



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 letter from Mr. Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers dated 30 January, 2019 (REF: AL TUR 2/2019), has the honour to enclose herewith information compiled by the relevant Turkish authorities.

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, 27 March 2019

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



**INFORMATION NOTE IN REPLY TO THE COMMUNICATION FROM THE
SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS
DATED 30 JANUARY 2019**

(Reference: AL TUR 2/2019)

1. With reference to the letter of the Special Rapporteur on the Independence of Judges and Lawyers dated 30 January 2019 regarding the alleged arbitrary arrest, detention and conviction of Murat Arslan and allegations with regard to the independence and impartiality of the judiciary in Turkey, the Government would like to submit its observations herein below.

I. INTRODUCTION

2. The Republic of Turkey is a democratic state governed by the rule of law, is a member of the United Nations and a founding member of the Council of Europe and is devoted to human rights, the rule of law and democracy. Turkey continues its fight against terrorist organizations within the framework of the Constitution and the relevant national legislation and in compliance with the fundamental principles of democracy and international law.

3. The Constitution of Turkey imposes a positive obligation upon the state to ensure the welfare, peace and happiness of the people and the society, to protect the Republic and democracy, to remove the obstacles that limit the fundamental rights and freedoms of the persons. As a requirement of its positive obligations, Turkey should also take the necessary measures to protect the people from terrorism.

4. In this context, the national authorities are actively and resolutely combatting, in accordance with the rule of law and with due regard to the criteria of necessity and proportionality, the terrorist organizations that threaten the national security and the public order by targeting the security forces and the civilians.

5. In this respect, the Government would like to refer to its responses given in reply to the Communications ref.no TUR 5/2017, and ref.no TUR 7/2018 specifically to the chapters regarding Turkey's fight against terrorism, in particular against Fetullahist Terrorist Organisation – Parallel State Structure (FETÖ/PDY), the 15 July 2016 coup attempt and the scope and necessity of measures taken by Turkey with respect to terrorist coup attempt.

6. The Government would like to reiterate that FETÖ/PDY is an armed terrorist organisation established by Fetullah Gülen, which aims to suppress and debilitate all the Constitutional

institutions, to overthrow the Government of the Republic of Turkey and to establish an oppressive and totalitarian system through resorting to force, violence, threat, blackmailing and other unlawful means. Since FETÖ/PDY is the terrorist organization responsible for the 15 July coup attempt in Turkey where 251 persons were killed and more than 2.000 were injured, the name used for this terrorist organization as “Gülen movement” in the instant communication letter is unacceptable.

II. PARTICULAR CIRCUMSTANCES OF THE PRESENT COMMUNICATION

7. First of all, the Government would like to submit that, Murat Arslan was not dismissed from rapporteur position in the Constitutional Court, rather he was reinstated to his previous post in the Court of Accounts where his permanent tenure remained.

8. Article 24/2 of the Law no. 6216 on the Establishment and Judgement Procedures of the Constitutional Court provides the requirements to be qualified as rapporteur. In this regard, one of the following requirements should be met in order to be assigned or appointed as a rapporteur:

- To be judicial or administrative judge or prosecutor or Court of Accounts auditor, chief auditor or specialist auditor who performed with success in his/her profession for at least five years,
- To be research assistant who has completed doctoral studies or assistant associate professor or associate professor at law, economy or political sciences departments of higher education institutions.
- To be assistant rapporteur who has worked with success for at least five years, excluding the candidacy period.

9. Those who would like to be rapporteur, submit their requests to the Presidency of the Constitutional Court. Upon the approval of the President of the Constitutional Court, rapporteurs are assigned by their principal institution where they are attached. In other words, once the assignment procedure is completed, rapporteurs' tenure remains in their principal institution.

10. Furthermore, rapporteur position is not permanent. Assignment to the rapporteur position or reinstatement to the previous post is dependent on the working performance and discipline. In this context, many rapporteur judges were reinstated to their principal institutions for these

reasons. Accordingly, Murat Arslan was also reinstated to his previous position in the Court of Accounts pursuant to his working performance.

11. Secondly, Murat Arslan was prosecuted before Ankara 25th Assize Court between 19 September 2017 to 18 January 2019. At the beginning of the criminal proceedings, Ankara 25th Assize Court was composed of a president and three judges. President of the Ankara 25th Assize Court requested his retirement on 5 September 2018. Accordingly, on 19 September 2018, a new President was appointed. Furthermore, in addition to the existing three judges, a fourth judge was appointed to the Court, taking into consideration of the workload of the Ankara 25th Assize Court.

12. The alleged change in the composition of the Court for four times does not reflect the truth. As clearly explained above, a change was made in the composition of the Court due to the retirement request. The other change was made in line with the workload of the Court. On the other hand, Murat Arslan did not submit these allegations as a complaint to the Council of Judges and Prosecutors.

13. Thirdly, independence and impartiality of the judiciary is guaranteed in Turkish legal system, in particular Articles 9 and 138 of the Constitution¹. Moreover, the principle of natural judge which establishes an essential pillar of the right to fair trial, is also provided in the Constitution.²

¹ **Article 9** - *Judicial power is exercised by independent and impartial courts on behalf of the Turkish nation.*

Article 138 – (1) *Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws and their personal conviction conforming to the law.*

(2) *No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.*

(...)

² **Article 37** – (1) *No one shall be tried by any judicial authority other than the legally designated court.*

(2) *Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.”*

14. Furthermore, attempting to influence fair trial is criminalized in Article 288 of the Turkish Criminal Code³.

15. Ankara 25th Assize Court which is an independent and impartial court established by law, initiated prosecution against Murat Arslan. Consequently, the Court held that his activities amount to offence of being a member of the FETÖ/PDY terrorist organization and he was sentenced to ten years imprisonment. Also, the Assize Court ordered his continued detention.

16. Claims regarding the criminal proceedings conducted before the Ankara 25th Assize Court, are directly related with the essence of the judicial proceedings. In the instant case, appeal mechanisms are available.

17. In addition, the Government would like to emphasize that, Murat Arslan did not submit any complaints to the Council of Judges and Prosecutors against the president and the members of the Ankara 25th Assize Court by claiming that they acted contrary to the independence and impartiality of the judiciary.

18. Therefore, allegations stated in the communication letter against the criminal proceedings conducted before the Ankara 25th Assize Court are ill-founded. The Government considers that the purpose of these allegations is to discredit the reputation, independence, and impartiality of the Turkish judiciary in general.

III. CONCLUSION

19. In light of the explanations above, the Government considers that allegations regarding the independence and impartiality of the Turkish judiciary are baseless. The Government would like to add that, in the instant case criminal proceedings are carried out in accordance with domestic law, as well as in line with Turkey's international obligations under international human rights law, in particular regarding the Conventions to which Turkey is party. Allegations on the criminal proceedings conducted against Murat Arslan are ill-founded.

³ **Article 288** - *“Anyone who makes oral or written statement publicly with the aim of unlawfully influencing the members of the judiciary, expert or witness to render an unlawful decision or perform an unlawful act or give false statement in the course of an ongoing proceeding or an investigation, shall be subjected to judicial fine not less than fifty days.”*

20. Therefore, the Government respectfully requests the Special Rapporteur to dismiss these allegations.