



COMPLAINT NO : 2015/5629

DATE OF DECISION : 8/23/2016

DISMISSAL

COMPLAINANT

: and 66 natural persons

**COMPLAINANT'S
COUNSELLOR
COMPLAINEE**

: -

: 1. The Ministry of National Education 2. The Ministry of Health 3. The Ministry of Family and Social Policies 4. The Ministry of Justice 5. The Ministry of Interior (Ex-officio)

**THE SUBJECT OF THE
COMPLAINT**

: The subject of the complaint pertains to an allegation over the prevention of right to education for children due to the curfew imposed by civilian authorities in some provinces and districts located in the Eastern and Southeastern Anatolian regions and the calling made for teachers to attend in-service training while the school year was ongoing.

THE DATE OF APPLICATION: 12/14/2016

I. PROCEDURE

A. Application Process for the Complaint

1. The applications of complaint were lodged by 67 natural persons between 12/14/2015 and 1/17/2016 via the Institution's electronic application system by filling out the application document and the first application No. 2015/5629 of 12/14/2015 was registered on 12/14/2015 with the file No. 12571.

2. In order to settle the applications of complaint, we proceeded with the review and inquiry procedures in accordance with the paragraph two of the article 8 of the Law No. 6328 on Ombudsman Institution dated 6/14/2012 and the clause (a) of the paragraph one of the article 41 of the Regulation on Procedures and Principles Concerning the Implementation of the Law on Ombudsman Institution published in the Official Gazette (bis) No. 28601 and dated 3/28/2013 and the clause (e) of the paragraph one of the article 7 of the Signing Authority Directive, and then the complaint numbered 2015/5629 was submitted to the Chief Ombudsman upon the recommendation of "DISMISSAL".

B. The Preliminary Review Process

3. Pursuant to the article 3 of the chapter one of Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights that set forth the powers and duties of national institutions (see p.18), and the article 5 of the Law No. 6328 on Ombudsman Institution titled "the duty of the Institution" (see p. 28.1) and the article 17 titled "application and procedures" and the article 7 of the Regulation on Procedures and Principles Concerning the Implementation of the Law on Ombudsman Institution titled "the right to petition" (see p. 31.1),

4. **It is decided that the violations of rights alleged in the applications of complaint are for "fundamental rights and liberties", "human rights", "children's rights" and "general matters of interest to the public", and Ombudsman Institutions have a mission to "express views on matters regarding the improvement and protection of human rights and make recommendations to take administrative measures or amend such measures in an effort to make sure that applicable regulations are harmonized with international documents and mechanisms" in accordance with the Paris Principles, and that the Ombudsman Institution conducted an inquiry based on the principle of "individual application", and the Institution did not identify any conflict settled or taken into consideration with regard to the complaint as concluded from the statement of complainants as well as information and documents specified in the file pertaining to the allegations over violation of rights except for the call made for the teacher to attend in-service training while the school year was ongoing, and that the Institution proceeds with the inquiry stage without imposing the exhaustion of administrative remedies or any violation or interest that falls within the remits of the Institution given the fact that some irreparable or irrecoverable harm may be done in case of imposing th exhaustion of administrative remedies considering the urgency and importance of the matter.**

5. **and since the Institution deduced that the applications, about which an inquiry was conducted, stemmed from the same grounds and subject and that a decision with regard to one would affect them all, the Institution decided to close the complaint register of files No. 2015/5630, 2015/5631, 2015/5632, 2015/5633, 2015/5634, 2015/5635, 2015/5636, 2015/5637, 2015/5638, 2015/5639, 2015/5640, 2015/5641, 2015/5642, 2015/5643, 2015/5644, 2015/5645, 2015/5646, 2015/5647, 2015/5648, 2015/5649, 2015/5650, 2015/5651, 2015/5666, 2015/5685, 2015/5686, 2015/5687, 2015/5688, 2015/5689, 2015/5690, 2015/5691, 2015/5692, 2015/5693, 2015/5694, 2015/5695, 2015/5696, 2015/5697, 2015/5698, 2015/5699, 2015/5700, 2015/5701, 2015/5702, 2015/5703, 2015/5704, 2015/5705, 2015/5706, 2015/5726, 2015/5728, 2015/5729, 2015/5731, 2015/5732, 2015/5733, 2015/5734, 2015/5751, 2015/5752, 2015/5772, 2015/5860, 2015/5885, 2015/5905, 2015/5917, 2015/5928, 2015/5995, 2015/6005, 2015/6006, 2015/6029, 2015/6037, 2016/209 and 2016/275 and combine them in a file of complaint No. 2015/5629 and carry out the review and inquiry procedures through this file in accordance with the paragraph three of the article 22 of the said Regulation and concluded that the applications of complaint had been lodged on time, and that there was no shortage concerning pre-review matters and therefore there was no barrier to the review and inquiry of the complaints.**

II. THE CASE AND FACTS

A. The Statements and Claims of the Complainants on the Subject

6. **While the applications of complaint, which were combined in one single file No. 2015/5629, are originally lodged on an individual basis, they are similar applications and they read in**

summary: *"The education has been interrupted and the right to education is violated due to the call made for the teachers as a whole to attend in-service training while the school year was ongoing in some provinces and districts where curfew was imposed particularly in the city of Şırnak's district of Cizre and Silopi, and many children have been injured and died as a result of conflicts that have been ongoing since July 2015 and those injured have had difficulty in having access to healthcare services and the aforementioned children could not meet their basic needs for a long time, and the children have been subject to forced migration in the midst of conflicts, and they have been taken into custody, arrested and sentenced"* **they allege and demand the Institution to safeguard the right to life for all, and do what is necessary for the continuance of education, and share with public the measures taken to put an end to the conflict and restore peace across the region and recover damages suffered by the children in the process.**

B. The Statements of the Authorities on the Complaint

7. In response to the Institution's request No. ... of .../2016 for information and documents from the Ministry of Justice, the Ministry of Interior, the Ministry of National Education, the Ministry of Health and the Ministry of Family and Social Policies with regard to the allegations subject to the application of complaint, **the Ministry of Interior delivered a letter No. ... of .../2016 along with annexes and it reads in summary as follows:**

7.1. Kicked off in an effort to put an end to the acts of terrorism, the Solution Process was interrupted by the PKK/KCK's acts of terrorism and violence, and such acts adversely affected the vulnerable local women and children and therefore, some intensive and comprehensive anti-terrorism operations have been launched across the region in an attempt to restore the public order and maintain peace.

7.2. For the operations launched in line with the rule of law and human rights, utmost care and attention have been paid in order to avoid any damage to the civilian population of the region and some curfews have been imposed in some provinces/districts in an effort to make sure the civilian population does not suffer from the operations and effectively fight against the terrorists.

7.3. All the necessary measures were taken to meet the basic requirements of the people and ensure the incessant provision of healthcare services in particular. A priority was attached to the identification of the problems and development of solution offers. The families were provided with protective, preventive and guiding services while some activities were carried out for psycho-social assistance and a variety of projects were put into effect for the personal, social, mental and psychological development of the traumatized children. Many supportive measures were taken in social and economic terms including the provision of rent allowance for the families forced to migrate due to the acts of terrorism. Those suffering from the counter-terrorism operations were reimbursed as soon as possible. A priority was attached to the compensation of the damages (debt relief for premium debts and loan repayments) suffered by the region and local traders due to the acts of terrorism. In addition, some efforts were exerted to invigorate the local economy.

7.4. The terrorist organization targeted many educational institutions across the region and thus some efforts were kicked off to repair and restore the educational institutions damaged as a result of acts of terrorism. Some arrangements were introduced to compensate those falling behind in classes in provinces where curfews were imposed. In addition, some measures are projected to be taken including medical screening for the students provided with compensation training, provision of financial aid for the students, handing out clothes and self-care materials, supply of reference books and stationery and meeting any type of sheltering needs.

7.5. The losses resulting death, injury and disablement, losses in estates and assets, losses in agriculture and livestock and losses of citizens forced to migrate due to acts of terrorism as a result of the fact that they have no longer access to their assets were compensated pursuant to **the Law No. 5233 on the Compensation of Damages Resulting From Acts of Terrorism and the Fight Against Terrorism introduced in an effort to reimburse citizens in a rapid, effective and fair manner without having to seek legal remedies in local and international courts for losses of citizens who suffered due to the operations launched as a part of counter-terrorism activities.** Damage Assessment Commission were established under the guidance of Deputy Governors in provinces in an effort to compensate for their losses under the law and 32 commissions are currently in force across the country while 54 of them have completed their efforts. A total of TL 3.439.688.251 has been demanded to be paid for the citizens who signed a negotiated settlement with the commissions and **a total of TL 3.438.785.486 has been paid** thus far while the efforts are ongoing to pay the remaining sum.

7.6. Within this process, a distinction was made between the terrorism and democratic demands of the citizens. In this respect, it was out of question to make concessions to the perspective that pushes democratization to forefront as well as the delicate balance between freedoms and security.

And a list displaying the beginning and expiration dates and hours of curfews imposed in some provinces and districts between 7/24/2015 and 3/23/2016 was submitted.

8. The response letter of the Ministry of National Education No. ... of .../2016 reads in summary:

8.1. The civilian authorities imposed curfews from time to time in an effort to ensure the safety of life and property for the civilian population and safeguard the fundamental rights and liberties, and many provinces and districts saw some setbacks in educational and training activities in the process due to the curfews, boycotts and impediments starting from the first semester of the school year and an intermittence was put into force for education and the students could not attend the schools in the meantime.

8.2. A total of 77 schools including 44 in the city of Şırnak, 26 in the city of Mardin and 7 in the city of Diyarbakır were heavily damaged in the process. Some damage assessment efforts were exerted in the districts where the curfews drew to a close. Immediate actions were taken to re-open the lightly and mildly-damaged schools. A plan was put into effect to repair and restore those heavily damaged, as well.

8.3. In the official letter No. ... of ../2015 submitted to 81 governor's offices, the Directorate General of Basic Education instructed **the Governor's Offices to take measures in accordance with article 33 of the Regulation on Early Childhood Education and Primary Education and article 61 of the Regulation on Secondary Schools in an attempt to compensate for educational and training activities that had not been put into effect as originally planned in line with the working schedule and consequently, the Ministry of National Education took the necessary measures.** The authorities began to take actions as a part of the short, mid and long-term plans.

8.4. Due to the fact that educational and training activities took a pause as a result of curfews, the teachers were instructed to attend in-service training under the title of "*the Seminar on Teaching Practices*" in line with the article 16 of the Regulation on In-Service

Training issued in accordance with the article 214 of the Law No. 657 on Public Servants to make use of this period of time in an efficient manner.

8.5. The efforts exerted by the Ministry for educational-training activities focused on two main themes:

(1) First of all, the Ministry introduced "Guest Student Button" on an e-school system for the students forced to migrate from the region as a result of the aforementioned incidents to continue their educational activities without any interruption and thus they were provided with a chance to continue to engage in educational activities in locations they migrated to without having to deal with any "minimum point clause". Within this scope, a total of 115.422 students including 87.334 of primary schools and 28.088 of secondary schools were transferred.

(2) In addition, a well-rounded compensation program was put into effect for the remaining students and it is still in effect. Some actions have been taken to generate exam marks for the students who failed to take exams due to the forced absenteeism and the authorities paved the way for the students to have a report card without any trouble as of the first semester.

8.6. A plan was put into effect for all the students to compensate for the setbacks that took place in the first semester of the school year by transporting the 8th and 12th graders to a center during the mid-term break and a compensation program was introduced accordingly for a total of 12.524 students including 775 from the city of Diyarbakır, 1761 from the city of Şırnak and 10.168 from the city of Mardin. Apart from the educational-training activities a part of the program, some social, cultural and sports activities were introduced for the students who also underwent medical screening in cooperation with the relevant Ministries. They were also provided with self-care products and in-kind assistance such as clothes as well as financial aid and some guidance activities were put into play for psycho-social assistance to the students.

8.7. The compensation activities were put into effect on site for the students in districts where curfews drew to a close as of the second semester of the school year while the 8th and 12th graders in districts where the curfews were still in effect were taken to a center serving as a boarding school. As a part of the second-semester compensation program, a total of 109.654 students including 833 from the city of Diyarbakır, 27.547 from the city of Mardin, 80.440 from the city of Şırnak and 834 from the city of Hakkari attended the educational activities and this program was reinforced with social, cultural and sports activities as specified in the aforementioned paragraph along with guidance activities.

8.8. The Directorate General of Special Education and Guidance Services assigned one department head and one expert for Diyarbakır, Batman and Mardin to **render guidance services, run psycho-social assistance efforts, make plans accordingly and ensure coordination** and they made contacts with other provinces on a regular basis to be informed of the status quo and their needs and took actions in this respect. Then, they **established Provincial Psycho-Social Protection, Prevention and Support Teams in Mardin, Diyarbakır, Hakkâri and Şırnak** and set working principles.

8.9. An in-service training seminar titled "*Psycho-Education Course for the Training of Trainers*" was introduced in some provinces including Mardin, Şırnak and Diyarbakır. Some well-trained guidance teachers were assigned to provide the students under the compensation program with psycho-social assistance and they held "the Psycho-Education Training for Practitioners" in February 2016. A Course titled "Psychological Consultancy with a Group" (Teaching Recovery Techniques), which is a higher level of intervention program, was organized in February 2016 to

work on the students with traumatic reactions and thought to be in need of assistance. Within this scope, the guidance teachers were trained to improve occupational skills in Mardin, Diyarbakır, Hakkari and Şırnak and a total of 300 guidance teachers will have been provided with training by the end of 2015-2016 school year **and some activities will be held in cooperation with the teachers, students and their parents.**

Last but not least, a lawsuit was filed by the ... Union against the Ministry of National Education in **Ankara 15th Administrative Court as a part of the file No. 2015/3604 for the nullity of judgment of December 13, 2015** for all of the teachers employed in the districts of Cizre and Silopi forced to attend in-service training and instead they could receive such training in their hometown.

9. The response letter of the Turkish Public Hospitals Institution No. .../. of/2016 reads in summary:

9.1. Located in provinces where curfews were imposed due to the acts of terrorism, the hospitals keep providing healthcare services including intensive care services. Admitted to the hospitals for being injured in Şırnak's districts of Cizre and Silopi, Mardin's districts of Dargeçit and Nusaybin and Diyarbakır were discharged after undergoing treatment **while some injured ones were referred to the nearest healthcare facilities for therapeutic purposes such as cornea transplantation, plastic surgery and cardiovascular operations and all the patients were provided with necessary interventions on time by the specialists and they suffered no trouble in the process.**

9.2. In addition, all the patients, who were admitted by emergency ambulances or through their own means as of the date when the curfew was put into force, were provided with services on a 24-hour basis and some pediatricians performed their duties in emergency services of the aforementioned healthcare facilities since the very beginning and provided the patients with all the medical interventions on time and attached utmost importance to this matter. The patients, who were in need of the tertiary healthcare services, were referred by ambulances.

10. The response letter of the Ministry of Health No. ... of/2016 reads in summary:

10.1. The primary healthcare services, which fall under the remit and responsibility of the Ministry, are mainly provided by family physicians.

10.2. With regard to access to healthcare services and measures taken, a "Commission" carries out efforts to avoid suffering any setback in provision of primary, diagnostic, therapeutic, rehabilitative and protective healthcare services in the midst of acts of terrorism.

10.3. However, the citizens had difficulty in having access to primary healthcare services due to the fact that the armed groups targeted healthcare professionals in an unprecedented manner, demolished healthcare institutions and their materials and devices, invaded the buildings of family and community healthcare centers, dug trenches in front of them and laid barricades.

10.4. During this period of time, 34 Family Health Centers, 2 Training Family Health Centers, 8 Community Health Centers, 2 Sanatoriums, 2 Healthcare Guest Houses and their materials and devices suffered damage in 6 provinces where such incidents took place.

10.5. In terms of securing the access to healthcare services, the Ministry took measures to refer the elderly people, pregnant women, children and the disabled under the guidance of homecare teams

to healthcare facilities where they could receive healthcare services and enable those forced to flee their homes to receive medical services including rehabilitation and psychological assistance from any healthcare institution (Family Health Centers and Community Health Centers).

10.6. Pediatricians, internists and surgeons continued to take office on a 24-hour basis in districts where curfews are imposed and for instance, a department of child psychiatry was established within the body of Şırnak Public Hospital to meet therapeutic needs of children in case they are affected by violence and polyclinics render services in an active manner. **The Provincial Community Healthcare Directorate severally gave a call to citizens to be informed of their health problems and their offices offered solutions for the problems suffered by the patients out of the province and the number of hot lines was increased from 9 to 2 given the calls made for 112 emergency command control center.**

10.7. Some steps have been taken to re-open the damaged healthcare institutions and introduce new service areas.

11. The response letter of the Ministry of Justice No. ... of .././2016 reads in summary:

11.1. The number of terrorist attacks has increased to a significant extent in Turkey after 7/20/2015 and this situation has escalated to a level to threaten the public order and national security and taken on a new dimension that targets fundamental rights and liberties as well as safety of life and property in daily life. For instance, 34 people died and more than 100 people were injured as a result of the terrorist attack leveled at the civilian population in the district of Suruç. 2 police officers were slaughtered in the district of Ceylanpınar on 7/22/2015 and more than 100 people lost their lives as a result of the terrorist attack that took place in front of Ankara Train Station on 10/10/2015 and similar attacks have occurred in various parts of Turkey.

11.2. The members of the terrorist organization have tried to hamper public services by launching armed attacks at healthcare institutions and professionals as well as schools. For instance, they stopped an ambulance in the district of Cizre on 9/11/2015 and attacked at the authorities by means of long-barreled weapons and plundered the ambulance. On 12/17/2015, the members of the terrorist organization attacked at ... Hospital by means of a rocket launcher weapon and detonated an improvised explosive device on 12/24/2015 in the restroom of Turk Telekom Occupational High School located in the district of Sur and launched another attack at Private Veni Vidi Hospital by means of a rocket launcher weapon on 12/27/2015 in the district of Sur.

11.3. One must remember the fact that the state has the discretionary power to take necessary legal measures for the restoration of public order and safety and resort to multifaceted measures at a time when terrorist attacks take place, the acts of violence increases and the safety of life and property is on the line. The security forces kicked off operations in line with their liability to safeguard the right to life for the civilian population exploited as a live shield and to prevent the civilian population from suffering any damage since the terrorist organization PKK increased its attacks, killed many civilians and security forces, dug trenches and laid entrapment of explosives and barricades in some provinces and districts located in the eastern and southeastern parts of Turkey in an effort to form autonomous regions under its control and hamper public services as well including attacks at healthcare professionals and teachers employed across the region.

11.4. Turkey has fought against terrorism to the extent specified by the Constitution and laws by complying with the rule of law and the fundamental principles of the universal law. Imposed during the efforts to restore the public order, the curfews are not continuous and unlimited as they have been temporarily imposed to safeguard the right to life for the civilian population in line with

the state's positive responsibility specified in article 2 of the European Convention on Human Rights. The public institutions and authorities have looked out for the rule of law and the fundamental principles in fight against terrorism. The Constitutional Court dismissed the individual applications lodged to demand the lift of curfews and ruled that they were not contrary to law. There are similar applications dismissed by the ECtHR on the grounds that the applicants failed to deliver necessary components to rule in favor of interlocutory injunction.

11.5. The authorities made announcements to provide convenience for the local people of the cities with curfew to flee them in a safe manner and a part of the local people was transported to safe locations upon their request and then the relevant departments were instructed by the Governor's Offices to make sure there was no impediment to educational and healthcare services for those transported to other locations. The security forces took necessary measures for the civilian population to avoid any injury during the efforts exerted to dismantle explosives and remove barricades. The public capabilities were put to utmost use to meet the basic needs of the people for food and medication. **The Governor's Offices announced online and via press that those residing across the region are free to call 155 Police Emergency Line to meet their basic needs in healthcare services and food. In addition, 112 Emergency Healthcare Line has been open to all the citizens along with the fixed lines and GSM networks in effect.**

11.6. As for allegations over the delivery of healthcare services, the healthcare professionals employed in hospitals located across the region where the curfews were imposed were actively on duty. The patients were referred to other healthcare facilities in company with security forces while necessary procedures and medical treatment were provided for those seeking medical aid. On the other hand, the healthcare professionals and ambulances were fired upon on duty and they were threatened and detained, as well. **The setbacks suffered by the citizens including children in particular resulted from not the security operations carried out for counter-terrorism but from the acts of terrorism leveled at public buildings including schools and hospitals in particular.**

11.7. The educational and training activities were hindered due to the acts of terrorism and some schools were burned down while ambulances were fired upon and the healthcare services were provided under the threat of terrorism which has been a known fact to the public. Between 9/5/2015 and 1/4/2016, a total of 20 attacks took place against healthcare professionals and ambulances solely in the district of Cizre and many attacks could not be registered on books due to the circumstances across the region. The ambulances were stopped on their way to emergency cases or those injured and sick and they were also fired upon by automatic weapons and some healthcare emergency service professionals were detained and threatened. In addition, the armed terrorists made false calls to security forces and healthcare professionals for help with an intention to lay an ambush on them.

11.8. As specified in article 5 of the Constitution on fundamental aims and duties of the state, the state has a positive responsibility to ensure welfare, peace and well-being of people and the society, safeguard the Republic and democracy and eliminate barriers that restrict fundamental rights and liberties. As required by its positive responsibility, the state has taken a variety of steps to protect children affected by violence and investigations & proceedings have been effectively run on legal rounds with necessary measures taken to re-integrate children affected (psychologically and physically) by violence into the society in line with the relevant legislation. The terrorists have hampered the ability of the state to meet the basic needs of children and the local people by digging trenches as a part of the incidents that have taken place across the region.

11.9. The separatist terrorist organization has exploited children for its illegal actions such as illegal meetings and demonstrations, digging trenches, laying barricades, throwing Molotov and

stones at security forces. **The state has taken necessary measures as a part of its positive responsibility for the children to avoid violence, continue their education and benefit from healthcare services** while fighting against the members/armed groups of the terrorist organization and the investigations against them have been effectively run on legal grounds.

12. The response letter of the Ministry of Family and Social Policies No. ... of .././2016 reads in summary:

12.1. The families aggrieved by terrorism have been provided with psycho-social assistance in 11 provinces as a part of emergency circumstances. The authorities have paid visits to households in those 11 provinces to identify needs and referred families in need of social aid (rent, education, sheltering) to the Social Solidarity Foundations or the Provincial Directorates to benefit from their social and economic aids while those in need of public services have been provided with a chance to seize on such services as well as homecare services. **The authorities also have identified children who have been unable to attend any school and those with healthcare problems in the family have been referred to healthcare institutions. The psychologically-traumatized ones have been under guidance, as well. The number of households affected by terrorism in 11 provinces has hit 20.228 as of 3/28/2016 while the total number of people suffering from terrorism accounts for 121.712.**

12.2. Traveling from all corners of Turkey, the professionals were assigned (for 10 or 15 days) for the cities including Diyarbakır, Şırnak and Mardin impacted by terrorism to an intensive extent and a total of 579 professionals including 130 in Diyarbakır, 181 in Mardin and 268 in Şırnak were tasked as of 3/23/2016 and they are still on duty.

12.3. A plan has been in place to provide professionals with training on "Psycho-Social Protection, Prevention and Support Services" on a regular basis to improve their capacity in cooperation with the Directorate General of Child Services and the Ministry of National Education. This training is intended to eliminate or mitigate psychological trauma or crisis of those in need of immediate psychological assistance after going through difficult living conditions, normalize their acute traumatic reactions and help them restore their pre-trauma functionality.

12.4. The Directorate General of Child Services has conducted various activities for children and families at risk and suffering from terrorism. **The efforts have been ongoing to prevent the violation of the rights of children affected by war and terrorism, ensure their safety, assist them in psycho-social services and help them overcome trauma and negative sentiments.** Performed in cooperation with relevant institutions and organizations to identify those affected by the actual state, the social surveys enabled children with a family struggling in economic terms to benefit from the Social Economic Support (SED) program. Along with the participation of children registered for the Provincial Committees of Children's Rights, **the Provincial Directorate of Family and Social Policies held training sessions on psycho-social assistance, peer-to-peer social harmony, awareness as well as recreational and cultural activities for children suffering from war and terrorism.**

12.5. A plan has been put into effect to introduce "Training on Values" drawn up in cooperation with the Directorate of Religious Affairs for the mental development of children under protection and to be under protection and this training is intended to enhance awareness of fundamental, social and moral values.

C. Events

13. Since July 2015, there has been an apparent trend of rise in PKK's (separatist terrorist organization) actions of terrorism and their members declared¹ autonomy/self-governance in some

provinces and districts across the Eastern and Southeastern parts of Turkey on various dates within the month of August and thus some close combats have taken place between the security forces and the members of the terrorist organization. Throughout this process, the civilian authorities declared curfews on a temporary basis until further notice as of August 2015 in an effort to neutralize the members of the terrorist organization ensure the safety of life and property and restored the public order and safety.

14. In provinces and districts where curfews were imposed as a result of close combats with the security forces, the members of the terrorist organization launched armed attacks at all the public institutions and the civilian population including educational and healthcare facilities and professionals and the authorities experienced some challenges in delivery of public services including educational and healthcare services in particular due to the curfews, operations launched against the members of the terrorist organization by the security forces and trenches dug by the members of the terrorist organization.

15. As a part of their applications lodged between 12/14/2015 and 1/17/2016, the complainants made allegations over the violation of the right to education for children residing across the region due to the curfews imposed by civilian authorities and the suspension of educational activities while the school year was still in effect in some provinces and districts located in the Eastern and Southeastern Parts of Turkey and demanded the Institution to do what is necessary to make sure that the right to life is safeguarded for all and the educational activities resume.

D. The Review and Inquiry Findings by Ombudsman Serpil Cakin

16. The Institution demanded the Ministry of Justice, the Ministry of Interior, the Ministry of National Education, the Ministry of Health and the Ministry of Family and Social Policies to deliver information and documents relating to the present case and the response letter and contents submitted by the aforementioned authorities are presented under the title of "statements of the authority on the complaint".

III. LEGAL ASSESSMENT and RATIONALE

A. The Regulation

17.

17.1. The article 74 of the Turkish Constitution No. 2709 of 10/18/1982 titled "right of petition, right to information and appeal to the Ombudsperson" read: *"Everyone has the right to obtain information and appeal to the Ombudsperson."*

The Institution of the Ombudsperson established under the Grand National Assembly of Turkey examines complaints on the functioning of the administration."

17.2. The article 5 titled "Fundamental aims and duties of the State" reads:

The fundamental aims and duties of the State are to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy, to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence."

17.3. The article 12 titled "Nature of fundamental rights and freedoms" reads:

Everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable. The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his/her family and other individuals."

17.4. The article 13 titled "Restriction of fundamental rights and freedoms" reads:

Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions on the essence and spirit of the Constitution, the requirements of the democratic order of society and the secular Republic and the principle of proportionality cannot be contrary to the Constitution."

17.5. The article 14 titled "Prohibition of abuse of fundamental rights and freedoms" reads:

None of the rights and freedoms embodied in the Constitution shall be exercised in the form of activities aiming to violate the indivisible integrity of the State with its territory and nation, and to endanger the existence of the democratic and secular order of the Republic based on human rights

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms recognized by the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be imposed on those who perpetrate activities contrary to these provisions shall be determined by law."

17.6. The article 17 titled personal inviolability, corporeal and spiritual existence of the individual reads: *"Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence.*

...

(...) The act of killing in case of self-defense and, when permitted by law as a compelling measure to use a weapon, during the execution of warrants of capture and arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency, do not fall within the scope of the provision of the first paragraph."

17.7. The final paragraph of article 41 titled "Protection of the family and children's rights" reads:

"The State shall take measures for the protection of the children against all kinds of abuse and violence.

17.8. The article 42 titled "Right and Duty of Education" reads: *"No one shall be deprived of the right of education.*

The scope of the right to education shall be defined and regulated by law.

...

Training, education, research, and study are the only activities that shall be pursued at institutions of education. These activities shall not be obstructed in any way. ..

18. The article 3 of the chapter one of Principles Relating to the Status of National Institutions (The Paris Principles) for the Promotion and Protection of Human Rights introduced by the UN General Assembly resolution No. 48/134 of 20 December 1993 and the resolution No. 1992/54 of 3/3/1992 taken by the United Nations Commission on Human Rights read:

"National institutions shall fulfill the following duties in particular:

A national institution shall, inter alia, have the responsibilities (a) to submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

- (ii) Any situation of **violation of human rights which it decides to take up;***
- (iii) The preparation of **reports on the national situation with regard to human rights in general, and on more specific matters;***
- (iv) **Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government.***

19. The article 3 of the United Nations Universal Declaration of Human rights reads

19.1. : *"Everyone has the right to life, liberty and security of person."*

19.2. The article 26 reads: *"Everyone has the right to education."*

19.3. The article 29 reads: *"1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations..",*

19.4. The article 30 reads: *"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."*

20. The paragraph one of the article 5 of the International Convention on Personal and Political Rights titled "the Prohibition of Abuse of Rights" reads:

"1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant."

20.1. The paragraph one of the article 6 titled "Right to Life" reads:

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

21. The paragraph one of the article 13 of the International Covenant on Economic, Social and Cultural Rights reads:

"The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."

22. The article 28 of the Convention on the Rights of the Child reads: *"State Parties recognize the right of the child to education..."*

22.1. The article 39 reads: *State Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of armed conflicts...*

23. The article 2 of the European Convention on Human Rights titled "Right to Life" reads:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: a) in defense of any person from unlawful violence;

b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

*c) in action lawfully taken for the purpose of quelling a riot or insurrection. **The article 17 titled***

"Prohibition of abuse of rights" reads: *"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."*

23.3. The article 2 of the Supplementary Protocol No. 1 to the European Convention on Human Rights:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." ..

24. The article 7 of the Basic Law of National Education No. 1739 of 6/14/1973 titled "IV - Right to Education" reads:

"Primary education is a right for all Turkish citizens. Citizens are entitled to benefit from educational institutions following their primary education in accordance with their interest, aptitude and capabilities."

25. The article 42 of the Primary Education and Training Law No. 222 of 1/5/1961 reads: *"The school terms and suspension of educational activities are organized by a regulation to be issued by the Ministry of National Education."*

26. The clause (C) of the article 11 of the Law No. 5442 of 6/10/1949 on Provincial Administration reads:

*"Governors shall have the duty, inter alia, to secure **peace and security, physical integrity, safety of private property and public well-being, and the authority to exercise preventive law enforcement.**"*

Governors shall take necessary actions and measures to do so.

Those who act contrary to resolutions made and measures taken shall be subject to the provision of the article 66."

26.1. The clause (ç) of the article 32 reads:

*"District Governors shall have the duty, inter alia, to secure **peace and security, physical integrity, safety of private property and public well-being, and the authority to exercise preventive law enforcement within the borders of districts. District Governors shall take necessary actions and measures to do so.***

Those who act contrary to resolutions made and measures taken shall be subject to the provision of the article 66."

27. The article 112 of the Turkish Penal Code No. 5237 of 9/26/2004 titled "Prevention of Education and Training" reads:

(1) Punishment of imprisonment from two to five years is imposed

- a) in case of execution of following acts contrary to the law by use of force or threat;*
- b) Prevention of all kinds of educational and training activities carried out under license issued by the public authorities,*
- c) Prevention of entry into buildings and premises where the students are sheltered in groups, or destruction of these buildings and premises.*

27.2. The article 199 titled "joint conviction" reads:

(1) In case of commission of offenses such as prevention of education and training, prevention of activities of public institutions and professional organizations in the nature of public institution, prevention of use of political rights, restriction of freedom of belief, conception and conviction, violation of dwelling immunity or restriction of freedom of work and labor;

- a) By use of a weapon,*
- b) By unsigned letter or use of special signs concealing ones identity,*
- c) By more than one person,*
- d) By taking advantage of the terror actions of the existing or potential organized groups,*
- e) By undue influence based on public office,*

the punishment to be imposed is increased by one fold. The provisions relating to felonious injury are additionally applied in case of commission of aggravated form of this offense which creates the consequences of felonious injury."

28. The article 5 of the Ombudsman Institution Law No. 6328 of 6/14/2012

28.1. titled "Duties of the Institution" reads:

The Institution shall be responsible for examining, investigating, and submitting recommendations to the Administration with regard to all sorts of acts and actions as well as attitudes and behaviors of the Administration upon complaint on the functioning of the Administration within the framework of an understanding of human rights-based justice and in the aspect of legality and conformity with principles of fairness."

28.2. The paragraph three and the paragraph four of the article 17 titled

"Application and Application procedures" read: " (3) Those applications which;

...

b) concern the disputes which are being dealt with or have been resolved by judicial organs, ..., shall not be examined."

(4) Before any application is filed with the Institution, the administrative remedies listed in Administrative Jurisdiction Procedures Law dated 6/1/1982 and numbered 2577 and the mandatory administrative remedies specified under special laws must be exhausted. Any application filed before exhausting administrative application remedies shall be sent to the relevant institution. However, in cases where it is likely to have damages which are hard or impossible to compensate, the Institution may accept applications even if administrative remedies are not exhausted."

29. The article 7 of the Regulation on Early Childhood Education and Primary Education No. 29072 of 7/26/2014 titled Exceptional Circumstances reads:

“Education and training are suspended under circumstances deemed necessary by civilian authorities, provincial and district public hygiene organizations due to any exceptional circumstances, flood, earthquake, disease, unfavorable weather conditions enough to hinder education and training.”

29.1. The paragraph one of the article 33 titled "compensatory education and training program" reads:

"In primary education institutions, education and training are suspended under circumstances deemed necessary by civilian authorities, provincial and district public hygiene organizations due to any exceptional circumstances, flood, earthquake, disease, unfavorable weather conditions enough to hinder education and training. Under such circumstances, school boards and provincial/district education directorates take necessary measures to make amends to students for falling behind”.

30. The paragraph two of article 15 of the Regulation on Secondary Schools No. 28758 of 9/7/2013 titled “Working Schedule” reads:

“Education and training are suspended under circumstances deemed necessary by civilian authorities, provincial and district public hygiene organizations due to any exceptional circumstances, flood, earthquake, disease, unfavorable weather conditions enough to hinder education and training. Under such circumstances, school boards and local education directorates take necessary measures to make amends to students for falling behind”.

30.1. The paragraph one of article 61 titled "Compensation Program" reads:

"(1) In secondary schools,

a) For classes about which one or two term scores are not generated due to the lack of teachers, natural disasters, epidemics, states of emergency and similar causes, a compensation program is put into force for the time between the second term of the school year and the beginning of the new school year.”

31. The article 7 of the Regulation on Procedures and Principles Concerning the Implementation of the Law on Ombudsman Institution titled "Right to complaint" and published in the Official Gazette (bis) No. 28601 of 3/28/2013 reads:

"Natural and legal persons whose interests are violated may lodge a complaint to the Institution against any and all kinds of acts, actions, attitudes and behaviors of the administration within the framework of the procedures and principles laid down in the Law and this Regulation. However, violation of interests shall not be sought in the event that the complaint is about human rights, fundamental rights and freedoms, women rights, rights of children and general matters concerning the public.”

B. Practices Concerning the Subject of the Complaint

32. As for the letter submitted by the Ministry of Justice in response to our request for information and documents, **the following items are detected as a result of the review of the decision made with regard to the appeal of provisional injunction lodged in the ECtHR** due to the curfews and operations imposed in the Eastern and Southeastern Anatolian regions²:

32.1. It is concluded that many applications have been lodged since December 2015 due to the request to notify the Turkish government of the necessity to take temporary measures in connection with the curfews imposed by the Governor's Offices and District Governor's Offices since August 2015 in some settlements across the southeastern part of Turkey,

32.2. and that there are 32 applications for provisional injunctions as of the date the letter was submitted on 4/14/2016 and 26 of them were dismissed while 5 of them were approved (4 for death and 1 for hospitalization) and 1 of them has yet to come to a conclusion,

32.3. **It is concluded that ECtHR underlines the apparent severity of the situation in its interlocutory judgments of dismissal delivered about appeals for granting a provisional injunction and notifying the Turkish government of the appeals,** and the Court was prevented from performing its duty due to the lack of information and the difficulty to learn about the facts given the fact that the applications were submitted without being subject to any review of the domestic judicial authorities, and the Court noted that the local courts are in a better position to deal with such emergencies in accordance with the principle of subsidiarity, **and the complainants had means to make direct contact with national and local authorities to ensure protection for the people at an actual and imminent risk,** and the Court also highlights the fact that those authorities must provide true and viable information to emergency services about the health status and the location of the complainants by encouraging them to make direct contact with emergency services,

32.4. and the Court believes **"given the dire situation across the region, the government will take all the reasonable steps to enable the applicants vulnerable in terms of physical integrity to have access to due care and assistance if requested"** .

33. **The Constitutional Court** also detected the following matters as a result of the review over interlocutory judgments as a part of the individual applications lodged against the curfews and operations imposed by the security forces due to the acts of terrorism launched across the region:³:

33.1. The applicants of the individual applications submitted to the Constitutional Court **demanded an interlocutory injunction to be delivered about the abolishment of the decision and enforcement of curfews on the grounds that the curfews declared by civilian authorities in some provinces and districts of the Eastern Anatolia and Southeastern Anatolia regions violate the right to life, the prohibition of ill treatment, the right to liberty and security, the right to privacy and the right to education and healthcare etc. of the local people that are all safeguarded by the Constitution.** The Court dismissed all of the demands for an interlocutory injunction.

33.2. Pertaining to the application, the Court referred to the clause (ç) of the article 32 and the clause (c) of the article 11 of the Provincial Administration Law No. 5442 of 6/10/1949 as the legal grounds for the curfews declared by the Governor's Offices and the District Governor's Offices.

33.3. **The Court noted that the civilian authorities imposed "curfews" in accordance with the relevant articles of the Law No. 5442, and the rationale behind the curfews was to ensure the safety of life and property for the civilian population during the efforts exerted to capture the members of the terrorist organization, ensure the safety of life and property against the acts of terrorism, lift the barricades laid in alleys, close the trenches and dismantle the explosives, and highlighted the fact that it is not possible to consider groundless the action of the civilian authorities to impose a curfew in order to ensure the safety of life and property and the public order and dismissed the appeal for an interlocutory judgment as one could not infer from the information and documents incorporated into the case file that there is a grave threat that requires to immediately deliver an interlocutory judgment for all the material and moral elements⁴.**

33.4. The Court dwelled on the matters, which were previously underlined in its verdicts with regard to the applications on the following dates and made an assessment for the concrete events under its own circumstances before dismissing the demands notifying the applicants of the fact that

there is no reason that requires to reverse the past verdicts about the appeal for the interlocutory injunctions pertaining to the curfews. **The appeals⁵ of the complaints in the Court to take measures for allegations** over the violation of right to life, prohibition of torture and torment, personal liberty and safety and right to education as a result of **curfews imposed by civilian authorities** were dismissed as well.

34. Pertaining to the resolution taken by the Ministry of National Education on December 13, 2015 for in-service training which is among the complaints, a lawsuit was filed by the ... Union against the Ministry of National Education in Ankara 15th Administrative Court for the nullity of judgment No. 2015/3604 as specified in paragraph 8.9, and the Court dismissed the request for the stay of execution as a part of its judgment No. 2015/3604 of 3/11/2016 and the appeal lodged in Ankara Regional Administrative Court to nullify the local Court's judgment and to enforce stay of execution was dismissed as a part of its judgment No. 2016/1566 of 4/20/2016. The lawsuit is still heard.

C. The Suggestion of Ombudsman Serpil CAKIN to the Chief Ombudsman

35. The Ombudsman concluded that the state has the discretion for measures to be taken based on its powers of civilian authorities regulated on a legal basis within the scope of the state's sovereignty powers and that there is no contrariety to law in terms of a state's positive responsibilities when article 2 of the European Convention on Human Rights titled "right to life" and the article 5 of the Turkish Constitution regarding the state's fundamental duties and tasks are taken into account in tandem. In terms of allegations over the violation of "right to health", the public services are sustained by the regional healthcare institutions and professionals without any interruption and additionally everyone including children under the age of 18 is provided with therapeutic means once they resort to healthcare institutions despite the circumstances of the issue at hand, and education is currently suspended as a result of measures taken in an effort to safeguard the right to life for civilians against acts of terrorism whereas the state has taken comprehensive measures to compensate for the setbacks in education. **In conclusion, the Ombudsman states that it is a must for a state in terms of positive responsibilities to attach priority to the protection of right to life for the students and teachers given the severe circumstances regarding the public order and safety across the region. The Ombudsman has identified no contrariety to law in this respect and submitted her recommendation to the Chief Ombudsman to dismiss the applications lodged by the complainants based on non-specific, general and intangible allegations.**

D. The Review at Law and In Equity

36. As specified in paragraph 6, the complainants made allegations over the violation of right to education by suspending the school term while the school year was still ongoing due to the operations carried out across the region and the curfews imposed in some provinces and districts located in the Eastern and Southeastern parts of Turkey and demanded the Institution to do what is necessary to make sure education is back in effect after safeguarding the right to life for all.

37. **The main problem pertaining to the matter in question stems from whether the right to education is violated or not due to the suspension of educational activities as a result of operations carried out by the security forces to neutralize the members of the terrorist organization and of curfews imposed by the civilian authorities across a region that is home to armed conflicts, specially-trained snipers of the terrorist organization, entrapment of explosives, barricades and trenches (See the attached images 1-13).**

38. Before making any assessment over the disagreement in question, **it is of importance to dwell on some points of our decision dated 6/14/2016 with regard to the application of complaint No. 2015/5756 of 12/17/2015 concerning "the curfews" in terms of pointing to the circumstances in which the incident in question took place:**

38.1. As is known, the Republic of Turkey has been fighting for decades against PKK/KADEK/KONGRA-GEL that seeks to found an independent Kurdish state in some Eastern and Southeastern parts of Turkey, poses a threat to the security, launches attacks at a legitimate and democratic state by ignoring fundamental rights and liberties and human rights and remains in the list of terrorist organizations released by the European Union. As a part of this fight, a state of siege was imposed from 1984 to 1987 when the organization began to engage in armed assaults and a state of emergency was declared between 1987 and 2002 and then a more democratic and civil mentality of administration was adopted as of 2002 by putting an end to the state of emergency. **Since 2002 when Turkey's democratization process gained momentum, the government has paved the way for stability, trust and peace across the aforementioned regions as a result of the steps taken for the economic and social development and improvement of the infrastructure while this setting of trust and peace has been disrupted by creating an environment of violence, fear, panic and despair through increasing acts of terrorism across the whole country following the general elections held in June 7 in particular.**

38.2. Increasing its attacks as of June 2015 to a significant extent, the separatist terrorist organization launched attacks at fundamental human rights including the right to life, the right to liberty and security, inviolability of domicile, the right to property, freedom of travel, the freedom of religion and faith and the right to education and hit ambulances, hospitals, schools, sanctuaries and public offices to prevent the civilian population from having access to the most basic public services such as healthcare and education (See the annexed images 14-21) and attempted to declare an autonomous zone across the region (See p. 20-21). Despite the calls made by the legitimate state authorities in line with the legislation and international criteria in force to end their illegal actions and surrender and avoid hurting the civilian population, the members of the terrorist organization continued to resist the state and the state's legitimate forces through any type of weapon (See the attached images 22-29). In the meantime, the civilian authorities decided to impose curfews in line with article 11/C and 32/Ç of the Administrative Law No. 5442 in an effort to lift the barricades in alleys, close the trenches and dismantle the explosives, and safeguard the safety of life and property for the civilian population during the operations carried out to capture the members of the terrorist organization and restore the public order and safety.

38.3. Delivered with regard to the application of complaint subject to the aforementioned case for the allegations over the lack of basis for the curfews, our decision No. 2015/5756 of 6/14/2016 notes that all of the individual applications lodged in the Constitutional Court to lift the curfews in consideration of the domestic and international law and practices and given the dismissal of appeals lodged in both the Constitutional Court and the European Court of Human Rights for interlocutory injunction for access to basic public services, **the curfews imposed by the civilian authorities are not contrary to law as they were necessary given the balance between freedoms and security and the authorities did not upset the balance in favor of one particular party in terms of public interest, security and order and seizing on individual rights and freedoms, and resorting to the use of force is a necessary, justified and proportionate measure to meet an obligatory social need in a democratic society when necessary to eliminate such a risk and threat. and that was the only way to protect the right of civilians to life.**

39. The complaint for the matter in question is about the allegation over the violation of right to education by suspending educational activities in some provinces and districts located in the eastern and southeastern parts of Turkey in the process that led to the curfews imposed by the civilian authorities as specified above.

40. As is known, the primary goal and duty of the state as stated in the Constitution (article 5) is to protect democracy, ensure individual and social welfare, peace and prosperity, to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social

state governed by rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence." **One of the requirements for a person to improve his/her material and moral existence is undoubtedly the provision of right to education for all and the elimination of political, economic and social barriers that limit the exercise of this right.**

41. "Education and training" are defined by article 42 of the Constitution as a right and a duty while the article says no one shall be deprived of right to education and the scope of the right to education shall be defined and regulated by law, and these activities shall not be obstructed in any way. The article 112 of the Turkish Penal Code No. 5237 defines the prevention of educational and training activities as a crime. **The paragraph one of article 2 of the Supplementary Protocol No. 1 to the European Convention on Human Rights** similarly ensures that no one shall be deprived of right to education.

42. As a public service, "education" is a right safeguarded by the Constitution and the Convention unlike any other public service. Education is not only a service benefited in a direct fashion but also an indispensable element to reinforce and sustain human rights in a democratic society as a service with broad social functions⁶. **The right to education and training specified in article 42 of the Constitution places a negative duty on public authorities to avoid preventing one's access to education and training on one hand and assigns a responsibility to make sure everyone takes part in education and training activities in an effective fashion⁷.** Involving a similar regulation, the article 2 of the Supplementary Protocol No. 1 to the ECHR is composed of two clauses (See p.23.3). **Once the case-laws of the ECtHR are considered, the first clause indicates a fundamental rule while the second one defines a complementary rule⁸.** The fundamental rule is to "avoid making someone deprived of his/her right to education" and the application must be reviewed in line with this fundamental rule for the matter in question.

43. In accordance with the article 42 of the Constitution on the limitation of right to education, it is concluded that there had been no arrangement to limit the right to education whereas the legislative power is granted with discretion since "the scope of right to education" is defined by law. In this case, it is not reasonable to say that the state's discretion is unlimited. In fact, the article 13 of the Constitution on limitation of fundamental rights and liberties indicates that fundamental rights and liberties can only be limited by law in line with causes specified in relevant articles of the Constitution without any injury to their spirit and such limitation would not be contrary to the letter and spirit of the Constitution, a democratic society's order and secular Republican requirements and proportionality. **According to the article 2 of the Protocol No. 1 to the ECHR, it is safe to say that only the right is defined whereas there is no phrase such as legal stipulation or necessity for a democratic society** with regard to legitimate circumstances where this right may be limited when it comes to national security, public safety, the country's economic welfare, restoration of order, prevention of crimes to be committed, protection of health or ethics or rights and liberties of others. **However, it is not possible to say that this right is "absolute and impossible to be limited".** In fact, the ECtHR has acknowledged that this right is not absolute and might as well be subject to limitation despite the importance attached to this right⁹.

44. In response to the appeals lodged for allegations over the violation of right to education, the ECtHR and the Constitutional Court highlighted the fact that the limitations imposed on right to education as a part of negative responsibilities of states must avoid injuring the aforementioned right and preventing it from being effective and instead they must be introduced by law with a legitimate ground and a reasonable balance must be struck between this legitimate ground and the instrument that is put to use. However, it is acknowledged that states are not bound to a limited number of "legitimate goals" in terms of article 2 of the Supplementary Protocol No. 1 to the Convention and that their discretion is broad¹⁰. In other

words, such limitations must be foreseeable and proportionate in line with legitimate goals to avoid any limitation that injures the spirit of right to education and eliminates its effectiveness.

45. In consideration of the foregoing, an inquiry will be conducted to see whether there is any intervention to the exercise of right to education due to a procedure, an action or a negligence of public authorities for the matter in question and then the allegation over violation will be reviewed in accordance with article 13 of the Constitution by taking into account the case-laws of the ECtHR and the Turkish Constitutional Court.

46. As is known, the separatist terrorist organization (PKK) has increased its actions since July 2015 and launched armed attacks at educational institutions, healthcare facilities and professionals in an effort to prevent the civilian population from seizing on basic public services such as health and education. Over this period of time, the civilian authorities have imposed curfews on a temporary basis as of August 2015 in an attempt to neutralize the members of the terrorist organization, ensure the safety of life and property for the people and restore the disrupted public order and safety. **The suspension of educational and training activities in provinces and districts where curfews were imposed is a natural and an inevitable consequence of the curfews and there is no doubt that they serve as an intervention to the right to education for the children residing across the region.**

47. At this stage, it is imperative to make an assessment over whether this intervention has a legal ground and legitimate purpose, and whether it is necessary and proportionate for a democratic society in line with article 13 of the Constitution and the case-laws of the ECtHR to see if it is contrary to article 42 of the Constitution.

48. The review for the suspension of education and training in terms of "legality":

48.1. In accordance with article 13 of the Constitution, fundamental rights and liberties shall be restricted only by law. The executive organ is entitled to introduce a regulation on fundamental rights and liberties on condition that it is based on a law. One shall not introduce a restriction through regulatory procedures not set forth in the law¹².

48.2. Once an inquiry is conducted within this scope, it is concluded that "suspension of education and training activities" is specified in article 42 of the Primary Education and Training Law No. 222. The aforementioned article indicates that the school terms and suspension of educational activities are organized by a regulation to be issued by the Ministry of National Education. Therefore, the suspension of educational activities by law is acknowledged and the identification of requirements to do so is defined by a regulation. Within this context, the article 7 of the Regulation on Early Childhood Education and Primary Education titled "Exceptional Circumstances" and the paragraph two of article 15 of the Regulation on Secondary Schools titled "Working Schedule" read: *"Civilian authorities are entitled to suspend educational activities in schools due to any exceptional circumstances enough to hinder educational and training activities"*. The following articles of both Regulations indicate measures to be taken to compensate students for falling behind due to the suspension of educational activities.

48.3. "Suspension of educational and training activities" is a natural and an inevitable consequence of the curfews and this matter is defined by the clause (Ç) of article 32 and the clause (C) of article 11 of the Provincial Administration Law No. 5442 of 6/10/1949. It is deduced from the aforementioned clauses that the civilian authorities are entitled to take **"necessary**

actions and measures" to restore public order and safety in locations they are assigned to, and a power of discretion is granted for them to act in line with the requirements of the matter in question without severally counting what actions and measures to be taken and thus, the "curfews" were among the actions and measures to be taken by the civilian authorities in line with their discretion (See p.38 and the following paragraphs).

48.4. In the light of the two paragraphs above, it is concluded that the intervention to the right of education is not contrary to law and it is not reasonable to say that the intervention has no legal basis given the fact that the Law No. 222 and the Regulation on Early Childhood Education and Primary Education indicates in a "foreseeable" and "accessible" manner the circumstances in which the state is entitled to suspend educational activities and that the suspension of educational and training activities is "foreseeable and a known fact to all" as a natural and inevitable consequence of the curfews imposed by the civilian authorities in accordance with the relevant provisions of the Provincial Administration Law No. 5442.

49. The review for the suspension of education and training in terms of "legitimacy":

49.1. Since the limitation of the right to education does not involve any a list of legitimate purposes specified in the Convention or the Constitution, the state has a broad type of discretion in what those legitimate purpose might be in line with the general principles specified in article 13 of the Constitution for regulations and practices that would lead to the limitation of the right to education¹³.

49.2. It is beneficial to draw attention to the situation and circumstances that region is under in terms of putting the matter in question into perspective for the criterion of legitimacy. The actions taken by the members of the terrorist organization have taken an apparent rise since July 2015 and they have disregarded the right to life and launched attacks at schools, ambulances, police stations, sanctuaries and public buildings, and caused the lives of many people including security forces as a result of mining and entrapment activities and thus posed an imminent threat to the safety of life and property and prevented people from exercising their fundamental rights and liberties including the right to health and education. and the rationale behind the curfews was to ensure the safety of life and property for the civilian population during the efforts exerted to capture the members of the terrorist organization, ensure the safety of life and property against the acts of terrorism, lift the barricades laid in alleys, close the trenches and dismantle the explosives, and restore the public order and safety. Therefore, the curfews were imposed by the civilian authorities in accordance with the relevant provision of the Provincial Administration Law No. 5442.

49.3. "The right to life" is a right primarily safeguarded by all the international conventions on protection and improvement of human rights and all other rights mean nothing unless this right is safeguarded. The fundamentality of this right lies in its "irrevocable" nature. Concerning the right to life, the article two of the Convention includes two fundamental elements: The protection of the right to life by law and "the prohibition over the deprivation of life" by means of listing exceptions one by one. As for legal actions filed in the ECtHR for the allegation about the violation of the right to life, the Court underlines the fact that the states are liable not only avoid intentional and unlawful killing (negative responsibility) but also take necessary measures to protect the safety of life for those under their sovereignty (positive responsibility)

49.4. In other words, a state is under a negative responsibility not to terminate one's life except for exceptional cases set forth in the article 2 of the ECHR. This confers a positive

responsibility on the authorities - under certain circumstances - to take preventive operational measures to protect an individual at risk due to illegal actions of someone else. In fact, the failure to take necessary measures to eliminate a risk is considered as a violation of the right to life in case authorities already know or are supposed to know about the existence of a true and an imminent threat resulting from criminal actions of a third party against the life of an individual¹⁴. Within this context, counter-terrorism is one of the primary tasks for any state pursuant to the international law on human rights and the states are liable to take measures to protect the fundamental rights of all within their jurisdiction and the right to life in particular against acts of terrorism.

49.5. In consideration of the foregoing, one must acknowledge the fact that the suspension of educational and training activities was an obligatory and inevitable consequence of the curfews due to the circumstances the region was under, and the curfews were not contrary to law (See p.38.3), and they were within the remit of the authorities, and the suspension of educational and training activities was a requirement in terms of the balance between freedoms and security in order to safeguard the right to life that must be protected in a primary fashion and thus it was imposed as a part of a "legitimate purpose" since there was no information, document, finding or evidence for the exercise of discretion by the authorities in contrary to the public interest and service requirements.

50. The review for the suspension of educational and training activities in terms of "necessity" in a democratic public order and "proportionality": -

50.1. A democracy is a regime that safeguards fundamental rights and liberties in the broadest sense possible and any limitation that injures the spirit of fundamental rights and liberties and makes them wholly inexercisable does not accord with the requirements of a democratic public order¹⁵. The benchmark of "the requirements of a democratic society order" is set forth in the article 9/2, the article 10/2 and the article 11/2 of the ECHR and the International Covenant on Civil, Social and Cultural Rights. This concept is designated through case laws by the institutions of the ECtHR. In many verdicts including *Handyside*¹⁶ in particular, the fundamental elements that constitute a democratic society are described as "pluralism", "tolerance" and "broad-mindedness"¹⁷. **However, the Constitutional Court notes¹⁸ "the requirements of a democratic society order entail limitation on rights to be coercive or exceptional and to serve as the last resort or the final method to put into practice."** The Court hereby acknowledges the fact that such limitation can only comply with the requirements of a democratic society order as long as it is proportional and intended for meeting a coercive social requirement and.

50.2. One of the warranties to consider when it comes to any limitation to rights and liberties is "the principle of proportionality". In doctrine, a limitation must feature suitability, necessity and reasonability to comply with the principle of proportionality. Suitability means that the instrument is in compliance with the achievement of the goal, Necessity means that the instrument is coercive in terms of the purpose of the limitation; Reasonability means that the instrument is not unreasonable in achieving the purpose¹⁹. **Therefore, the principle of proportionality requires striking a fair balance between the rights of individuals deprived of their fundamental rights and the public interest intended to be generated by depriving those of this right through the suspension of educational and training activities during the curfews.**

50.3. In the light of the aforementioned statements for the present case, it is inferred that... the suspension of educational activities resulting from the curfews imposed by the civilian authorities and the operations launched by the security forces to neutralize specially-trained snipers, explosives, barricades and trenches in locations where armed conflicts took place and

ensure the safety of life and property and safeguard fundamental rights and liberties is a necessity given the balance between freedoms and security and it manifests itself as the last resort in a democratic society whereas this was the only way to protect the right to life and thus the balance between the public interest & safety and the individual rights and liberties was not disrupted in favor of one particular party.

50.4. Even though the students residing across the region were deprived of the right to education during the curfews, this period of time is reasonable given the circumstances of the present case. Adopted in accordance with the Law No. 22 that serves as the legal basis of the suspension of educational activities, the Regulation on Early Childhood Education and Primary Education and the Regulation on Secondary Schools thoroughly set out how to implement compensation programs for the students falling behind due to the suspension of educational activities. The state has documented with no room for doubt and tangible evidences the fact that it held compensation courses and provided the children with guidance activities for psycho-social assistance as well as social, cultural and sports activities, peer-to-peer social harmony training sessions, awareness training, recreational and entertainment events as a part of the compensation courses and made sure to involve their families and thus, the intervention of the state that limits the right to education was reasonable, acceptable and proportionate.

51. In consideration of the abovementioned statements, allegations of the complainants, the statements of the authorities, the relevant legislation, judicial rulings and the entire file, the limitation introduced by the state to suspend educational activities as a part of its negative responsibility is not contrary to law and this requires to **DISMISS the complaints.**

52. As for allegations of the complainants over the violation of the right to education due to the call made for the teachers to attend in-service training while the school year was still in effect, ... Union filed a lawsuit for the nullity and stay of execution on the grounds that the resolution of 12/13/2015 for the organization of an in-service training for the teachers employed in Şırnak's districts of Cizre and Silopi along with other locations where the curfews were imposed and the resolution that allowed them to receive such in-service training in their hometowns resulted in the suspension of educational activities for an indefinite period of time and the prevention of the right to education for the students studying in primary and secondary schools and therefore, it is imperative to declare the applications for contrariety, which are currently heard by judicial authorities, "NOT FIT FOR REVIEW" in accordance with the clause (b) of the paragraph three of article 17 of the Law of the Ombudsman Institution No. 6328 of 6/14/2012 titled "Application and Procedure" and the paragraph one of article 5 of the Regulation on Procedures and Principles Concerning the Implementation of the Law on Ombudsman Institution and the clause (d) of the paragraph one of article 19 and the paragraph one of article 20.

53. In addition, it is imperative to declare the applications for the aforementioned allegations "NOT FIT FOR REVIEW" given the fact that the complainants failed to deliver any tangible information, document or evidence to confirm their allegations over *"the injury, death, detention, arrest and imprisonment of many children as a result of armed conflicts that have been in effect since July 2015"* and that it is inevitable to acknowledge in line with the statements of the public authorities that the matter of violation of the right to life such as death and injury has been submitted to the judicial (courts) authorities.

E. The Review In Terms of Human Rights

54. "The right to education and training" is a universal right safeguarded by international conventions that Turkey is a party to. **The paragraph one of article 2 of the Supplementary Protocol No. 1 to the European Convention on Human Rights** ensures that *no one shall be deprived of right to education*. "The Language of Education case in Belgium"²⁰, is the first instance in this respect and the judgment reads: *"The clause one of article 2 of the Protocol [...] secures the right to access to educational institutions in place for a certain period of time whereas this access constitutes only one part of the right to education. For "the right to education" to be effective, the individual receiving education must have the capabilities to seize on the education or in other words have his/her education officially recognized in line with the legislations in force.* "In **other words, the Signatory States, which are under the liability to avoid denying the right to education, must provide everyone under their authority with the right of access to educational institutions in place for a certain period of time**" and **"the opportunity to seize on the education by means of official recognition for their completed educational studies"**²¹.
55. According to the ECtHR, the scope of right to education involves public schools as well as private ones. In addition, this right is exercised for all of the primary, secondary higher education schools. When levels of education are ranked, the Court attaches more importance to the education of children than elders and acknowledges the safeguard of access to education on a primary school level, which is vitally important for the development of children, for the avoidance of doubt²². In fact, the Court, as a result of this acknowledgment, indicates that the scope of a state's discretion in right to education is expanded as the level of educational institutions is higher, whereas this type of education diminishes depending on the importance to the individuals and the society²³.
56. The examples for which the Constitutional Court and the ECtHR reviewed the limitations on the right to education and its exercise safeguarded by the article 2 of the Supplementary Protocol are as follows:

57. Ali v. The United Kingdom, Application No: 40385/06, 11/1/2011²⁴

The case pertains to an allegation over the violation of the right to education as a result of the suspension of the 14 year-old applicant and two other students due to the suspicion that arose about a potential case of arson in a dustbin of the school as they were around the class when the fire started.

57.1. Following the incident that took place on March 8, 2001, the school authorities notified the family of the applicant about the suspension to remain in effect until April 5 and then extended it to May 15. In the meantime, the school administration submitted individual working papers for various classes to the applicant and gave permission to enter the school to attend the exams conducted on May 8 to 14. In a letter submitted to the students on May 25, the school administration notified them of the fact that they cannot go back to the school until the judicial process is completed. The law of 1998 imposes a maximum 45-day suspension on students for one semester while this period of time expired on June 6 for the present case. On June 18, the prosecutor's office declared to proceed no further due to lack of evidence and thereupon, the school administration invited the family of the applicant to the school for a meeting to be held on July 13, 2001 to help the children re-integrate into the school. The family of the applicant did not attend the meeting while the families of the other two children did attend and then the children were admitted to the school again. After the family of the applicant did not attend the meeting, the family was notified about the decision to cancel the enrollment whereas it was not canceled even though the student continued to attend the school until

mid-October. On November 6, the father of the applicant lodged an application in the school for the re-enrollment but the application was dismissed as the enrollment of the applicant had been canceled and another student was enrolled in place of the applicant and the quota for students was full. Thereon, the applicant was enrolled in another school on January 20, 2002.

57.2. Having accounted for the abovementioned incidents, the Court put forth the general principles followed for the applications lodged for the allegation over the violation of right to education:

57.2.1. The Article 2 of the Supplementary Protocol No. 1 to the ECHR includes "*the right of access to educational institutions that are in place for a certain period of time*" whereas it is imperative to "*provide means to benefit from education*" by "*the official recognition of the education*" for the right to education to take effect.

57.2.2. The rules that regulate educational institutions may vary by a society's needs, resources, time and place for various levels of education.

57.2.3. In spite of its utmost importance, the right to education is not absolute and subject to some limitations "*due to the fact that it must be regulated by the state in nature*".

57.2.4. It is a must to ascertain whether the limitations are "foreseeable or not" and "featuring a legitimate purpose or not" enough to prevent its exercise to the extent that injures the spirit of the right and eliminates its effectiveness. In addition, it is a must to check "*whether or not there is a reasonable relation of proportionality between the instruments used and the purpose to be achieved*" since there is no list that breaks down the limited number of legitimate purposes in line with article 2 of the Supplementary Protocol No. 1 unlike the article 8 and the article 11 of the Convention.

57.2.5. The article 2 of the aforementioned Protocol does not categorically dismiss "*disciplinary sanctions*" including expulsion and suspension s long as they are necessary for compliance with the school rules and in fact, one of the founding purposes for schools is to assist students in improving their mental skills and personality.

57.3. The Court made the following comments for the present case:

57.3.1. Even though the applicant was not technically expelled from the school as a result of a disciplinary sanction to ensure compliance with the school rules, the Court is of the opinion that the "*temporary*" suspension of a student from a school due to "*reasons beyond control*" such as a judicial investigation should be viewed as legitimate.

57.3.2. The Court ruled that the school expulsion of the applicant is foreseeable. While the applicant was suspended from the school for a period of time longer than what is specified in the law of 1998, it is unreasonable to expect the applicant to go back to the school at the end of the prescribed period of time while the police investigation was still in effect since the applicant had been told that going back to school was out of question until the police investigation was over and the officials were potential witnesses of the incident, as well.

57.3.3. To decide whether the applicant was deprived of the right to education as a result of expulsion, the Court reviews whether there is a fair balance between the expulsion and its grounds. In this respect, the Court ruled that (1) *there is no procedural warranty to appeal against*

the expulsion and prevent arbitrariness, and took into account (2) the duration of expulsion, (3) the scope of cooperation displayed by the applicant and the family of the applicant to ensure the re-integration into the school, (4) the effort exerted by the school authorities to minimize the impact of the expulsion and especially (5) the adequacy of the alternative education offered by the school during the expulsion and its relation with the rights of third parties.

57.4. In its review carried out in consideration of the aforementioned criteria in the present case, the Court concluded that

57.4.1. the applicant was suspended from the school until the judicial proceedings were completed, and the family of the applicant was called upon for the re-integration into the school after they were completed, and the family did not respond to this call in a positive fashion or make contact with the school until mid-October and it was the fallacy of the student or the family, not the school to fail in re-integration into the school,

57.4.2. and the applicant was provided with alternative educational instruments during the suspension period whereas the applicant did not prefer to benefit from any of them,

57.4.3. and it is not reasonable to expect the alternative educational instruments to cover the entire curriculum as the applicant was temporarily suspended from the school until the judicial proceedings were completed, and additionally the article 2 of the Supplementary Protocol No. 1 to the Convention does not impose such a responsibility on the signatory states,

57.4.4. whereas the Court indicated that it might deliver a different judgment in case of permanent expulsion of a school-age student from a school and any failure of receiving full-time education in another school,

and that **the expulsion of the student from the school does not result in deprivation of right to education and it is a proportionate measure that fits for a legitimate cause.**

58. The rule of the Constitutional Court of 12/10/2014 concerning the application No. 2013/583:

58.1. The applicants, who were in a F-type High Security Prison as convicts for acts of terrorism, started their higher education through distance education and the prison administration provided the applicants with a proper computer room for them to attend the educational activities in line with the Ministry's circular letter. During 2011/2012 school term, the applicants continued their educational activities as a part of the instruments provided for them. However, a need for re-arrangement rose for the use of the computer room due to security reasons given the fact that a person, who was convicted for being a member of a crime syndicate for the purpose of generating monetary profit, started distance education during the 2012/2013 school year and the the period of time in which the applicants could benefit from this room was reduced from twenty-one to fifteen hours. The applicants indicated that this period of time was not sufficient for educational and training activities and alleged that their right to education was violated and their complaints were not reviewed on a fair trial basis by the judge of execution.

58.2. The Constitutional Court put forth the general principles taken into consideration in the present case in terms of the state's positive responsibilities as a part of the right to education. In this context, the Court highlighted the fact that *"the right to education is not absolute and unlimited"* despite the importance for a society, and therefore, *"the states have a certain extent of discretion in regulations and practices for this matter"*, *fundamental rights and liberties might be restricted in case reasonable requirements arise* to ensure security in a prison to prevent crimes and introduce discipline as an inevitable consequence of being held in a prison, whereas such limitation must be

based on "a law", in line with a "legitimate cause" and "proportionate for the requirements of a democratic public order" specified in article 13 of the Constitution.

58.3. Based on the aforementioned criteria, the Court made the following comments:

"77. It is a must to identify whether or not the prison administration made any intervention to the right to education granted for the applicants. The prison administrative and the observation board provided the applicants with a chance to benefit from the computer room for 21 hours during the 2011/2012 school year. The time allowed to use the computer room was reduced to 15 hours due to security reasons given the fact that a person, who was convicted for being a member of a crime syndicate for the purpose of generating monetary profit, started distance education during the 2012/2013 school year. [...] Therefore, an intervention was made to the right to education by limiting the use of the computer room for the applicants.

78. Any limitation to the right to education must be foreseeable and proportionate as a part of a legitimate cause. The article 42 of the Constitution does not impose any positive responsibility for prisons to offer educational opportunities. Nevertheless, it is not reasonable to limit the right to education in an arbitrary and unreasonable manner in case the prison provides educational instruments.

79. The Law No. 5275 and the Execution Statute (§§ 17-18) indicate that participation in educational and training activities might be limited for dangerous convicts and those found guilty of being a criminal syndicate. Therefore, it is a foreseeable case for the prison administration and the observation board to limit the hours for the use of distance education classes. [...]

80. In limiting the right to education, there is not any list of legitimate purposes in limited numbers specified by the Constitution or the Convention. Therefore, the state is entrusted with a broad type of discretion to decide what those legitimate purposes could be in line with the general principles set out in article 13 of the Constitution for arrangements to be made for prisoners in particular. For this reason, one must acknowledge the fact that the prison administration and the observation board introduced such a limit on the distance learning class in line with a legitimate purpose in an attempt to ensure the security of the prison.

81. Striking a balance between the legitimate purpose and limitation on the right to education is essential for the protection of the right. One must seek proportionality between outcomes to be achieved in line with the legitimate purpose and the instruments used for the limitation of the right. Another factor to be taken into account for the proportionality is whether or not the outcomes to be achieved in line with the legitimate purpose are reasonable and acceptable.

82. [...] Ensuring security and discipline is of importance not only for the administration but also for the prisoners in F-type prisons that host dangerous criminals and convicts guilty of being member of a benefit-oriented crime syndicate. Therefore, it is reasonable to prevent certain convicts or prisoners who pose a risk in terms of discipline from attending some activities together.

83. [...] Conducted to ensure discipline and security in the prison, such a classification is a reasonable measure as it falls within the scope of the administration's discretion. On the other hand, the prison administration did not entirely prevent the applicants from making use of the distance education class while introducing a new plan for the use of the computer room as a part of this measure. On the contrary, the administration introduced a limit within the capabilities of the prison.

85 [...] In addition, the applicants did not come up with any allegation over a time limit on them to graduate from the programmes they attend as a part of the distance education or challenges they may encounter in case their education requires a longer period of time. One cannot conclude that the right to education was denied even if it is deemed reasonable for the applicants to follow the classes

on computer for a longer period of time to get better education. Otherwise, this gives rise to a responsibility to be shouldered by the prison administration for the quality and effectiveness of the educational activities as well. And this would place a responsibility on the shoulders of the prison authorities even though article 42 of the Constitution does not impose such a responsibility.

86. [...] In addition, the fact that the prison administration and the observation board allowed the applicants to benefit from the distance education classroom on a full-time basis during 2011-2012 school year is a testament to the fact that the administration was encouraging the applicants to attend the educational activities. The limitation on the use of the distance education classroom as a part of an indispensable purpose such as security for prisons during 2012-2013 school year should be viewed as a reasonable and proportionate intervention to the right to education. Therefore, the limitation on the use of the distance learning classroom to ensure security and discipline in the prison is reasonable given the fact that the educational activities remained in force with an amendment to limit class hours since it is concluded that the applicants held in the prison failed to deliver tangible, reasonable and acceptable allegations pertaining to the challenges they would face in case their education requires more time as a result of taking less number of classes.

Due to the aforementioned causes, it has been decided that the right to education and training, which is safeguarded by article 42 of the Constitution, is not violated.

59. When the judgments of the Constitutional Court and the ECtHR on the aforementioned matter are put into perspective for the present case, it is safe to deem "temporary" absence of students from the school "reasonable" due to the "compelling reasons and reasons beyond control" such as "acts of terrorism" that have been ongoing across the region. In line with the Law No. 222, the Regulation on Primary and Secondary Schools adopted in accordance with this Law and the Provincial Administration Law No. 5442 introduced as a legal basis for curfews, the fact that students might be deprived of educational activities until the public order and safety is restored across the region is "foreseeable" and additionally, it would not be "realistic, reasonable and acceptable" for the students and their parents to expect attendance to schools while the curfews were still in effect and the members of the terrorist organization kept attacking at the schools. It is inferred that the relevant legislation provides "a procedural warranty" for compensation courses to ensure "re-integration" of the students into schools and it is concluded from the information and documents submitted by the authorities that the courses were put into effect as a part of short, mid and long-term plans and additionally these courses were enriched with "social, cultural and sports activities". The students and their families were provided with "psycho-social assistance" as well as "financial aid" to help them overcome adversities caused by the conflicts across the region and re-integrate into the society. Since it is inferred that the public authorities exerted all the efforts and took all the measures possible, it is safe to say that the suspension of educational activities for the students on the grounds of curfews imposed by the civilian authorities and the operations launched by the security forces is "a proportionate measure that fits for the legitimate purpose followed and it did not lead to deprivation of the right to education".

60. On the other hand, the applicants failed to deliver any tangible, reasonable and acceptable allegation for problems they are likely to face due to the failure of completion of the curriculum as a result of the suspension of educational activities. Given the rule of the ECtHR indicating that it would not be reasonable to expect alternative education to be comprehensive enough to cover the entire curriculum, it is inferred that the content and scope of the education provided constitute a proportionate intervention to the right to education considering the fact that the educational activities remained in effect by means of compensation courses and the students were even provided with psycho-social assistance and financial aid.

F. The Review from the Perspective of Principles of Good Governance

61. In today's world, the authorities are expected not only to act in line with the law as a requirement of democratic, modern and participatory administration but also to take actions in line with good governance principles.

62. The article 6 of the Regulation on Procedures and Principles Concerning the Implementation of the Law on Ombudsman Institution released in the Official Gazette No. 28601 (bis) of 3/28/2013 and titled "good governance principles" reads: *"While conducting examinations and investigations, the Institution shall obey the good governance principles and monitor whether the acts and actions of the administration are fulfilled with an understanding of human rights based justice and in conformity with principles of good governance such as compliance with laws, prevention of discrimination, proportionality, abuse of power, equality, impartiality, honesty, courtesy, transparency, accountability, compliance with the fair expectation, protection of vested rights, right to be heard, right to defense, right to be informed, taking decision in a reasonable period, taking reasoned decisions, indicating remedies against decisions, notifying the decision without delay and protection of personal data."* The article 41 of the European Union Charter of Fundamental Rights, which constitutes the basis of the principles set forth in the provision of the said regulation, dwells on the right to good governance while similar principles are also incorporated into "the European Administrative Law" adopted by the European Parliament.

63. **As a result of the analysis made in line with the said principles, it is concluded that** Since it is concluded that the authority submitted the information and documents concerning the subject of the application to our Institution on time, and the decisions (actions and procedures) of the authority were justified, sufficient, reasonable and convincing, it is detected the authority **acted in line with the good governance principles** that include *"compliance with law", "proportionality", "non-abuse of powers", "accountability", "taking decisions in a reasonable period of time", "justified decisions" and "pronouncing judgments without any delay"*. Since the applications subject to the complaint were reviewed without exhausting administrative remedies, it was not possible to conduct a separate review from the perspective of the complainants within the context of how the authority treated the complainants.

IV. APPLICABLE LEGISLATION ON RIGHT TO LEGAL REMEDIES

A. Resumption of litigation

64. In accordance with the paragraph eight of article 17 of the Law No. 6328 of 6/14/2012 on Ombudsman Institution, the application lodged within the term of litigation halts the term of litigation that was ongoing and the article 21 of the Law titled "resumption of the term of litigation" indicates that the term of litigation that is pending shall resume in case the Ombudsman Institution fails to finalize its inquiry within six months starting from the application date. The paragraph four of article 38 of the Regulation on Procedures and Principles Concerning the Implementation of the Law on Ombudsman Institution sets out that the situation shall be notified to the complainant in case the Ombudsman Institution fails to finalize its inquiry within six months starting from the application date and the pending term of litigation shall resume where it is left off. Within this context, the complainants were notified of the grounds for failing to finalize the inquiry in six months and the fact that the term of litigation would resume.

B. Legal Remedy

65. The paragraph 2 of the article 40 of the Constitution No. 2709 titled Protection of Fundamental Rights and Freedoms reads: "The State is obliged to indicate in its proceedings, the legal remedies

and authorities the persons concerned should apply and time limits of the applications". Thus, one is free to seek legal remedies in Administrative Courts within the period of time remaining after the 60-day term of litigation against any procedure in line with the paragraph 2 of the article 20 of the Law No. 6328 on Ombudsman Institution.

V. DECISION

In consideration of the grounds and the file scope, **the Chief Ombudsman of the Republic of Turkey has decided to**

1. **NOT REVIEW** the complaints pertaining to the violation of the right to education due to the call made for the teachers to attend in-service training as a whole while the school year was ongoing,
2. **NOT REVIEW** the complaints pertaining to the allegations that many children have been injured, died, taken into custody, arrested and sentenced as a result of conflicts that have remained in effect since July 2015,
3. **DISMISS** the complaints pertaining to the violation of the right to education due to the curfews and the operations in force,

and submit the decision to **the COMPLAINANTS, THE MINISTRY OF NATIONAL EDUCATION, THE MINISTRY OF HEALTH, THE MINISTRY OF FAMILY AND SOCIAL POLICIES, THE MINISTRY OF JUSTICE and the MINISTRY OF INTERIOR.**

E-signed

M.Nihat ÖMEROĞLU
Chief Ombudsman