



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 the Working Group on Arbitrary Detention; 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, dated 22 October 2018 (REF: OL TUR 15/2018), has the honour to enclose herewith an information note compiled by relevant Turkish authorities, in reply to the information request stated in the aforementioned letter.

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, 21 December 2018



Encl: As stated

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

**INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION
REGARDING A NUMBER OF LAW DECREES ADOPTED DURING
THE STATE OF EMERGENCY IN TURKEY DATED 22 OCTOBER 2018**

1. With reference to the joint communication dated 22 October 2018, sent by the Working Group on Arbitrary Detention; 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 would like to submit its observations herein below.

I. OVERVIEW

2. The State of Emergency (SoE) was declared in Turkey shortly after the terrorist coup attempt of 15 July 2016 (which was organized and carried out by FETÖ/PDY) in order to ensure the continuity of the Turkish democracy and to protect the rule of law, as well as the rights and freedoms of the citizens. It should be noted that all measures that have been taken during the SoE, including the decree-laws that have been adopted, had the sole aim of eliminating terrorism threats and in no way intended to limit the fundamental freedoms of Turkish citizens which are enshrined in the Constitution.

3. It should be further stressed that, following the declaration of SoE, Turkey resorted to the right of derogation from the obligations in the European Convention on Human Rights (ECHR) and International Covenant on Civil and Political Rights (ICCPR). Notifications of derogation from Convention obligations were submitted to the Council of Europe in accordance with Article 15 of the ECHR and to the Secretariat of the United Nations in accordance with Article 4 of the ICCPR, concerning the rights permitted by the Conventions. (Notifications of derogation from these conventions have been revoked as the SoE has ended as from 19 July 2018.)

4. In line with Article 4 of the ICCPR, all Decree-Laws that were adopted during the SoE were strictly required by the exigencies of the situation and proportionate to the crisis faced. Unlike other terrorist organizations such as PKK or DAESH, FETÖ/PDY is an atypical armed terrorist organization, which infiltrated state institutions and spread into educational, health and media sectors and academic institutions over the years. In this perspective, all measures were taken

with a view to eliminate the influence of terrorist organizations within the state. The scope of the Decree-Laws were limited to the terrorist organizations in order not to interfere with the rights and freedoms of others but rather to allow a prompt response by the State in its fight against terrorist organizations including the FETÖ/PDY. Therefore, the measures taken during the SoE did not lead to any changes in daily life.

II. PARTICULAR CIRCUMSTANCES OF THE PRESENT COMMUNICATION

5. According to the Decree Law No. 676, lawyers against whom there is a pending investigation or prosecution for terror-related crimes and for the crimes stipulated in Articles 220 and 314 of the Turkish Criminal Code (TCC), may be banned from representing clients. The decision to ban is rendered by Magistrate's Court on a case-by-case basis, is limited with crimes the lawyer is being investigated or prosecuted for and can only be given for 1 year. Furthermore, the lawyer can challenge the decision and can resume his duties if the decision to ban is lifted following the objection raised. Both the presidency of the relevant bar association and the suspect are immediately notified of the decision to ban with a view to assigning a new lawyer in order not to infringe the right of the suspect to access to a lawyer. Thus, aforementioned arrangement cannot be considered as a restriction imposed on the right to access to a lawyer and complies with the criteria of "the extent required by the exigencies of the situation" envisaged in the Constitution.

6. According to the above-mentioned Decree-Law, persons in custody for crimes stipulated under Anti-Terror Law and under the Fourth, Fifth, Sixth and Seventh Chapters of the Second stimulants can be restricted from accessing a lawyer for twenty four hours by the Court upon the request of the public prosecutor. However, the same provision underlines that the law enforcement officials or the prosecutor cannot take the statement of the person under custody within those 24 hours.

7. The provisions of the Decree Law No. 676 aim to prevent the terrorist organizations from putting pressure on the suspects through their lawyers and avoid dissemination of information among the members of terrorist organizations through the lawyers. Due to the magnitude of the threat posed by FETÖ/PDY and its atypical structure that had enabled it to place its members among various institutions including the bar associations, there are many difficulties in regulating the relationship between a lawyer and the client who is under investigation or prosecution for terrorism charges. Therefore, certain restrictions were needed to be imposed on

the rights of persons tried for terrorism charges from contacting their lawyers.

8. The European Court of Human Rights (ECtHR), in its various judgments, held that states can impose “legitimate restrictions” on prisoners convicted of terrorist activities in so far as they were necessary to protect society against violence (*Öcalan v. Turkey*, No. 2, par. 135, 18.03.2014) or if there is an exceptionally serious and imminent threat to public safety that provided compelling reasons justifying the temporary delay on access to a lawyer (*Ibrahim and Others v. UK*, 16.12.2014).

9. Following the *Salduz v. Turkey* (no. 36391/02) judgment of the ECtHR, the Government took measures in order to improve the issues raised therein, which were regarding the right to a fair trial including the right to access to a lawyer. Details of measures taken by the Government are explained in the following paragraphs:

10. In July 2003 by Law No. 4928, the restriction on an accused’s right of access to a lawyer in proceedings before the State Security Court was lifted; and in July 2005, a new Code of Criminal Procedure (CCP) entered into force, granting all detained persons the right of access to a lawyer from the moment they are taken into police custody and making the appointment of a lawyer obligatory in respect of minors, deaf and speaking impaired persons and those who are accused of an offence that call for a minimum five years’ imprisonment.

11. Furthermore, in October 2016, additional amendments were made to the CCP, providing that, by a court order, the right of access to a lawyer can be restricted during the first 24 hours of police custody in respect of an exhaustive list of crimes, including crimes relating to national security, terrorism and organized drug trafficking, but that suspects cannot be interrogated while denied access to a lawyer during this period and that there is, therefore, no possibility of statements made while denied legal assistance being admitted as evidence against the person in custody or detention.

12. Committee of Ministers of the Council of Europe adopted on 7 June 2018 in the 1318th meeting of the Ministers’ Deputies, the Resolution CM/ResDH(2018)219, in which it decided to close the examination of *Salduz* and 83 other cases against Turkey, noting that all the measures required by Article 46, paragraph 1 of the ECtHR have been adopted by Turkey regarding the issues raised, mainly the limitations on the right to access to a lawyer, in the

above-mentioned 84 cases.

13. The decision of the Committee of Ministers attests to the fact that Turkey has taken the necessary steps to satisfy the rights of persons under custody or detention to access to a lawyer.

III. CONCLUSION

14. In light of the explanations provided above, it is believed that the measures introduced by Decree-Laws during the SoE were in line with Turkey's international obligations, including those arising from the ICCPR and the ECHR, and that there are no infringements on the rights of persons to access to a lawyer and on the right of lawyers to carry out their duties.