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PERMANENT MISSION OF THE REPUBLIC OF TURKEY  
TO THE UNITED NATIONS OFFICE IN GENEVA

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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 communication sent by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Mr. Michel Forst, Special Rapporteur on the situation of human right defenders, dated 23 January 2017 (Reference: AL, TUR 1/2017), has the honour to enclose herewith an information note comprising the response of the Government of the Republic of Turkey.

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.



Encl: As stated

Office of the High Commissioner for Human Rights  
Palais des Nations  
1211 Geneva 10

**Observations Regarding the Joint Communication of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and the Special Rapporteur on the Situation on Human Rights Defenders dated 23 January 2017**

**(REFERENCE: AL/TUR 1/2017)**

1. In respect of the Joint Communication of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and the Special Rapporteur on the Situation on Human Rights Defenders dated 23 January 2017, the Government would like to provide information requested and respond in detail to the concerns and recommendations taking into account the points raised in the Communication.

2. Osman İşçi held the position of a Research Assistant at the Faculty of Arts and Sciences, Department of English Language and Literature at Ağrı İbrahim Çeçen University.

A disciplinary investigation has been initiated on suspicion that the said personnel might be linked to the PKK terrorist organization.

In accordance with the relevant articles of Decree Laws 667, 668 and 675; as well as articles 137 and 138 of the Law on Public Employees (No. 657), Mr. İşçi was suspended from his duties at the Ağrı İbrahim Çeçen University until the conclusion of the investigation.

Articles 137 and 138 of the Law on Public Employees determines suspension as “a precautionary measure concerning public employees whose stay in office may be deemed inconvenient for the exigencies of the public service.”

The Decree Law 667 provides that public officials who are deemed to be members of or have links to terrorist organizations be dismissed from public service. Accordingly, through the boards existing or to be established within their higher bodies, each public institution or organization shall be empowered to dismiss staff from office when their ties to terrorist organizations have been found.

Decree Law 675 allows that limits for the duration of investigations not be observed for those suspended during the State of Emergency.

Currently, the investigation concerning Osman İşçi is ongoing.

3. Taking this opportunity, the Government believes that the scope and the necessity of measures taken in Turkey pursuant to the terrorist coup attempt of 15 July 2016 need to be better assessed by giving due consideration to the severity of the threats posed by terrorist organizations, namely Fetullahist Terrorist Organization/the Parallel State Structure (“FETÖ/PDY”), PKK, DAESH and DHKP-C.

In recent years, Turkey faces unprecedented security threats emanating from terrorist organizations such as FETÖ/PDY, PKK, DAESH and DHKP-C as seen in the 15<sup>th</sup> July terrorist coup attempt. In these circumstances declaration of state of emergency became a necessity, first and foremost, to protect the people and their rights.

Once the State of Emergency was declared, Turkey duly resorted to the right of derogation from the obligations in the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), in line with the relevant articles of these

Conventions (Article 15 of the ECHR and Article 4 of the ICCPR) which permit the Contracting Parties to take measures derogating from their obligations under the Conventions in extraordinary circumstances.

Whereas derogation may bring certain limitations to the exercise of certain rights under required conditions, it is also of relevance to note that the exercise of Article 19 of the ICCPR also carries with it special duties and responsibilities under all circumstances. It may therefore be subject to certain restrictions, as permitted by the ICCPR. The Government pays utmost attention to fully observe legality, necessity and proportionality criteria for any limitations introduced as such. Accordingly, recent measures during the State of Emergency has been (i) taken for the protection of national security or of public order, (ii) provided by law (as well as Decrees with the Force of Law) and (iii) undertaken within the necessities of the exigencies.

The Republic of Turkey is fully aware of its obligations related to democracy, human rights, the principle of rule of law and international conventions in this process and due respect is being shown to fundamental rights and freedoms; the principle of supremacy of law is strictly observed.

4. Concerning suspension/dismissals of public employees, which *inter alia* has been the focus area of the letter of the Special Rapporteurs, it should be underlined that such measures again reflect principles of necessity and legality.

On 15 July 2016, Turkey endured a terrorist coup attempt committed by FETÖ/PDY. This attempt, directed towards overthrowing the democratically-elected Government, the President and the constitutional order in Turkey.

Following the coup attempt and ensuing terrorist attacks from various terrorist organizations, including PKK and DAESH, it became urgency to remove all the elements of FETÖ and other terrorist organizations first and foremost from public institutions, as a matter of national security. It is the prerogative of the state to determine conditions and qualifications that are expected from public employees. In this regard, existence of public employees who act based on their loyalty to terrorist networks cannot be accepted.

Within this framework, the Decree Law 667 allows that public officials who are found to be members of or affiliated to or in contact with the terrorist organization be dismissed from public service.

It should be underlined that, as is the case with other measures taken under State of Emergency, suspension/dismissal of public employees who are deemed to be members of or have links to terrorist organizations, is undertaken within the limits of the rule of law and Turkey's international obligations, including the ICCPR. Principles of necessity, legality and proportionality are observed. To this end, measures taken within the State of Emergency are being constantly examined and revisions are introduced as necessary.

On a different note, domestic remedies exist for those who believe they have been wrongfully suspected in the anti-terrorism probes. Upon individual complaints, a number of personnel have been reinstated to their duties, following reassessment of their cases.

In addition to administrative complaint procedures, the decisions of the boards established in accordance with the Decree Law 667 can be subject to judicial review and the persons concerned have the right to challenge these decisions before administrative courts as well.

Furthermore, with the Decree Law 685 dated 23 January 2017, a special commission (Inquiry Commission on State of Emergency Measures) has been established as a binding legal remedy to address measures that are taken directly with Decrees.

The Commission will assess applications regarding dismissals of public employees and closure of associations, institutions, as well as media outlets, as listed in relevant Decrees. This provides an effective domestic legal remedy concerning such cases.

This Commission is entitled to take binding decisions with due process. Decisions taken by this commission are also subject to judicial control. Its decisions can be challenged before relevant courts.

5. In light of the above, it should be underlined that disciplinary/administrative investigations concerning Mr. İşçi has been initiated within the framework of anti-terrorism probes in Turkey.

Investigations has no relevance to his meeting with the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion during his latest visit to Turkey either, nor do they relate to his assumed work as a human rights defender.

It would also be misleading to link the investigations concerning Mr. İşçi to his exercise of the freedom of expression.

As regards points raised in the joint communication concerning judicial criminal investigations and prosecutions, the Government would like to recall that while it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, any inappropriate interference with the judicial processes shall be strictly avoided by all. In that sense, statements that may even slightly insinuate the nature or the outcome of a court-case are not acceptable. While duly respecting the mandates of the Special Rapporteurs, the Government rejects prejudging assumptions that try to link the ongoing trials with purposes other than provision of justice.

Legal rights of Mr. İşçi are under protection. Judicial remedies are available, including individual application to the Constitutional Court as well as to the European Court of Human Rights once domestic remedies are exhausted.

Thus, the claims that “Mr. İşçi has been subject to criminal investigations in relation to his human rights activities” are groundless.

6. With reference to the question of the Special Rapporteurs on measures that have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment, it should be underlined from the outset that Turkish legislation ensures freedom for everyone from any form of intimidation or reprisals, or fear of intimidation or reprisals, when seeking to cooperate with the treaty bodies.

Over the last decade significant amendments have been introduced to the legislation, further consolidating the rule of law and with considerable contributions to the enabling environment for the freedoms of expression as well. An overview of the comprehensive reforms is presented at Annex.

Furthermore, Turkey's constant constructive cooperation with the UN human rights treaty bodies and special procedures, should also be considered in relation to the enabling framework for human rights defenders.

As a party to the core human rights conventions, regular and timely submission of the reports to the treaty-based bodies is among the priorities of Turkey's human rights policies. In this respect, views and contributions of the civil society are considered significant components during the preparation of periodic country reports. Civil society contributions to the periodic reports are usually sought via public calls, as is the case with the reports concerning Universal Periodic Review of Turkey and relevant international conventions.

On the other hand, importance is also attached to active contribution to the interactive dialogue with the relevant Committees pursuant to the consideration of the periodic reports. To this end, Government attends with widely representative delegations during the consideration of the periodic reports. Such occasions also form a fruitful platform for NGOs and human rights defenders to engage in cooperation with the treaty bodies.

As per country visits, within the framework of our standing invitation to UN special procedures, since 2001 numerous visits has taken place to Turkey, including most recently the visit of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The visits of UN mandate holders, being carried out in this State of Emergency period, reflect Turkey's firm commitment to further enhancing the existing cooperation with the UN on human rights issues, while at the same time provides an enabling environment for the meetings of the Special Rapporteurs with civil society members, including human rights defenders. These visits, equally demonstrate the readiness of the Government to facilitate the civil society actors/human rights defenders to provide first hand testimony or information to these.

Against this backdrop, the allegations of reprisal are strongly rejected.

7. Taking this opportunity, the Government reiterates its will to continue constructive cooperation with the UN special procedures, in line with the priorities of the Turkish state in the field of human rights, democracy and the rule of law.

Recognizing terrorism itself as a flagrant violation of human rights, foremost the right to life, Turkey adheres to its right and its responsibility to take necessary measures for the protection of democracy, the rule of law, as well as the rights and freedoms of its citizens. The measures will continue to be taken in transparency and in accordance with existing international obligations.

## **ANNEX:**

### **Freedom of expression and the media**

Freedom of expression and the media are safeguarded by the Constitution and other relevant legislation. With a view to further aligning the domestic legal framework with international standards and principles, including especially those set by the European Court of Human Rights and the EU's Copenhagen Political Criteria, Turkey has been undertaking comprehensive judicial reforms:

With the amendment of Article 301 of the Turkish Penal Code in 2008, filing a case under this article requires the permission of the Minister of Justice. As a result of the amendment of this Article – which was subject to various recommendations in the first review – number of cases filed under the article has considerably decreased.

Within the framework of third and fourth Judicial Reform Packages adopted in 2012 and 2013, major amendments expanding the scope of freedom of expression and freedom of the media were introduced. Significant improvements have been made, in particular within the scope of the Turkish Penal Code and Law on Counter-terrorism, in order to align the legislation on freedom of expression and freedom of press with universal norms. Within this scope;

-It has become possible to suspend the cases and execution of penalties for offences committed through the press. Consequently, prosecution, trials and execution of sentences based on such offences were suspended and many detainees were released.

-With the amendments to the Turkish Penal Code, provisions that provide for an increase of the penalty when the crime is committed through the press or broadcasts were revoked. Furthermore, the penalties will no longer be increased if the offense is committed through the press or broadcasting.

-Through the addition of a provisional article to the Law on the Press, a number of decisions, taken by various courts on different dates regarding the confiscation of printed works, have been revoked in line with the provisions of the ECHR and the rulings of the ECtHR.

-The temporary suspension of publications indicated in Article 6 (Announcement and Publication) of the Law on Counter-terrorism has been repealed.

-The elements of “praising the offence and offender” have been reformulated and narrowed so that in order for actions to constitute an offence, a clear and imminent danger to the public order must exist.

-The elements of offence of “making propaganda on behalf of a terror organization” were narrowed down with the introduction of a more concrete criteria through the addition of the phrase “making the propaganda for the methods of a terrorist organization constituting coercion, violence or threats”. Accordingly, only the persons who explicitly legitimize, praise or encourage the methods of terror organizations which contain coercion, violence or threat, shall be punished.

-Article 6 of the Law on Counter-terrorism has been amended to ensure that only printing and publishing declarations and statements that legitimize terrorist organizations' methods involving coercion, violence and threat as lawful or that praise these methods or encourage them, are deemed as punishable.

-Those, despite not being members of a terrorist organization, who "printed or published leaflets and declarations of terrorist organizations" will no longer be prosecuted for being a member of the terrorist organization.

Furthermore, the Law no: 6529 of March 2014, which legislates the provisions of the Democratization Package also expands the scope of freedom of expression. Accordingly, political campaigning and propaganda in languages and dialects other than Turkish is enabled and education in private schools in languages and dialects traditionally used by Turkish citizens in their daily lives is permitted.

Moreover, "Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services" which entered into force 3 March 2011 was prepared in conformity with the European Convention on Transfrontier Television – to which Turkey is a party – and EU Audiovisual Media Services Directive. The law enables retransmission, lifts the restrictions on language of broadcast and bans the prior inspection of the content, all of which are very important for freedom of expression.