

Observations Regarding the Joint Communication of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation on human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment dated 23 June 2017

(REFERENCE: AL/TUR 8/2017)

1. In respect of the Joint Communication of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation on human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment dated 23 June 2017, the Government would like to provide information requested and respond to the concerns and recommendations taking into account the points raised in the Communication.
2. At the outset, it should be pointed out that Turkey is exposed to severe threats by terrorist organizations, including PKK, FETÖ/PDY, DAESH and DHKP-C. It is the right, duty and obligation of the Turkish State to fight against terrorism in all its forms as terrorist activity itself is a fundamental violation of human rights.

Concerning the points and allegations raised in the Joint Communication, the Government considers it necessary to recall the overall framework that necessitated counter-terrorism operations to take place in the southeast Turkey as well as the measures taken due to intensive terrorist attacks of the PKK.

PKK is a terrorist organization, listed as such by numerous countries and international organizations, including the EU and NATO. Since its inception in 1984, more than 40 thousand people lost their lives because of PKK terrorism. In that respect, the State party deeply regrets the absence of any indication that PKK is a terrorist organization in the Joint Appeal. Turkey has been countering PKK terrorism which claimed thousands of lives of innocent people and violated the fundamental rights and freedoms of people; first and foremost, right to life.

In addition to its explanations on its responses to the Joint Appeals UA, TUR 1/2016, no. TUR 5/2016, as well as AL/TUR 3/2017 regarding the PKK terrorist organization and counter-terrorism operations against PKK, the Government would like to reiterate that;

- As from 20 July 2015, the number of the terrorist attacks has significantly increased in Turkey. PKK moved its terrorist acts in a number of cities and towns Silopi, Cizre, Nusaybin and Şırnak located in Turkey's southeast, it tried to intimidate and coerce the local population and to disrupt the maintenance of public security in the residential centers.

- In this context, illegal actions and violent attacks of the terrorist organization were intensified in the district centers such as Silopi, Cizre, Sur and Yüksekova in which they stockpiled explosives. Prior to the operations of the security forces, hundreds of ditches had been dug, barricades had been constructed, explosives had been trapped in the mentioned district centers by the terrorist organization which wanted to cut off citizens' access to public services and limited their fundamental rights and freedoms.

- PKK has killed many teachers, damaged buildings of schools, clinics and hospitals in order to prevent the education and health services.

- In addition, PKK terrorist organization has been using civilians (especially children) as human shields against law enforcement units and has seized residents' houses by force of arms.

- In order to gain the ability to move flexibly, the terrorist organization PKK/KCK also forced people who did not support them, out of their homes and transformed these vacant homes to shelters and spaces for their use.

- In the course of this terrorist campaign since July 2015 (**as of 18 August 2017**), **352** civilians and **987** security personnel were murdered, **2,344** civilians have been injured; **231** civilians have been kidnapped by the PKK terrorist organization. It has targeted public facilities, including schools, hospitals, ambulances, infrastructure such as dams as well as private business establishments. As from 20 July 2015, PKK attacked 249 public facilities, 234 private business establishments, 14 ambulances and 1,718 vehicles. It has used heavy weaponry. 4,106 grenades, 407 rocket launchers, 4,775 Molotov cocktails and 8,050 IEDs have been captured as of 18 August 2017.

The circumstances fomented by PKK affected the living conditions of the citizens in the mentioned settlements negatively. As a sovereign country and as a democratic state based on the rule of law, Turkey has the duty and obligation to take necessary measures to protect its citizens against terrorism and to establish public order in its territory in line with its constitutional order and international norms.

Accordingly, security forces have carried out counter terrorist operations, in order to stop all these terror acts as well as to restore public order and to protect civilians whose fundamental rights have been severely infringed by the terrorist acts.

The measures Turkey has taken within the framework of counter-terrorism operations are within the limits of rule of law and in full observance of its legislation and international obligations. Counter-terrorism operations are necessary and proportionate to the legitimate aim of protecting its people from unlawful terrorist violence by PKK terrorism.

While measures were taken in response to these pressing circumstances, due consideration has been given to the principles of necessity in a democratic society and proportionality.

3. As regards information request on the legal grounds for the detention of Serdar Küni, the status of the legal proceedings against him should be recalled:

There existed two separate public prosecutions for Serdar Küni, concerning the offence of being a member of terrorist organization. Those prosecutions have been merged by the domestic court and as a result of the trial, he was sentenced to 4 years and 2 months imprisonment according to the decision of Şırnak 2nd Assize Court dated 24 April 2017. The aforementioned Court ruled that the offence in question was **not** “being a member to the terrorist organization” but **“aiding the organization knowingly and willingly without being involved among the hierarchical structure of the terrorist organization”**.

It has been indicated in the reasoning of the said decision that the statements given before the Public Prosecutor by [REDACTED] who were arrested in the framework of the security operations against PKK/KCK terrorist organization, as well as the witness statement by [REDACTED] before the police, pointed that Küni treated the members of terrorist organization who got injured during their armed attacks against the security forces in Cizre; and that Küni treated those injured members of the terrorist organization within places that belonged to the terrorist organization, due to the risk that they could be arrested if they went to state hospitals. The witnesses made identifications from pictures.

On the other hand, according to the reasoning of the decision, it is also acknowledged that while the witnesses later denied their former statements, did not accept identifications in their statements given before the court and stated that they were subject to torture and pressure; no signs were found regarding these allegations in the files containing the judicial reports of being taken into and releasing out of custody and the statements of witnesses regarding themselves in their separate investigation files.

Furthermore, the Court also took into consideration that the witnesses stayed in the penal institution with the detainees and convicts from other investigations of PKK/KCK terrorist organization; and that the organization exerted pressure - on the witnesses and their families, causing them to deny their earlier statements. It is also stated in the reasoning of the decision that the identification of the members of the terrorist organization is duly made and therefore remained valid.

It has also been understood that there were not any indications or findings of torture and ill treatment in the judicial reports of the witnesses in their files. During the custody periods of the people whose statements were taken, judicial medical reports were taken from Dr. Selahattin Cizrelioğlu State Hospital on various dates in order to find out whether they were subject to any assaults or physical violence. These reports reveal that the abovementioned witnesses were not subject to any assaults or physical violence.

The said witnesses who alleged to have been subject to torture and pressure in their statements did not submit any complaints before the Office of Chief Public Prosecutor either.

Finally; it should be noted that the decision of Şırnak 2nd Assize Court regarding Serdar Küni has not yet been finalized. The legal remedies have not yet been exhausted. The files were forwarded to Gaziantep Regional Court of Justice on 20 June 2017 due to the appeal request of the accused. Serdar Küni who was detained on 19 October 2016 was released on 24 April 2017 when the decision of Şırnak 2nd Assize Court was given.

4. Concerning the questions on the legal justification of the detention of Serdar Küni and the principle of legality in the sentencing of Küni with the charges of “aiding the organization knowingly and willingly without being involved among the hierarchical structure of the terrorist organization”, related provisions of domestic legislation should be taken into consideration.

Forming and being member to an organization for committing crimes

In Turkey, the principal regulation with regard to criminal organizations lies in Article 220 of Turkish Penal Code (TPC).

In Article 220 of Turkish Penal Code (TPC) entitled “Establishing Organizations for the Purpose of Committing Crimes” it is stated that :

“(1) Any person who establishes or manages an organization for the purposes of committing offences proscribed by law shall be sentenced to imprisonment for a term of two to six years provided the structure of the organization, number of members and equipment and supplies are sufficient to commit the offences intended. However, a minimum number of three persons is required for the existence of an organization.

(2) Any person who becomes a member of an organization established to commit offences shall be sentenced to a penalty of imprisonment for a term of one to three years.

(3) If the organization is armed, the penalty stated in aforementioned paragraphs will be increased from one fourth to one half.

(4) If an offence is committed in the course of the organization’s activities, then an additional penalty shall be imposed for such offences.

(5) Any leaders of such organizations shall also be sentenced as if they were the offenders in respect of any offence committed in the course of the organization’s activities.

(6) (Amended on 2/7/2012 - By Article 85 of the Law no. 6352) Any person who commits an offence on behalf of an organization, although he is not a member of that organization, shall also be sentenced for the offence of being a member of that organization.

The sentence to be imposed for being a member of that organization may be decreased by half. (Additional Sentence: 11/4/2013 - By Article 11 of the Law no. 6459) This provision shall only be applied in respect of armed organizations.

(7) (Amended on 2/7/2012 - By Article 85 of the Law no. 6352) Any person who aids and abets an organization knowingly and willingly, although he does not belong to the hierarchical structure of that organization, shall also be sentenced for the offence of being a member of that organization. The sentence to be imposed for being a member of that organization may be decreased by one-third according to the assistance provided.

(8) A person who makes propaganda for an organization in a manner which would legitimize or praise the terror organization's methods including force, violence or threats or in a manner which would incite use of these methods shall be sentenced to a penalty of imprisonment for a term of one to three years. If the said crime is committed through the press or broadcasting the penalty to be given shall be increased by half."

Knowingly and willingly helping the organization without being a member

As specified in Paragraph 7 of Article 220 of TPC, **those knowingly and willingly helping the criminal organization will be punished even if they are not involved in the hierarchical structure within the organization.**

Anyone who knowingly and willingly aids and abets a criminal organization formed for committing offences may become the perpetrator of this offence. But for the occurrence of the crime of knowingly and willingly abetting the organization, those helping the organization should not be involved in the hierarchical structure of the organization, namely, they should not be the members of the organization. Whereas the member establishes a connection with the criminal organization and is involved in the hierarchical structure, the person aiding and abetting the organization is not involved in this hierarchy and is not in connection consistently.

The judge determines in each relevant concrete case whether a person is a member of the criminal organization or aiding and abetting the organization, including through the activities such as supply of arms, food and logistical support.

Armed organizations

In Article 314 of the TPC entitled "Armed Organization", the offences of forming, leading and being a member of an armed organization are specified:

"(1) Any person who establishes or commands an armed organization with the purpose of committing the offences listed in parts four and five of this chapter, shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years.

(2) Any person who becomes a member of an organization defined in paragraph one shall be sentenced to a penalty of imprisonment for a term of five to ten years.

(3) Other provisions relating to the forming of an organization in order to commit offences shall also be applicable to this offence.”

In accordance with the Paragraph 3 of Article 314 of the TPC, other provisions with regard to the offence of forming a criminal organization for the purpose of committing offences is applied for offence of aiding and abetting armed organizations.

Terrorism related offences

On the other hand, separate arrangements are needed in order to fight against the terrorism offences effectively. Turkey is one of the countries being most affected by the terrorism offences. In Article 1 of Anti-Terror Law (ATL), terrorism is defined as follows:

“(Amended on 15/7/2003-by Article 20 of Law No 4928) Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution; its political, legal, social, secular and economic system; damaging the indivisible unity of the State with its territory and nation; endangering the existence of the Turkish State and Republic, weakening, destroying or seizing the authority of the State; eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by using coercion and violence, and by any of the means of pressure, intimidation, oppression, suppression or threat.”

In Article 2 of Anti-Terror Law “Terrorist Offenders” are defined:

“Any member of an organization, founded to attain the aims defined in Article 1, who commits a crime in furtherance of these aims, individually or in concert with others, or any member of such an organization, even if he does not commit such a crime, shall be deemed to be a terrorist offender.

Persons who are not members of a terrorist organization, but commit a crime in the name of the organization, are also deemed to be terrorist offenders.”

According to Article 3 entitled “Terrorist Offences”;

“Offences defined in Articles 125, 131, 146, 147, 148, 149, 156, 168, 171 and 172 of the Turkish Penal Code are terrorist offences.”

In Article 4 entitled “Offences committed for terrorist purposes” it is stated that;

“Offences specified below are considered as terrorist offences if they are committed within the framework of activities of a terrorist organization established to commit crimes to achieve the objectives defined in Article 1:

a) Offences defined under articles 79, 80, 81, 82, 84, 86, 87, 96, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118, 142, 148, 149, 151, 152, 170, 172, 173, 174, 185, 188, 199, 200, 202, 204, 210, 213, 214, 215, 223, 224, 243, 244, 265, 294, 300, 316, 317, 318, 319 and paragraph 2 of article 310 of the Turkish Penal Code

b) Offences defined under the Law on Firearms, Knives and Other Instruments, dated 10 July 1953, Law no. 6136

c) Offences of intentional forest arson, as defined under paragraphs 4 and 5 of article 110 of the Law on Forests, dated 31 August 1956, Law no. 6831

ç) Offences punishable by imprisonment defined under the Law on Combating Smuggling, dated 10 July 2003, Law no. 4926

d) When committed within regions, in which a state of emergency has been declared according to article 120 of the Constitution, offences relating to events that have led to the declaration of the state of emergency

e) The offence specified in Article 68 of the Law no. 2863 dated 21/7/1983 on the Conservation of Cultural and Natural Property.”

Article 5 of the ATL relates to “increase of sentences”:

“The sentences pronounced for the persons committing the offences mentioned in Articles 3 and 4 will be increased up to one-half for imprisonments and fines. In sentences to be so pronounced, the upper limits for both the aforesaid acts and for other infractions may be exceeded. However, instead of life imprisonment, aggravated life imprisonment shall be imposed.

If any increase is envisaged for the penalty in the related Article due to the fact that the offence was committed in the context of the activities of an organization, then an increase shall be made in the penalty solely on the basis of this Article. However, increase to be made shall not be less than 2/3 of the penalty.

(Additional paragraph: 22/7/2010 - Article 6008/4) The provisions of this Article shall not apply to minors.”

In accordance with the abovementioned provisions, when the armed/terrorist organizations are in question, the offence of aiding and abetting comes forth under different categories. The Court of Cassation acknowledges acts such as serving for the purposes of these organizations,

supplying clothes and treatment, serving as a courier among the members, purchasing and giving mobile phone SIM cards to the members, distributing leaflets and keeping publications of the organization, preserving the materials of the organization etc. within the scope of Paragraph 7 of Article 220 (regarding the offence of knowingly and willingly aiding the criminal organization)¹.

Whereas the nature of aid and abet may vary, penal provisions are specified in Paragraph 7 of Article 220 of the TPC. It is envisaged **in Article 220 of the TPC that the person knowingly and willingly aiding the criminal organization should be punished as a member of the criminal organization, even though he/she is not involved in the hierarchical structure of the organization.** For this reason, anyone knowingly and willingly helping the organization may become the perpetrator of this offence.

5. With regard to measures in place to guarantee that health professionals are able to provide impartial care and services following can be cited:

The Regulation of the Rights of the Patient has been prepared with a view to ensure that the "rights of the patient", which are reflection of fundamental human rights in the field of health services and which are recognized in the Constitution of the Republic of Turkey, in other legislation and international legal texts are indicated on a concrete basis (Article 1). The said Regulation is designed to enable people to benefit from "patient rights" in a manner compatible with human dignity, in all the institutions and establishments where health services are provided as well as in cases when health services provided in places other than health institutions and organizations; to be protected from any infringement of their rights, and to use legal remedies, when necessary (Article 1).

To this end, the Regulation of the Rights of the Patient denotes the principles, respect of which are obligatory in the provision of health services. Such principles include;

“a) It shall always be taken into account at every stage of health services that the right to life is the most basic human right which includes state of well-being in body, spirit and social terms.

b) The treatment shall be made cognizant that everyone has the right to life and the right to protection and development of their material and spiritual existence; that no one or authority has the power to defer these rights.

c) In the provision of health care services, race, language, religion and sect, gender, political thought, philosophical belief and economic and social status of the patients or other

¹ “. . . the accused committed the offence of helping the organization knowingly and willingly by sheltering the accused A.K., who was a member of the terrorist organization, buying clothes from the market and dressing him with his own money, taking care of his treatment and allowing him to make calls from the home phone . . .” (Decision no. 2009/11005, 2009/12787 and dated 02.11.2009 of 9. C.D.)

differences can not be considered. Health services are planned and arranged so that everyone can easily access them.” (Article 5, a-c).

Article 37 of the Regulation of the Rights of the Patient guarantees that everyone has the right to expect and demand to be safe within health institutions; all institutions of health are obliged to take necessary measures so that life and properties of the patients and their relatives or those who attend the patient are protected.

On the other hand, “Guideline on Quality Standards for Health” foresees provisions that enable protection of a safe environment for health personnel in emergency situations and during disaster management. Accordingly, the Guideline comprise measures that can be taken for elements that threaten provision of health services in a safe environment.

“Detention Room Instructions of the Security General Directorate” dated 24.06.2014 also comprise proceedings to be conducted regarding the people taken under custody by the police while they are put in detention rooms, during the period they are in detention rooms and when they are taken out of detention rooms. In the said instruction plan, necessary measures have been taken in order to enable the health workers to perform their duties in a safe environment and to enable the citizens to receive the health services safely and comfortably.

The Government wishes to inform that, the need of physicians and other health personnel, ambulance, medicine, medical device and stuff is met in all regions of Turkey, enabling access to healthcare any time. In line with the health transformation programme aiming to achieve equality in terms of health services among all, provinces in southeast Turkey were prioritized and benefited from positive discrimination in implementation of the programme. In this context, 254 primary and 343 secondary/tertiary level health care facilities were established in the region between 2003 and 2015. This increase is aligned with rise in the numbers of health professionals and ambulances in the region.

During the security operations in the region, health care provision continued on the basis of 7 days a week and 24 hours a day including emergency health services. Health professionals of the Ministry of Health made every effort to provide uninterrupted medical care services to those living in the region. With a view to avoiding casualties, a crisis desk was established within the Ministry of Health, including a special line with the Governor of Cizre.

Necessary measures were taken to provide the personnel and ambulances required for healthcare services in the cities and towns which came under the influence of terrorist activities. With the aim of preventing health personnel and patients from being attacked by the terrorists, the ambulances were strengthened with protective shields for providing uninterrupted health services in affected regions. Measures have also been taken for on-site treatment, including the performance of surgical operations.

Therefore, **vital services were not interrupted during the counter-terrorism operations and no distinction was made among the patients irrespective of the reasons leading to his/her condition particularly in situations requiring emergency care.**

6. As regards “*measures taken to ensure that any declaration obtained under torture is excluded from any judicial proceedings, except against a person accused of torture as evidence that the statement was made*”, it should be underlined that torture has also been prohibited by the third paragraph of Article 17 of the Constitution. The judicial proceedings are carried out with the principle of rule of law and respect for human rights, monitoring mechanisms are in place in determining unlawfulness in practice. Being party to relevant UN and the Council of Europe conventions which prohibit torture, Turkey has taken necessary measures to prevent it. Relevant provisions of the domestic legislation are presented below:

Torture and ill treatment of persons are forbidden in our Constitution and perpetrators are imposed deterrent judicial sanctions in the legislation. Torture has been regulated as an independent crime in Articles 94 and 95 of Turkish Penal Code in order to fulfil commitments arising from international conventions to which Turkey is a party and in particular to protect human dignity and personality. In Article 94 of Turkish Penal Code and in the first paragraph, it is stated that “*Any public officer who causes severe bodily or mental pain, or loss of conscience or ability to act, or dishonors a person, is sentenced to imprisonment from three years to twelve years*”. In the Justification of Article 94 of TPC it has been emphasized that torture is forbidden in international conventions to which Turkey is a party and that Turkey has committed to taking measures related to the prevention of the torture. In this context, relevant provisions of the Universal Declaration of Human Rights; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights); United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment are mentioned and it has been stated that acts of torture have been defined as an independent crime in the face of these commitments and with the thought that there should be no impunity for acts of torture, which is essential for the protection of human dignity from infringements.

Furthermore, **the statute of limitations on the crime of torture has been lifted** for the offence of torture and so the investigations to be conducted directly by the Public Prosecutor’s office due to the allegations and prosecutions to be conducted by the court have been prevented from discontinuance.

According to the general criminal procedure, when the information is received that any types of crime has been committed, pursuant to Code of Criminal Procedure (CCP), investigation is initiated regarding the perpetrator and activity by Public Prosecutors and the police. However, relying on the provision in the last paragraph of Article 129 of the Constitution that “*...Prosecution of public servants and other public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law....* ”, it has been determined that criminal investigation shall be subject to

the permission of competent authorities, apart from the general procedure, in the event that the offenses considered to be within the context of Law on the Trial of Civil Servants and Other Public Officials are committed by public officials.

In addition, with the amendment of Article 2 of Law on Prosecution of Civil Servants and Other Public Officials regarding the offense it has been added that *“The provisions of this Law could not be executed in investigations and prosecutions to be initiated within the context of Article 243 and 245 of Turkish Penal Code and the fourth paragraph of Article 154 of Code of Criminal Procedure”*. Thus, within the framework “zero tolerance policy against torture”, with the said regulation, *“the offence of torture and ill treatment”* was excluded from the context of Law on the Trial of Civil Servants and Other Public Officials and it was ruled that the **investigation and prosecution shall be made ex officio without getting permission from any authorities**.

Furthermore, it was stipulated that administrative investigations and judicial proceedings shall be made regarding the personnel against whom there exist allegations of torture and ill treatment. In this context, if a person alleges to have been subjected to torture and ill-treatment at the time of custody or if a public prosecutor is informed by denunciation or any way of a situation giving the impression that a crime has been committed, investigations shall be initiated immediately to determine whether there is room for an immediate public prosecution.

It should be underlined that the rule of law, democracy and human rights are the fundamental principles of the Republic of Turkey and all the measures, including those under the State of Emergency, are taken accordingly. It should be recalled that “zero tolerance policy against torture” of the Turkish Government has been continuously and decisively implemented well over a decade, preventing all forms of torture and other cruel, inhuman or degrading treatment or punishment. None of the measures taken within the framework of the State of Emergency decriminalizes torture and ill-treatment nor do they provide impunity for possible perpetrators. As required by the “zero tolerance policy against torture”, the judicial and administrative authorities continue to duly examine each and every allegation of torture and ill-treatment and take the necessary actions in respect of those responsible.

Lately, with Decree Law 682 dated 23 January 2017, committing acts of torture have been listed among reasons for dismissal of law enforcement officers from public service with no possibility of being re-employed.

The Government would also like to enclose herewith additional information on national preventive mechanisms at Annex, for appropriate perusal and reference.

Rights of the detainees, people arrested or under custody

It is specified in Paragraph 1 of Article 148 of the Code of Criminal Procedure (CCP) that the statements given by the suspect or accused should derive from his own free will. Any physical

or psychological intervention that would hamper free will - such as ill-treatment, torture, administration of medicines or drugs, and infliction of fatigue, deception, use of compulsion or threat, and use of certain equipment shall be prohibited.

The rights of the suspect arrested or taken under custody include being informed of the accusation and his/her rights, right to remain silent, benefiting from legal assistance, communication with his/her family, providing evidence in his/her favor and demanding for the collection of these, being brought to trial and requesting to see a doctor.

The arrested person, the defense counsel or his/her legal representative, the spouse or the first or second degree relatives may appeal to the criminal judge to ensure immediate release against the written order of the public prosecutor for the arrest, custody and extension of the custody period. The petition of the arrested person is delivered to the competent judge in the most immediate manner. The release decision upon the appeal to the judge against the order of the public prosecutor for the arrest or the extension of the custody period shall be immediately applied.

In Article 19 of the Constitution, the right to personal liberty and security was regulated and it was emphasized in the first sentence of the same article that everyone has freedom and security. The Turkish Constitution guarantees the right to personal liberty and security as a human right with this expression.

Right to Remain Silent

The principle that “**no one shall be compelled to make a statement that would incriminate himself/herself or his/her relatives or to present such incriminating evidence**” is stated in the fifth paragraph of Article 38 of the Constitution. These provisions of the Constitution are embodied as the "Right to Remain Silent of the Accused" in paragraph (e) of the first paragraph of Article 147 of the CCP, which regulates the "Statement and Interrogation Style". In Article 148 of the CCP, the methods affecting free will, including torture, are forbidden; it is stated in the third paragraph of the same article that the **expressions obtained by the prohibited methods shall not be considered as evidence.**

Custody period

In Article 91 of the CCP which regulates the procedure of custody, it is provided that the person arrested pursuant to Article 90 of the same law shall be subject to custody for the completion of the investigation if not left by the Public Prosecutor, custody period shall not exceed twenty-four hours from the moment of capture except for the compulsory time to be sent to the nearest judge or court, the compulsory time for sending to the nearest judge or court instead of arrest shall not be more than twelve hours, the custody shall be implemented if the investigation is mandatory and in case there are concrete evidence supporting the suspicion that the person has committed a crime, the public prosecutor may decide in writing

to extend the period of custody by three days, not to exceed one day each time due to the large number of suspects and difficulty in the collection of evidence in collective crimes.

During the state of emergency period, for the offenses that are included in the scope of Anti-Terror Law and which are committed collectively, the Public Prosecutor may issue a written order for the detention period to be extended for 7 days due to the difficulties of gathering evidence and high number of the suspects, in accordance with the Decree Law 684. The aim is to ensure that the statements of a large number of detainees are taken in a healthy manner, to collect evidence that is in favor of and against the suspects and thus to fulfil the State's obligation to investigate effectively.

Right to counsel

In the Article 149 of the CCP, it is provided that the suspect or the accused can benefit from the help of one or more defense counsels at every stage of the investigation and the prosecution, if he has a legal representative, he may also choose a defense counsel for the suspect and the accused, at most three lawyers can be present in the investigation phase, the lawyer shall not be prevented and restricted from the right of meeting with the suspect and accused and accompanying to him during interrogation or query and provide legal assistance at every stage of the investigation and prosecution.

According to Article 150 of the same law, the suspect or the accused shall be asked to choose a defense counsel, and if he/she declares that he/she is not in a position to choose one, a defense counsel shall be assigned if requested. Suspected or accused without defense counsel; if the child is disabled or deaf and dumb and unable to defend himself, a defense counsel shall be appointed without request. Furthermore, a defense counsel will be appointed in the investigation and prosecution of the crimes that require a minimum sentence of more than five years imprisonment regardless of the request of suspected or accused.

Health care and medical examination of the detainees

In the Article 9 of the Regulation on Arrest, Custody and Statement Taking, it is provided that if the arrested person is to be taken into custody or if he/she is arrested by force, health status at the time of arrest shall be determined through doctor control. The same article also regulates that the medical condition of the detainee shall be determined by medical report before the procedures of replacement for any reason, extension of the period of custody, release or referral to judicial authorities, the people under custody whose health status is deteriorated for any reason and those with suspected health status shall go immediately through inspection and shall be treated if necessary and those with a chronic condition shall be examined and treated by the official doctor under the supervision of their doctor (if any).

It is stated in the aforementioned regulation, as a protective order, that the law enforcement officer taking the statement of the detainee or carrying out the investigation shall be distinct from the law enforcement officer who takes this person to the medical examination. However,

in case deployment of distinct personnel is not possible due to insufficient number of staff, this shall be documented.

On the other hand, it is provided that the medical examination, control and treatment procedures must be done by the forensic medical institution or official health institutions, the medical report shall be prepared in three copies, the unit that will give the medical report shall be notified in written by the law enforcement officer regarding if the arrested person is brought in for the entrance report or the exit report, one copy of the report on the arrest or entry to the detention room shall be stored in the health institute which prepared the report, the second copy shall be given to the detainee and the third copy shall be given to the relevant law enforcement officer to be added to the investigation file.

It is stated that a medical report shall be prepared in case the extension of the custody period or the replacement or departure from detention room, from the mentioned medical reports; a copy shall be kept in the health institution and two copies shall be sent to the relevant Chief Public Prosecutor's office immediately in a closed and sealed envelope by the health institution that prepared the medical report and a copy shall be given by the public prosecutor to the detainee himself/herself or to his/her representative and a copy will be added to the investigation file, the preparation of these reports and sending to the Chief Public Prosecutor's office will comply with the confidentiality rules set forth in Article 157 of the CCP and the necessary measures will be taken by the relevant health institution for this purpose.

Moreover, it is guaranteed by regulation that in case the doctor finds any evidence of the crime of torture specified in Article 94, aggravated torture specified in Article 95 or torment specified in Article 96 of the TPC during the examination, the public prosecutor shall be informed immediately and the procedure shall be carried out in accordance with Articles 7 and 8 of the Regulation on Physical Examination, Genetic Analysis and Determination of Physical Identity at the Criminal Procedure.

It has been accepted with the regulation that it is essential that the person being examined and the doctor must remain alone and the examination should be made in compliance with the requirements of doctor-patient relationship, but that the doctor may request the examination to be carried out under the supervision of a law enforcement officer, arguing for personal security concerns.

The defense counsel may also be present at the examination upon the request of the detainee provided that it does not cause delay for the examination.

Examinations of women shall be done by female doctors upon their request, to a feasible extent and if a female doctor is not available despite the request, a female health staff to shall accompany the doctor during the examination.

Monitoring of places of detention

According to Article 92 of CCP and Article 26 of the Regulation on Arrest, Custody and Statement Taking, the Chief Public Prosecutors or the Public Prosecutors to be appointed by them, as a requirement of their judicial duties, shall monitor the detention rooms, statement taking rooms if any, situations of the detainees, the reasons and period of the custody, all records and transactions related to the custody. Detention rooms are also kept under constant control by the camera. On the other hand, in line with Turkey's international obligations, relevant international mechanisms and the Turkish Human Rights and Equality Institution have the authority to examine the detention rooms and prisons with respect to allegations of torture.

ANNEX

Monitoring of places of detention

Within the scope of the administrative inspection, the penitentiary institutions are inspected by the inspectors of the Ministry of Justice, controllers of the General Directorate for Prisons and Detention Houses, other officers of General Directorate for Prisons and Detention Houses, chief public prosecutors and public prosecutors responsible for penitentiary institutions.

Besides that, the human rights boards of provinces and districts that are set up by the representatives of the non-governmental organizations in the provinces and districts can visit and inspect penitentiary institutions.

The Ombudsman Institution and the Human Rights and Equality Institution of Turkey (which is accepted as the national preventive mechanism within the scope of the OPCAT) can carry out on-site examinations to assess the complaints, made by the penitentiary institutions, without permission.

Within the scope of the parliamentary inspection, the president and the members of the Human Rights Inquiry Committee of the TNGA or the investigation commissions can visit penitentiary institutions and carry out activities of investigation and inspection.

Moreover, the Human Rights Inquiry Committee, the members of the investigation commissions, enforcement judges, personnel of probation services and a panel or persons entrusted by the law can make private interviews with prisoners

Apart from all these inspection mechanisms, a unit was established within the body of the Ministry of Justice to scrutinize the allegations raised in the media with regard to ill-treatment and torture in detention houses and prisons after 15 July. The relevant unit shall meticulously monitor all kinds of news and comments raised in the media, refer them to the competent authorities to ensure them to be swiftly examined and share the results of the examinations with the public.

International Monitoring

All the places, including penitentiary institutions and custody centers, where the persons deprived of their freedom have been kept can be inspected by international mechanisms such as the European Committee for Prevention of Torture, the United Nations Subcommittee on

Prevention of Torture (SPT) and the UN Special Rapporteur on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Turkish Republic is party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and continues its cooperation with the European Committee for Prevention of Torture (“CPT” or “Committee”) that is the inspection body for the Convention. As it has been, the Committee in question can always visit the prisons in our country.