



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

2018/62441669-BMCO DT/13653707 - URGENT

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 by Working Group on Arbitrary Detention; M. David Kaye, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Michel Forst, the Special Rapporteur on the situation of human rights defenders; Mr. Diego Garcia-Sayan, the Special Rapporteur on the independence of judges and lawyers and Ms. Fionnuala Ni Aolain, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism dated 9 February 2018 (Ref: UA TUR 1/2018)), has the honour to enclose herewith an information note comprising the response of the Government of the Republic of Turkey.

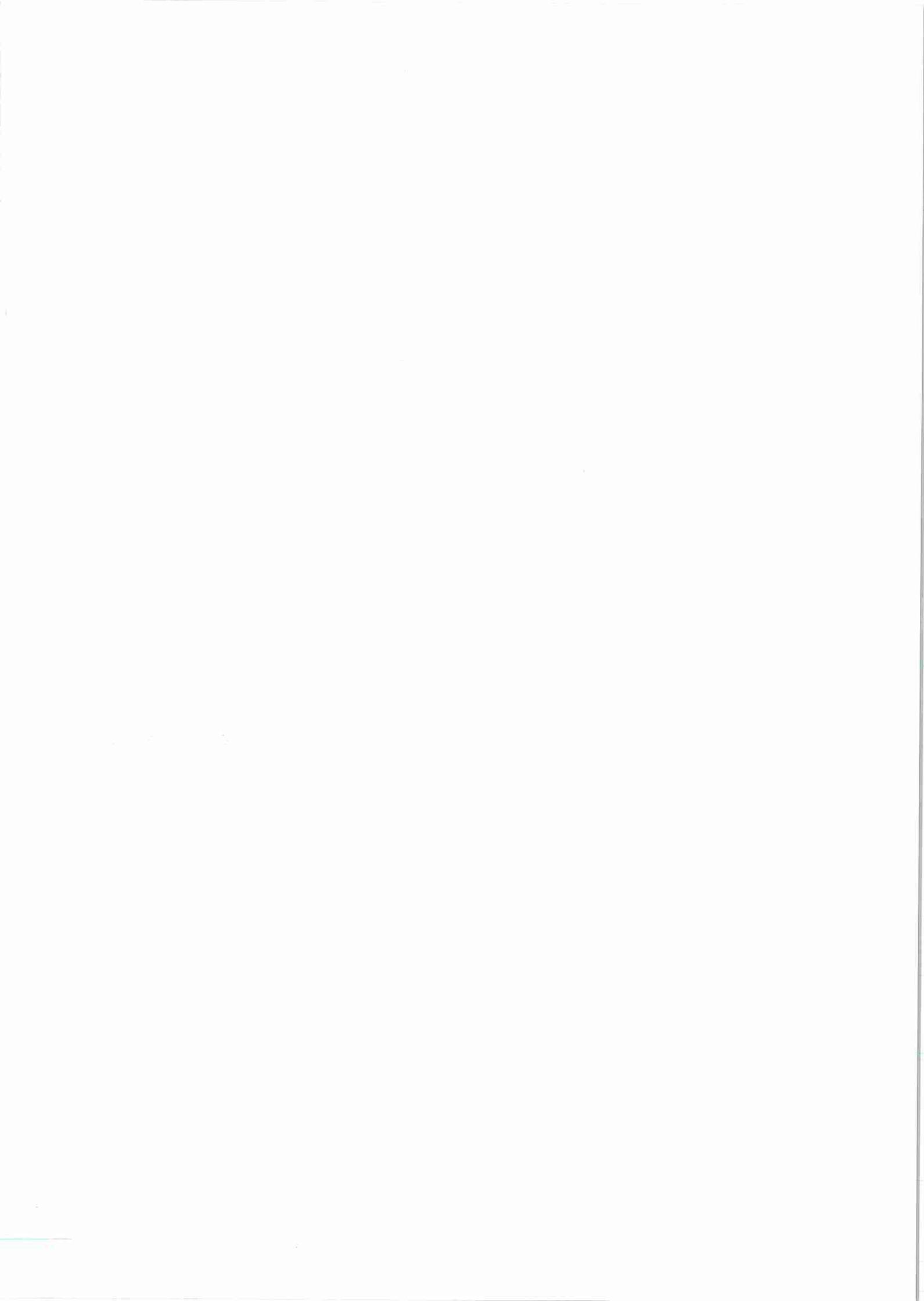
The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 28 March 2018



Encl: As stated.

Office of the High Commissioner for Human Rights
Special Procedures Branch
Geneva



**OBSERVATIONS REGARDING THE JOINT URGENT APPEAL FROM SPECIAL PROCEDURES
(REFERENCE: UA TUR 1/2018)**

1. The Government would like to present its observations herein below in respect of the Joint Urgent Appeal of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

The Government wishes to inform that in Government's reply regarding Taner Kılıç Case (Reference : UA TUR 7/2017), in response to the Joint Urgent Appeal of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers, dated 4 July 2017, comprehensive information has already been submitted. Therefore, as the answers of certain questions on the current Urgent Appeal such as measures taken for human rights defenders to perform their activities in a safe environment free from fear, threats and harassment have already been submitted in Government's previous response, they will not be addressed once more.

In this connection, the Government needs to underline that it continues to attach utmost importance to the existence of a vibrant and pluralistic civil society in Turkey, as well as to the work of human rights defenders. Views and recommendations of the credible NGOs are paid due consideration. At present, hundreds of NGOs freely operate in Turkey.

However, as previously indicated, Taner Kılıç is charged with membership to an armed terrorist organization.

This terrorist organization, namely Fetullahist Terrorist Organization/Parallel State Structure (FETO/PDY), attempted to stage a coup for the purposes of overthrowing the elected President, the Parliament and the Government and abolishing the Constitutional order. In this heinous coup attempt, 250 persons were killed and more than 2000 were injured. As per the principle of the presumption of innocence, it is not possible to prejudge the outcome of ongoing proceedings against Taner Kılıç. However, there are serious charges leveled against him along with considerable evidences inside the file. The judicial proceedings in connection with these charges are as follows.

A. Investigation Process

2. Taner Kılıç, the Chair of Executive Board of Amnesty International Turkey, was taken into custody on 6 June 2017, on the suspicion of "being a member of an armed terrorist organization" under an investigation carried out by the İzmir Chief Public Prosecutor's Office as per Article 314/2 of Turkish Criminal Code (TCC).

3. According to the information in his investigation file, Kılıç downloaded "ByLock" application onto his phone with the number "0532" on 27th August 2014. In his

defense, he stated that he did not download the application by himself, but instead it might have been downloaded by his brother in law, who was then the Assistant Chief Editor of Zaman Newspaper, a daily belonged to FETO/PDY, or there might have been an error in the technical information provided by intelligence service. He also stated that he had a bank account in Bank Asya, which FETO/PDY used in order to finance its members' investments in the education, media, trade and so on, and six years ago his daughter attended a school that belonged to the FETO/PDY.

4. Kılıç was detained on remand by 3rd Criminal Magistrates' Office of İzmir on 10 June 2017 on the basis of the report confirming that he used encrypted communication system "ByLock" application which was created and used by FETO/PDY armed terrorist organization, along with other evidence. Kılıç appealed against his detention. The 4th Criminal Magistrates' Office of İzmir refused his appeal and decided the continuation of his detention on 23 June 2017. The investigation file was sent to 1st Criminal Magistrates' Office of İzmir on 5 July 2017 for a review of his detention status as per Article 108/1 of the Code of Criminal Procedure (CCP). 1st Criminal Magistrates' Office of İzmir decided for the continuation of the detention of the suspect on 6 July 2017.

5. İzmir Chief Public Prosecutor's Office has launched an investigation and drew up an indictment regarding Taner Kılıç on the suspicion of being a member of armed terrorist organization and a criminal case was initiated at the 16th Assize Court of İzmir. The indictment asserts that he was a user of the ByLock, the encrypted organizational communication tool of the FETO/PDY, and that ByLock was downloaded to the mobile phone belonging to him with IMEI number 353 ... and GSM number "0 532" on 28 August 2017, and it was established that he communicated with other members of FETO/PDY through this phone and that he admitted having used this phone. The indictment includes other evidence such as financial expert reports. It was also stated that the analysis of the contents of his ByLock conversations have not been completed yet.

6. On the other hand, within the framework of another investigation, known as "Büyükada Investigation" in public along with other suspects, a criminal case about Taner Kılıç was initiated at the 35th Assize Court of İstanbul as per the Articles 3 and 5 of the Anti-Terror Law (Law No. 3713) and the Articles 314/2, 53/1 ve 58/9 of the TCC.

B. Prosecution Process

a. Trial in İzmir and Merging of the cases

7. Upon the indictment prepared by İzmir Chief Public Prosecutor's Office, the trial against Taner Kılıç started before the 16th Assize Court of İzmir. The trial was initially scheduled for 26 October 2017.

8. Later, the 16th Assize Court of İzmir decided to merge this case with the one filed before the 35th Assize Court of İstanbul.

b. The trial in İstanbul and latest developments

9. At the hearing held on 22 November 2017, the 35th Assize Court of İstanbul decided to keep defendant Taner Kılıç in detention and to adjourn the next hearing to 31 January 2018.

10. The 35th Assize Court of İstanbul reached an interim decision at the hearing held on 31 January 2018. The Court decided for Taner Kılıç's release pending trial. However, due to the presence of strong suspicions related with a serious crime, the court also decided to apply judicial control measures on him, such as a ban to leave country and obligation to report to the nearest police station once a week. The next hearing was adjourned to 21 June 2018.

11. The İstanbul Chief Public Prosecutor's Office raised objection against the decision of release. After having examined this objection, the 36th Assize Court of İstanbul ruled for his arrest and detention on remand on 31 January 2018. The 36th Assize Court of İstanbul based this latter decision on the considerations of Kılıç's having used FETO/PDY terrorist organization's encrypted communication system "ByLock", transfers made from and to his bank account in Bank Asya*, strong suspicion about his active role in the organization of Büyükada meeting (an event that judicially considered to be connected with terrorist organizations), diverse and intense nature of his activities in connection with the suspicion of crime, being charged for crimes listed in the Article 100/3-1-11 of the CCP, the presence of concrete evidence indicating strong suspicions related with a crime, as well as the fact that the collection of all evidences was not completed. In this context, the trial process is still in progress.

12. Turkey is a country where the rule of law reigns and human rights are respected. Courts and Public Prosecutors are independent and impartial in accordance with the Constitution. In this context, the judicial proceedings have been carried out by independent and impartial judicial organs and it is considered that everyone, including foreign counterparts, should respect judicial decisions.

(*) Bank Asya was established by FETÖ/PDY in order to finance its organizational activities. Following the statement of Fetullah Gülen, leader of FETÖ/PDY, ordering the members of the organization to support Bank Asya, FETÖ/PDY members acting within the hierarchical command chain, resorted either to open new bank accounts in the Bank, or to increase the amount of money deposited in such accounts.

