their detention as indicated in paragraphs 178, 181, 184, 185-186, 187, respectively, above; the Court reiterates that a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygiene requirements (see paragraph 170 above).

191. The Court notes that the applicants were confined to their cells and had no or very little opportunity to participate in out-of-cell activities. Nonetheless, this state of affairs must be distinguished from situations in which inmates were confined to their cells indoors, without adequate access to natural light or the opportunity to exercise or participate in other purposeful

activities (see, for example, *Moiseyev*, cited above, §§ 125-126, and *Gaspari v. Armenia*, no. 44769/08, § 64, 20 September 2018). The fact that the applicants in the present cases had unlimited access to the outdoor yards of their units during daylight hours, where they could have the benefit of natural light and fresh air, and could use those spaces for basic individual exercise, should be taken into account as a significantly alleviating factor in relation to the scarce allocation of personal space.

192. It remains to be determined whether other material conditions of the applicants' detention were acceptable.

193. As regards the sanitary and hygiene conditions of the applicants' detention, on the basis of the parties' submissions, the Court finds it established that the sanitary facilities in the cells were entirely separated by a door, and that the applicants had daily access to both cold and hot water. While the Court can accept that the sanitary conditions might have been affected by the fact that the facilities were operating beyond their capacity, on the basis of the material before it, the Court does not find that the following factors were inadequate *vis-à-vis* Convention standards: the cleanliness of the facilities; the number of lavatories and washbasins available; and the amount of time which prisoners had to use them. Furthermore, it was not disputed between the parties that in addition to a door opening onto the outdoor yard, each unit had several windows, which allowed for ventilation and light (for a similar conclusion, see *Kovyazin and Others v. Russia*, nos. 13008/13 and 2 others, § 108, 17 September 2015, and *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, §§ 131-134, 20 September 2018). In the light of the parties' submissions, the Court therefore concludes that the overall conditions of the cells, including cleanliness, ventilation and lighting, were adequate *vis-à-vis* Convention standards.

194. As regards those applicants (Kemalettin Erel, Onur Yörük and Deniz Aktaş) who complained about having to sleep on mattresses on the floor, the Court notes that the Government accepted this state of affairs, but submitted that the applicants had had their own mattresses and bedding at all times, and that they had not had to sleep in shifts. Moreover, the situation had ceased as soon as a unit's population had decreased to a number equal to the number of bunk beds. Notwithstanding the applicants' arguments, the Court does not have any grounds to doubt the Government's submissions in this regard. While the Court is uneasy about the fact that the applicants slept on mattresses on the floor for periods unspecified by the parties, in view of the fact that they were provided with their own mattresses and bedding and did not have to share their beds or take it in turns to sleep (compare and contrast *Aliyev*, cited above, § 125; *Gusev v. Russia*, no. 67542/01, § 57, 15 May 2008; and *Boudraa v. Turkey*, no. 1009/16, § 34, 28 November 2017), it is not convinced that this aspect, taken alone or in conjunction with other material aspects of their detention, subjected them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

195. In sum, having examined the facts as presented by the parties, the Court does not exclude the possibility that the applicants may have endured some distress and hardship as a result of their detention in the conditions described above. Nevertheless, taking into account the cumulative effect of those conditions, the Court does not consider that they reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention.

(iii) Conclusion in respect of applicants who had more than 4 sq. m of personal space

196. The Court reiterates the same conclusion with respect to the applicant Metin Kolotooğlu, who had more than 4 sq. m of living space for the entire period of his detention in question, and other applicants who had more than 4 sq. m of personal living space for periods which were not specified by the parties and which the Court cannot determine on its own from the information before it. It reiterates that in cases where a detainee had more than 4 sq. m of personal space at his disposal in multi-occupancy accommodation in prison, no issue with regard to the question of personal space arises, yet other aspects of physical conditions of detention including those referred to above (see paragraph 170 above) remain relevant for the Court's assessment of the adequacy of an applicant's conditions of detention under Article 3 of the Convention.

197. In addition to his complaints of a lack of hygiene, insufficient lavatory facilities and insufficient ventilation, which have been examined above (see paragraph 193 above), the applicant Metin Kolotooğlu also complained in general of noise and restrictions on the amount of drinking water that he could buy from the prison canteen. However, he did not substantiate his complaints to a sufficient degree. The Court therefore finds it difficult to determine precisely the severity of the situation. As regards the applicant's noise complaint, the Court notes that this is a general issue stemming from the nature of detention in multi-occupancy units and having to share space with other inmates. In the absence of further substantiation, the Court notes that it does not raise an issue under Article 3 of the Convention. As regards the impugned restrictions on buying bottled water, the Court notes that it appears from the applicant's submissions in the domestic proceedings that he was allowed to buy 15 litres of bottled water per week (see paragraph 69 above), which does not appear to be inadequate. The Court therefore notes that this complaint, on its own, does not raise an issue under Article 3 of the Convention either.

198. Having regard to its findings above regarding the other aspects of the applicants' detention and conditions in the prisons in question, the Court notes that the conditions of the applicants' detention did not amount to ill-treatment within the meaning of Article 3 of the Convention.

199. The Court therefore finds that in this regard there has been no violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF APPLICATIONS NOS. 6489/20 AND 18001/20

200. The applicants Davut Tek and Deniz Aktaş alleged a violation of their right to respect for family life on account of the hardship involved for their families in visiting them, because of the considerable distance between their places of detention and their families' places of residence, and their inability to obtain transfers elsewhere. They relied on Article 8 of the Convention, which reads, in so far as relevant, as follows:

> "1. Everyone has the right to respect for his ... family life...
>
> 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."

A. Admissibility

201. The Government argued that the applicants had failed to exhaust domestic remedies, as they had failed to challenge before administrative courts the decision of the Central Prison Authority rejecting their transfer requests, and had also not attempted to seek compensation from the State for the damage they had allegedly suffered by means of an action for a full remedy. Furthermore, the applicant Deniz Aktaş had failed to raise his complaint under Article 8 of the Convention before the Constitutional Court. In any event, the Government considered that the applications were manifestly ill-founded, in so far as the applicants had failed to substantiate, before the domestic authorities and this Court, the necessary elements pertaining to the alleged difficulty which their families had faced in visiting them. In this regard, they relied on the Court's decision in *Nuri Akbulut v. Turkey* ((dec.) [Committee], no. 36647/11, 28 May 2019).

202. The applicant Davut Tek submitted that he had made repeated requests to be transferred, and had lodged a complaint regarding his Article 8 grievance with the relevant enforcement judge and assize court, and subsequently with the Constitutional Court. He noted that an action before the administrative courts was not an effective remedy in this context.

203. The applicant Deniz Aktaş did not respond to the arguments put forward by the Government concerning the exhaustion of domestic remedies.

204. The Court refers to the general principles with respect to the obligation to exhaust domestic remedies as set out in paragraph 145 above. It further reiterates that it is incumbent on the Government claiming non-

exhaustion to satisfy the Court that the remedy in question was available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success (see *Vučković*, cited above, § 77, and *Sher and Others v. the United Kingdom*, no. 5201/11, § 132, ECHR 2015 (extracts)).

205. As regards the first objection of the Government concerning the alleged failure of the applicants to lodge an action for annulment with the administrative courts, the Court makes the following observations. As noted in its analysis above, in accordance with the wording of the domestic legislation (see paragraph 108 above), enforcement judges are competent to examine complaints with respect to transfer requests. In the present case, it is not disputed that the applicants lodged unsuccessful requests directly with the Central Prison Authority, and also made use of the complaints procedure before enforcement judges, who did not reject their cases for lack of jurisdiction. In so far as the Government may be understood to have suggested that the applicants were required to lodge the same complaints with administrative courts before or in addition to raising their transfer complaints before the Central Prison Authority and enforcement judges, the Court considers that this was not necessary in order to comply with the rule of exhaustion of domestic remedies. It reiterates that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). When a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, 15 October 2009).

The Court therefore rejects the Government's plea in so far as it has not been shown that actions for annulment before administrative courts would have offered the applicants better prospects of success.

206. As regards the alleged failure of the applicants to lodge actions for a full remedy with administrative courts, the Court notes that the Government have not discharged their burden by submitting a decision by an administrative court awarding compensation in a situation comparable to that of the applicants, that is to say, where the Central Prison Authority had rejected a transfer request owing to prisons elsewhere lacking space.

207. Accordingly, the Court is unable to agree with the Government's contention that an action for annulment or an action for a full remedy before administrative courts was an effective remedy in respect of the applicants' grievances.

208. As regards the Government's second ground of objection concerning the applicant Deniz Aktaş, the Court reiterates that an individual appeal before the Constitutional Court is a remedy that needs to be exhausted in relation to alleged violations of the rights and freedoms protected by the

Convention (see *Uzun v. Turkey*, (dec.), no. 10755/13, §§ 68-71, 30 April 2013). Given that in his individual appeal before the Constitutional Court, the applicant did not raise, even in substance, his complaint regarding the distance of the prison facility from his family's place of residence, the Court upholds the Government's plea of non-exhaustion in respect of this applicant, and therefore rejects this part of the application pursuant to Article 35 §§ 1 and 4 of the Convention.

209. Lastly, the Court notes that the applicant Davut Tek's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

210. The applicant Davut Tek submitted that he had been placed in Nevşehir E-type Prison at the beginning of his pre-trial detention, and that that prison was closer to his family's place of residence in Kayseri and the location of his subsequent trial. However, the authorities had transferred him first to İzmir Menemen and then to İzmir no. 2 T-type Prison without any justification at all, and the area was approximately 1000 km away from his family's place of residence. He argued that his elderly mother, who suffered from a disability, could not make such a long journey, and consequently she had been able to visit him only once during the 3 years and 4 months he had been detained there. The applicant further argued that the decision to allocate him to that facility had imposed a financial burden on his wife, who had been unemployed and therefore could not afford the long and expensive journey to visit him on a regular basis, and consequently he had had fewer visits than he would have been able to have had he been allocated to a facility closer to his family. Lastly, the applicant argued that the authorities had not granted him any alternative measures, such as longer telephone calls or longer visits, in order to alleviate the disadvantage.

211. The Government, who contended that this complaint was manifestly ill-founded, argued firstly that the Central Prison Authority determined the allocation of detainees to penal institutions not only with respect to an institution's proximity to a detainee's place of residence, but in accordance with a variety of factors as set out in the legislation, including security and order within prisons, the types of offences of which detainees had been accused or convicted, their age and state of health, and the location of their trial. Secondly, they noted that the applicant's requests to be transferred to a prison in Kocaeli or Maltepe had been rejected because those facilities had already been operating at full capacity. Thus, even assuming that there had been an interference with the applicant's right to respect for his family life, in the Government's view, it had been lawful, had pursued the legitimate aim

of preventing prison disorder and overcrowding, and had nonetheless been proportionate, given that the applicant had been able to receive visitors and communicate with his family members in other ways, such as over the telephone and by letter. In relation to this last point, they considered that the circumstances of the present case were similar to those in the Court's decision in *Labaca Larrea and Others v. France* ((dec.), no. 56710/13 and others, 7 February 2017), where the Court had considered that the disadvantage claimed by those applicants was not sufficient to amount to an interference within the meaning of Article 8 of the Convention, on account of, *inter alia*, the large number of telephone calls and visits which they had had.

2. The Court's assessment

(a) Whether there was an interference with the applicant's right to respect for family life

212. As is well established in the Court's case-law, on imprisonment a person forfeits the right to liberty but continues to enjoy all other fundamental rights and freedoms, including the right to respect for family life, so that any restriction on those rights must be justified in each individual case. Detention entails inherent limitations on his or her family life, and some measure of control of the detainee's contact with the outside world is called for and is not of itself incompatible with the Convention. However, it is an essential part of a prisoner's right to respect for family life that the authorities enable or, if need be, assist him or her to maintain contact with his or her close family (see, among other authorities, *Khoroshenko v. Russia* [GC], no. 41418/04, §§ 116-17, ECHR 2015, and *Subaşı and Others v. Türkiye*, nos. 3468/20 and 18 others, § 77, 6 December 2022).

213. Be that as it may, the Convention does not grant prisoners the right to choose their place of detention, and the fact that prisoners are separated from their families (and some distance away from them) is an inevitable consequence of their imprisonment (see *Vintman*, cited above, § 78; *Rodzevillo v. Ukraine*, no. 38771/05, § 83, 14 January 2016; and *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, § 100, 7 March 2017). Nevertheless, detaining an individual in a prison which is so far away from his or her family that visits are made very difficult or even impossible may, in some circumstances, amount to interference with family life, as the opportunity for family members to visit the prisoner is vital to maintaining family life (see *Vintman*, § 78, and *Rodzevillo*, § 83, both cited above).

214. Hence, the placement of a convicted prisoner in a particular prison may potentially raise an issue under Article 8 if its effects for the applicant's private and family life go beyond "normal" hardships and restrictions inherent to the very concept of imprisonment (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 837, 25 July 2013, § 837; *Polyakova and Others*, cited above, § 81; *Klibisz v. Poland*, no. 2235/02,

§ 355, 4 October 2016; and *Fraile Iturralde v. Spain* (dec.), no. 66498/17, 7 May 2019).

215. The Court notes that in *Labaca Larrea and Others* (cited above), the Court was provided with no specific details of the applicants' difficulties in maintaining links with their families, or details of their place of residence prior to their detention, and it found that there had been no interference with their right to respect for their family life, noting that they had had the benefit of numerous visits and telephone calls. Similarly, in the case of *Akbulut* (cited above), in declaring the application manifestly ill-founded, the Court noted that the applicant had not substantiated the alleged violation by providing information about where his family resided, how difficult the journey in question had been, and the travel and accommodation costs his family members had incurred or other financial difficulties they had encountered in visiting him. In the present case, the applicant provided specific details about where his family resided, their individual circumstances in terms of health and employment, and the hardships encountered by his wife and elderly mother in making a journey of 1,000 km involving three different connections. Moreover, it was undisputed between the parties that the applicant's mother had visited him only once and that the applicant had been visited by his family about 67 times between 30 November 2016 and 5 August 2021 each visit lasting about 45 minutes at the most. The Court therefore finds that the present case must be distinguished from the cases relied on by the Government, and concludes there has been an interference which must be justified under Article 8 § 2 of the Convention (see *Fraile Iturralde*, cited above, § 20, and *Avşar and Tekin v. Turkey*, nos. 19302/09 and 49089/12, § 61, 17 September 2019).

(b) Whether the interference was justified

216. The expression "in accordance with the law" in Article 8 § 2 of the Convention, in essence, refers back to national law and states the obligation to conform to the substantive and procedural rules thereof (see *Akopyan v. Ukraine*, no. 12317/06, § 109, 5 June 2014). The expression also refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him or her, and compatible with the rule of law. The phrase thus implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts), with further references).

217. The Court notes that Davut Tek's complaint does not concern his initial placement in Nevşehir E-type Prison, but his subsequent transfers to prisons in İzmir and the authorities' decisions rejecting his requests to be transferred to a facility closer to his family. The domestic legislation gives

the Central Prison Authority a wide discretion to transfer detainees and convicted prisoners from one facility to another for the reasons set out in Articles 53 and 54 of Law no. 5275. The applicant argued that the decision to transfer him to İzmir no. 2 T-type Prison and the subsequent decisions of the authorities rejecting his transfer requests had been arbitrary, and in any event disproportionate. Those arguments may be understood as being directed against the "quality" of the relevant domestic law. However, the Court considers that they should be examined below as part of the analysis regarding justification and safeguards against the arbitrary use of discretion. It will therefore proceed on the basis that the interference complained of was "in accordance with the law" (for a similar approach, see *Subaşı and Others*, cited above, § 81).

218. The Court will also proceed on the assumption that the interference in question pursued the legitimate aim of preventing disorder and prison overcrowding.

219. As regards the proportionality of the interference, the Court notes that it was not provided with the decision to transfer the applicant from Nevşehir E-type Prison to the other prisons in İzmir. The Government argued that the applicant's first transfer to İzmir Menemen had been for reasons of prison security, and his second transfer to İzmir no. 2 T-type Prison had been because of prison overcrowding. Lastly, they argued that the applicant's requests to be transferred to Kocaeli and Maltepe prisons had been rejected on account of prison overcrowding. While the Court is not in a position to doubt the veracity of the reasons advanced by the Government, it notes that the applicant himself was not provided with any reasoning when he was first transferred to İzmir Menemen and then İzmir no. 2 T-type Prison from Nevşehir E-type Prison, which was close to the location of his trial as well as his family. It therefore follows that the applicant's transfer to those prisons took place in the absence of procedural safeguards against arbitrary interference with his right to respect for family life. As regards the applicant's subsequent requests to be transferred to the prisons in Kocaeli or Maltepe, which were made while he was detained in İzmir no. 2 T-type Prison, the Court considers that the prison administration's refusals of those requests were based on relevant and pressing reasons related to prison overcrowding. However, the domestic authorities did not make any concrete assessment of whether the applicant could be allocated to another prison relatively closer to his family, or whether any alternative means of making up for the fewer visits he received would be possible, such as longer visits (as recommended as a general measure in the decision of the Ombudsman) or even longer telephone calls.

220. The Court finds the above considerations sufficient to conclude that the interference complained of was disproportionate to the legitimate aim pursued. Accordingly, there has been a violation of Article 8 of the Convention in this regard.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

221. Article 41 of the Convention provides:

> "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."

A. Damage

222. The applicant Ahmet İlerde claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

223. The applicant Ruhi Hallaçoğlu claimed EUR 20,000 in respect of non-pecuniary damage.

224. The applicant Davut Tek claimed EUR 6,964 in respect of pecuniary damage, in relation to travel and postal expenses incurred by his family, and EUR 500,000 in respect of non-pecuniary damage.

225. The applicant Aşkın Şanlı claimed 1,000,000 Turkish liras (TRY) without substantiating his claim, and TRY 2,000,000 in respect of non-pecuniary damage.

226. The applicant Kemalettin Erel claimed EUR 100,000 in respect of non-pecuniary damage.

227. The applicant Harun Altun claimed EUR 50,000 in respect of non-pecuniary damage.

228. The applicant Kahraman Yıldırım claimed EUR 15,000 in total.

229. The applicant Deniz Aktaş claimed EUR 13,000 in respect of non-pecuniary damage.

230. The Government contested those amounts, submitting that they were excessive and unjustified.

231. The Court does not discern any causal link between the violations found and the pecuniary damage alleged by those applicants who made a specific claim under that head; it therefore rejects the claims in respect of pecuniary damage. As regards compensation in respect of non-pecuniary damage caused by a violation of Article 3, the Court considers that the suffering and frustration caused to an individual who was detained in manifestly inappropriate conditions cannot be compensated for by a mere finding of a violation. The length of stay in such conditions is undeniably the single most important factor that is relevant for the assessment of the extent of non-pecuniary damage. It is also known that an initial period of adjustment to poor conditions exacts a particularly heavy mental and physical toll on the individual concerned (see *Ananyev and Others*, cited above, § 172). Having regard to the fundamental nature of the right protected by Article 3, the Court finds it appropriate to award the following amounts, in view of the length of the applicants' detention under conditions contrary to Article 3:

- 10,000 EUR to Ahmet İlerde on the basis of the principle of *ne ultra petitum*;
- 2,300 EUR to Ruhi Hallaçoğlu;
- 3,000 EUR to Davut Tek;
- 10,900 EUR to Aşkın Şanlı;
- 10,700 EUR to Kemalettin Erel;
- 7,300 EUR to Harun Altun;
- 5,700 EUR to Kahraman Yıldırım;
- 7,600 EUR to Deniz Aktaş.

B. Costs and expenses

232. The applicant Ahmet İlerde claimed EUR 2,000 in respect of the work carried out by his representative in the proceedings before the Court, referring to the Ankara Bar Association's scale of fees, and EUR 500 for other costs and expenses incurred in these proceedings.

233. The applicant Davut Tek claimed TRY 14,000 in respect of the work carried out by his representative in the proceedings before the Court, submitting a contract.

234. The applicant Aşkın Şanlı asked the Court to award a sum in relation to costs and expenses, without specifying an amount or substantiating his claim.

235. The applicant Kemalettin Erel claimed EUR 4,000 in respect of the work carried out by his representative, submitting a contract and a time sheet, and also claimed EUR 55 in respect of postal expenses, submitting receipts.

236. The applicant Harun Altun claimed TRY 32,000 in respect of the work carried out by his representative, submitting a contract and a time sheet.

237. Remaining applicants did not make a claim for costs and expenses.

238. The Government contested those claims.

239. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many others, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023).

In the present case, regard being had to the documents in its possession and the amount of legal work necessary, the Court considers it reasonable to award EUR 1,000 each to those applicants (Ahmet İlerde, Davut Tek, Aşkın Şanlı, Kemalettin Erel and Harun Altun) who claimed reimbursement in respect of the work carried out by their representatives in the proceedings before the Court, including other costs, plus any tax that may be chargeable to these applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* all the applicants' complaints under Article 3 of the Convention and the applicant Davut Tek's complaint under Article 8 admissible, and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the applicants Ahmet İlerde (application no. 35614/19), Davut Tek (application no. 6489/20) and Aşkın Şanlı (application no. 7540/20) in respect of the entire period of their detention; and in respect of the applicants Ruhi Hallaçoğlu (application no. 5885/20), Kemalettin Erel (application no. 10977/20), Harun Altun (application no. 16554/20), Kahraman Yıldırım (application no. 16577/20) and Deniz Aktaş (application no. 18001/20) in respect of the periods of detention during which they had less than 3 sq. m of living space;

4. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicants Onur Yörük (application no. 14798/20) and Metin Kolotooğlu (applications nos. 11422/20 and 40294/20), or as regards the remainder of the other applicants' periods of detention during which they had more than 3 sq. m of living space;

5. *Holds* that there has been a violation of Article 8 of the Convention in respect of the applicant Davut Tek;

6. *Holds*

   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

      (i) in respect of non-pecuniary damage: EUR 10,000 (ten thousand euros) to Ahmet İlerde; EUR 2,300 (two thousand three hundred euros) to Ruhi Hallaçoğlu; EUR 3,000 (three thousand euros) to Davut Tek; EUR 10,900 (ten thousand nine hundred euros) to Aşkın Şanlı; EUR 10,700 (ten thousand seven hundred euros) to Kemalettin Erel; EUR 7,300 (seven thousand three hundred euros) to Harun Altun; EUR 5,700 (five thousand seven hundred euros) to Kahraman Yıldırım; and EUR 7,600 (seven thousand six hundred euros) to Deniz Aktaş;

(ii) EUR 1,000 (one thousand euros) each to Ahmet İlerde, Davut Tek, Aşkın Şanlı, Kemalettin Erel and Harun Altun, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	35614/19	İlerde v. Türkiye	24/05/2019	**Ahmet İlerde** 1983 Kars Turkish	Ahmet Kırtepe
2.	5885/20	Hallaçoğlu v. Türkiye	10/12/2019	**Ruhi Hallaçoğlu** 1975 Adana Turkish	
3.	6489/20	Tek v. Türkiye	02/01/2020	**Davut Tek** 1983 Kocaeli Turkish	Melek Aydın İslamoğlu
4.	7540/20	Şanlı v. Türkiye	20/01/2020	**Aşkın Şanlı** 1976 Isparta Turkish	Eyüp İltir
5.	10977/20	Erel v. Türkiye	10/02/2020	**Kemalettin Erel** 1972 Uşak Turkish	Semih Erken
6.	11422/20	Kolotooğlu v. Türkiye	10/02/2020	**Metin Kolotooğlu** 1984 Kocaeli Turkish	Elvan Bağ Canbaz
7.	14798/20	Yörük v. Türkiye	11/03/2020	**Onur Yörük** 1982 İzmir Turkish	Yüksel Ersoy

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
8.	16554/20	Altun v. Türkiye	24/03/2020	**Harun Altun** 1979 Ankara Turkish	Yakup Gönen
9.	16577/20	Yıldırım v. Türkiye	20/03/2020	**Kahraman Yıldırım** 1982 Kocaeli Turkish	
10.	18001/20	Aktaş v. Türkiye	16/04/2020	**Deniz Aktaş** 1987 Kocaeli Turkish	Oğuz Gündüz
11.	40294/20	Kolotooğlu v. Türkiye	05/08/2020	**Metin Kolotooğlu** 1984 Istanbul Turkish	Elvan Bağ Canbaz