

TIME RECEIVED

September 6, 2013 5:30:53 PM GMT+02

REMOTE CSID

+4122 7340859

DURATION

291

PAGES

10

STATUS

Received

6. Sep. 2013 17:22

MIS. TURKEY TO UNOG +4122 7340859

No. 1274

P. 1



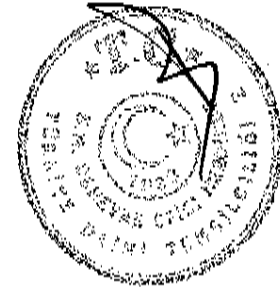
PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

2013/62441669-BMCO DT/851282

The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the joint urgent appeal from the special mandate holders, received on 14 June 2013 (ref: TUR 03/2013), has the honour to transmit herewith the information obtained from the relevant Turkish authorities, as regards the allegations concerning the police intervention to the protests that have taken place in Istanbul's Gezi Park.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 6 September 2013



Encl: As stated

Office of the High Commissioner for Human Rights
Palais Wilson
Geneva

1. Are the facts alleged in the summary accurate?

The incidents summarized in the report of Joint Urgent Appeal prepared by the Special Rapporteurs of the UN relating to "Gezi Park demonstrations" are in part based on inaccurate and incomplete information. There has been an extensive disinformation concerning the demonstrations. Although the demonstrations began in a peaceful manner, relevant to Gezi Park, they have subsequently gained a different dimension owing to abuses by marginal and illegal groups.

Starting from 28 May 2013, demonstrations were held in Istanbul and throughout the country, led primarily by Taksim Solidarity Platform, under the slogan "We are not handing over our park, we do not want the Barracks/ shopping mall!", protesting the cutting down of the trees in Gezi Park, located in Istanbul's Taksim Square. However, at the subsequent stage, it has been observed that marginal left-wing terrorist groups have been effectively provoking the incidents.

In this process, as a result of manipulation by terrorist organizations, protests spread throughout the country, turning into acts of violence aiming to obstruct daily social life completely. Terrorist organizations and marginal groups abused the incidents and tried to incite people to violence and to act contrary to public order.

In Istanbul, as a result of provocations by marginal groups, 13 public / political party buildings, most of which belong to AK Party, 134 official vehicles, 44 city buses, 11 bus stops, 66 private vehicles, 22 surveillance cameras, 5 bank branch offices, 22 ATMs, 3 live broadcast vehicles, 1 base station vehicle, 28 workplaces and roads and pavements were damaged in many areas.

The use of methods during the violent demonstrations within the context of the Gezi Park demonstrations are similar to those used previously by violent street demonstrations staged by terrorist organizations (covering the face for anonymity, carrying emblems, flags and symbols belonging to terrorist organizations, moving in synchrony and coordination, preventing monitoring by the security forces by disabling surveillance cameras, etc.). This shows that terrorist organizations got involved in the activities and that the incidents have been manipulated.

Particularly, terrorist organizations and supporter groups fabricated false news and made them public (news that the police burned down protesters' tents, there were scores of dead and injured, police officers resigned, protestors were run down by police vehicles, etc.). During the incidents, creating hostility between different groups was attempted by means of attacking on national values (such as flag burning), and it has been observed that left-wing terrorist organizations such as DHKP/C (Revolutionary People's Liberation Party/Front), MLKP (Marxist Leninist Communist Party), MKP (Maoist Communist Party) and TKP/ML Konferans (Turkish Communist Party/Marxist Leninist Conference) attempted incitements which could lead to clashes between different segments of the society.

Although the initial slogan of the protests was “We are not handing over our park, we do not want the Barracks/ shopping mall!”, the demonstrations that were exploited by the terrorist organizations deviated from their purpose and have been turned into the form of “Resistance”, “Public Movement” and “Rebellion Against the Government”.

Moreover, it has been observed that persons who were found to have been involved in terrorist acts and in respect of whom judicial proceedings had previously been brought participated in the incidents and that one out of every ten detained demonstrators had criminal record.

The leading organizations which provoked the demonstrations were as follows; along with **PKK/KCK** and **DHKP/C**, which are listed as terrorist organizations by the European Union and the United States, **MLKP – ESP**, **MLSPB** (*Marxist Leninist Armed Propaganda Units*), **TDP** (*Turkish Revolution Party*), **SDP** (*Socialist Democracy Party*), **Anarchists**, **Resistance Movement**, **DEV-YOL Revolutionary Movement**, **Trotskyists**, **MKP**, **TKP/ML**, **DSİH** (*Revolutionary Socialist Labor Movement*), **SODAP** (*Socialist Solidarity Platform*), **SYKP** (*Socialist Reestablishment Party*), **TKİP/BDSP** (*Turkish Communist Workers/Independent Democratic Socialist Party*), **TİKP/Bolshevik Proletarian Revolutionary Stance**, **Revolutionary Muslim Youth** and **Anti-Capitalist Muslim Youth**. The above mentioned organizations have taken an active part in the violent protests which did not serve any peaceful purpose.

As a result of calls by left-wing terrorist organizations and marginal groups and upon provocation of masses with the allegations that acts of violence were caused by the use of disproportionate force by law enforcement officers to the masses;

- Particularly in Taksim Square, an area open for public use was occupied by crowds of people and roads were blocked by setting up barricades.

- Despite the fact that stones, sticks, metal balls, Molotov cocktails, sharp objects, fireworks and even firearms were used against the security forces on duty, and despite the fact that all conditions making a police intervention legitimate have been effectuated, absolutely no firearms were used by the police.

- Since the aggressive acts of the violent groups did not cease despite all the warnings and lawful interventions but rather escalated to a level which caused harm to the environment and to people, the police was obliged to disperse them gradually, by using proportionate force.

- Within this context, pepper gas was used, which is an internationally accepted standard and used by law enforcement officials worldwide. The fact that pepper gas has no permanent negative effects or lethal health risks has been taken into account.

- The police has not responded to direct attacks and attacks made by using stones. Hundreds of policemen were injured and one police inspector died as a result of the attacks.

- It has been observed that the majority of civilian injuries were due to the turbulence created by the protesters. Within this context, a total of 2175 persons went to hospitals in

Istanbul, 103 of which remained in hospitals, treated and subsequently discharged, 2 of which were taken to intensive care units and the remaining patients have undergone outpatient treatment.

2. Please provide the full details of the legal basis for the use of force during the peaceful demonstrations that have been taking place since 28 May 2013.

Law enforcement officers resort to their power to use force pursuant to Article 16 of the **Law on the Duties and Powers of the Police**.

Accordingly, depending on the nature and degree of resistance against the security forces and to the extent that would render rioters ineffective, the use of force includes a gradually rising level of bodily force, physical force and, when legal conditions are realized firearms. Physical force expresses the devices apart from bodily force, which may be used by the police against resisters such as handcuffs, truncheons, water cannon, tear-inducing gases and powders, physical barriers, police dogs, horses, etc.

The decision to use force is taken when law enforcement officials are absolutely obliged to use force. The nature and extent of the force is determined in proportion with the level of the resistance and is gradually raised depending on the resistance or aggression the police is confronted with.

While using devices of physical force, law enforcement officials display utmost care to make sure that people who are not involved in the unlawful civil disorder are not affected. For this purpose, a new circular has been issued by the Ministry of Interior, stipulating the principles governing the use of force.

In conformity with the right to assemble and protest, the demonstrations that continued overnight on 27 May 2013 were not intervened in. However, since criminal acts were subsequently displayed, such as violation of the freedom of work and labour (Article 117 of the Criminal Code) through the prevention of construction works by protestors who actually occupied the area for some 15 days; damage to public property (Article 151) through an intensive stoning of the construction vehicles operating in the area; and prevention of public duty (Article 265) and physical attacks against the municipal constables and subsequently against riot police officers, a gradual and proportionate intervention took place on 28 May 2013 at around 14.00. The protesting crowd was taken out of the park and the act of occupation was terminated.

3. Please provide detailed information concerning the legal grounds for the arrest and detention of the above mentioned persons and explain how these grounds are compatible with international human rights norms and standards as stated, inter alia, in the UDHR and the ICCPR.

During the demonstrations, a number of persons were taken into custody, detained on remand or judicial control measures were imposed in respect of a number of persons. However, no single person has been detained on remand solely for having been participated in the demonstrations. According to the data collected by the Ministry of Justice by 9 July 2013,

115 persons were detained and judicial control measures were imposed on 85 persons during the demonstrations. A wide variety of charges have been brought against the persons who were imposed a judicial measure. Information relating to persons who have been detained on remand or imposed a judicial control measure by 9 July 2013 in İstanbul, Ankara and İzmir are stated below:

Among 516 persons who were taken into custody in İstanbul, 40 were detained on remand and 42 were imposed a judicial control measure. The remaining persons were released after being interrogated. Those who have been detained on remand or imposed a judicial control measure have been charged with “being a member of an armed terrorist organization, aiding a terrorist organization without being a member and forming an organization for committing crimes, destruction of public property, attempted extortion, possession of explosives, possession of hazardous substances without permit, possession of unregistered weapons and ammunition, leading an illegal organization and violating the Law on Meetings and Demonstration Marches”.

In Ankara, 34 persons were detained on remand among the 979 persons taken into custody, while the remaining persons were released after being interrogated. Judicial control measures were taken in respect of 12 persons. Those who have been detained on remand or imposed a judicial control measure have been charged with “being a member of an armed terrorist organization, violating the Law on Meetings and Demonstration Marches, vandalism, preventing officers from performing their duties, defamation of police officers, possession of hazardous substances without permit, publicly degrading the symbols of State sovereignty, causing injury, making propaganda of a terrorist organization and violating the freedom of work and labor”.

In İzmir, among 490 persons taken into custody, 37 were detained on remand. Those who have been detained on remand were charged with “being a member of an armed terrorist organization, violating the Law on Meetings and Demonstration Marches, destruction of public property, publicly provoking people to disobey laws, provocation by means of social-media to commit an offence and preventing officers from performing their duties”.

Since strong suspicion against the above mentioned persons of having committed one or more of such offences was established as a result of the assessment made by independent courts, the provisions of detention and judicial control measures have been applied. Therefore, the allegation that such measures were arbitrary is unacceptable. Moreover, taking into consideration the amount of corresponding sentences applicable for the offences listed above, the measures of judicial control and detention on remand are regarded proportionate. Criminal investigations are underway in respect of the persons under judicial control and detention. Therefore, the implementing procedures and grounds for the said judicial measures are in accordance with the provisions of Articles 3 and 9 of the Universal Declaration of Human Rights, Article 9 of the International Covenant on Civil and Political Rights and 5 § 1 (c) of the European Convention on Human Rights.

Article 11 of the Convention on Human Rights entitled “freedom of assembly and association” and the Turkish national legislation, which was designed in accordance with the

Convention, protects **only** the assemblies which are peaceful and non-violent. Assemblies which are not peaceful and are violent cannot be protected and law enforcement officers' right to intervene shall be reserved in such situations. In this context, as public and private property was damaged, Taksim Gezi Park events were not of a peaceful nature. In addition, as a result of the use of a firearm against riot police by a protester among the crowd gathered at Mecidiyeköy Varyant, a deputy inspector sustained an injury to his abdomen and a police officer to his leg.

The security forces have intervened in the demonstrations within the legal boundaries when they determined that the persons resisted the officers in charge, attacked against them with Molotov cocktails, stones, fireworks etc., and damaged the environment and public property during the demonstrations.

Concerning arrest and detention of lawyers who had gathered in front of Çağlayan Justice Palace in support of Gezi Park protests, which has been referred to in page 3 (first paragraph) and 6 (last paragraph) of the Joint Urgent Appeal, several points need to be clarified regarding this police intervention. Prior to the operation in Çağlayan Justice Palace, protests were held for two to three days in the same spot, with no interventions. However, on the day of intervention, the number of protestors reached 300 and it has been observed that persons other than lawyers were also among them. Since their actions disturbed people who were there to follow their judicial works and since the noise generated hindered trial activities, the security forces called on the crowd to stop the protest. However, as the group did not comply with the call, an intervention took place, based on Article 22 of Law on Meetings and Demonstration Marches, which states that meetings and demonstrations shall not be held in public buildings, facilities and their annexes. In addition, since the Justice Palace is visited by some 50,000 people daily, where about 300 courts and other judicial units operate, such an intervention is considered necessary in order for an uninterrupted and unhindered public service. 44 protesters, who were taken out of the courthouse by the police were taken to the Security Directorate. In accordance with the order of the public prosecutor, those protesters who proved that they are lawyers were immediately released after identification. Therefore, the intervention has been proportionate and careful. The Government is not of the opinion that the incident has violated or impaired the "Basic Principles on the Role of Lawyers", which was adopted in 1990 by the General Assembly of the United Nations.

4. Please provide information on the measures taken to ensure the physical and psychological integrity of those who have been arrested and who are now detained.

The security forces have acted in accordance with the powers granted by the laws while performing apprehensions and custodies. The allegations that "*the persons held in custody were subjected to torture and ill-treatment and their urgent access to medical assistance was denied*" do not reflect the truth. 569 persons were transferred to the hospitals by the provincial ambulance services during the incidents in Istanbul. A great number of ambulances were kept available at and around the Taksim Square during the incidents.

Moreover, there are cameras in the detention facilities in Turkey and the detention facilities of anti-terror units provide service in compliance with EU standards.

In accordance with Article 10 of the Regulation on Apprehension, Detention and the Taking of Statements, a report of battery and coercion is issued following a medical examination for persons who were apprehended and detained upon a decision of the public prosecutor before being taken into custody. A report of battery and coercion is also issued following a medical examination when they are released from custody.

Pre-apprehension and after-apprehension medical reports show that no torture and ill-treatment took place. Apart from that, the allegation that gas bombs were thrown from helicopters is technically not possible. Therefore, this allegation is unsubstantiated.

5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the alleged cases of deaths, torture and ill-treatment. If no inquiries have taken place, or if they have been inconclusive, please explain why.

In cases where the boundaries of the law were exceeded during the Gezi Park demonstrations, judicial investigations have been immediately initiated by the judicial authorities.

Within this scope;

8 separate investigations have been initiated against the police officers concerning the incidents that took place in Adana province on 1 June 2013, 4 June 2013 and 15 June 2013. The investigations are being conducted within the context of the offence of injury with respect to the allegation of battery. 1 of these investigations has been concluded and a decision of non-prosecution has been delivered.

There are 83 separate investigations against the police officers concerning the incidents that took place in Ankara province in June. One of the investigations is related to homicide and a criminal case has been initiated against the suspected police officer in Ankara 6th Assize Court. The other 82 investigations are being conducted on the charge of qualified injury. The investigations are in progress as medical reports are still awaited. Within the scope of investigations, 216 persons are in victim status.

There are 9 separate investigations conducted against the police officers on charges of torture, injury, misconduct, deprivation of liberty, defamation, threat concerning the incidents that took place in Antalya province on 1, 2 and 3 June 2013. In these investigations, 12 identified persons are in victim status. 17 police officers are in suspect status in the investigation conducted on the charge of torture. The investigations are in progress.

An investigation has been initiated against the police officers on the charges of exceeding the limits of the right to use of force, due to injury of 4 persons in Aydın province, Söke district on 1 June 2013. The investigation is in progress.

A decision of non-prosecution has been delivered concerning the police officers in the investigation carried out due to injury of four persons in Bursa province on 2 June 2013. However, the investigation against actual perpetrators is still in progress.

4 judicial investigations in total have been initiated with respect to the incidents that took place in Eskişehir province; 1 on the charge of intentional homicide, 1 on the charge of removing evidence, and 2 on the charge of malpractice. These investigations are still in progress. Public officers; doctors, police officers and chief police officers are among the suspects of these investigations. In addition, 4 persons in total are in victim status in the judicial investigations.

An investigation has been initiated against a police officer on the charge of injury with respect to the incident that took place in Gaziantep province on 1 June 2013, where a person was injured. The investigation is still in progress.

An investigation has been initiated on the charge of causing the death of Abdullah Cömert in Hatay province. The investigation is still in progress.

2 separate investigations have been initiated against the police officers concerning the incidents that took place in Isparta province on 1 - 2 June 2013. Within the scope of the investigations, 2 persons are in victim status. The investigations are being conducted on the charges of injury, misconduct and defamation. The investigations are in progress.

There are 7 separate investigations against the police officers and public officers concerning the incidents that took place within this period in Istanbul province. The investigations are being conducted on the charges of injury, exceeding the limits of the right to use of force, and defamation. 308 persons who were identified are in victim status.

There are 37 separate investigations with respect to the injury of 76 persons concerning the incidents that took place in İzmir province between 1 and 7 June 2013 and on 11 June 2013. The investigations have been initiated against the police officers on the charges of injury and exceeding the limits of the right to use of force. 41 police officers who were identified are in suspect status and the investigation is in progress.

22 persons in total have been injured during the incidents that took place in Mersin province; 8 between 1 and 4 June 2013, and 14 on 20 June 2013. 3 separate investigations have been initiated with respect to the incidents. The investigations are still in progress.

A criminal case has been initiated before the criminal court on the charge of injury against a police officer, who has been accused of squeezing the throat of 3 persons and punching them, during the incidents that took place in Muğla province on 1 June 2013. The criminal case is still in progress.

2 separate investigations have been initiated against the police officers on charges of misconduct, injury and defamation with respect to the incident that took place in Kocaeli province on 2 June 2013, where 3 persons claimed to have been injured. The investigations are still in progress.

The complaints filed against the public officers, particularly police officers, during the Gezi Park Demonstrations are being investigated with due diligence.

6. Please indicate whether complaints have been lodged by or on behalf the victims and whether compensation has been provided to the victims or their families.

No information is available.

7. Please indicate what measures have been taken to ensure that the legitimate right to assemble peacefully and the related right to freedom of expression is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

Around 25.635 events were organized under various names and forms of meetings and demonstrations marches in Turkey in 2012. Some 7.500.000 persons participated in these events. 60% of these events were organized in the form of spontaneous meetings under the title of press statements. It is not required to submit a notice to the administrative authorities for this type of meetings. 6% (1534) of the events organized in 2012 were illegal and only 3% (802) of the events were intervened by security forces where participants had resorted to violence despite all the warnings by the security forces.

This shows that the security forces ensured the security of the participants and the people around. The meetings could be held without submitting any notice and freedom of expression was ensured. The security forces did not intervene in every event by using force even the event was contrary to the law.

The demonstrators were warned prior to intervention that the demonstration was against the law and disturbed the public order, and that they would be dispelled by use of force if they did not end the demonstration. For instance, in the incidents in Gezi Park in İstanbul, the groups were warned several times that the demonstrations turned into violent protests and thus became illegal and therefore they had to disperse. Following these warnings the demonstrators were given sufficient time to disperse. Pressurized water was used for the groups who did not disperse and an intervention was performed in a proportional manner by using pepper gas against those who continued the resistance.

Prior to the intervention, the issues such as number of demonstrators, the duration of the demonstration, and whether damage caused in public order is tolerable, are taken into consideration.

8. Please provide information concerning consultation and participation of individuals and communities in the decisions related to the redevelopment project of the Gezi Park in Taksim and surrounding area, including in relation to the protection of the right to adequate housing.

With the construction project of the Artillery Barracks in Gezi Park, it is planned to transform the area, into its original Artillery Barracks constructed during the reign of Sultan Selim III and thereby to direct all vehicle traffic in Taksim and surrounding area under the Taksim square.

The construction works for directing the vehicle traffic under the Taksim square started at the end of 2012 and the works are in progress at present. As a result of these works, 1131m of underground way consisting of 312m from monument on Cumhuriyet Street and 819m from Atatürk Cultural Centre will be constructed. In addition, according to the project, it is planned to renovate the facade of the buildings on the Tarlabası and Cumhuriyet Boulevard in accordance with their original.

Taksim Gezi Park Protection and Beautification Association applied to the İstanbul 6th Administrative Court, asking nullity and stay of execution of the decision given by the Supreme Council of Protection of Cultural Property on 27.02.2013 under No. 139, claiming that the project will allow a construction of a shopping mall under the guise of construction of the Artillery Barracks. The decision of **“Stay of Execution”** was rendered by **İstanbul 6th Administrative Court on 31 May 2013**. The Ministry of Culture and Tourism objected to the decision of “Stay of Execution”. The objection of the Ministry of Culture and Tourism was dismissed by İstanbul 6th Administrative Court, thereupon the Ministry of Culture and Tourism applied to the Regional Administrative Court. The Regional Administrative Court has unanimously revoked the decision of stay of execution rendered by İstanbul 6th Administrative Court.