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 in 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 letter by the Working Group on Arbitrary Detention; 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 12 June 2019 (Ref: UA TUR 6/2019), 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, 9 August 2019

Encl. A/S

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

INFORMATION NOTE IN REPLY TO THE JOINT URGENT APPEAL (UA TUR 6/2019) FROM SPECIAL PROCEDURES

1. With reference to the joint urgent appeal dated 12 June 2019 sent by the Working Group on Arbitrary Detention; 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, the Government would like to submit its observations herein below.

I. INTRODUCTION: FETÖ/PDY TERRORIST ORGANIZATION AND THE PARALLEL STRUCTURE IT FORMED WITHIN STATE INSTITUTIONS

2. The foundations of FETÖ were laid by Fetullah Gülen, in Izmir in 1966. In the early 1970s Fetullah Gülen, with his inner circle, established the core cadre for the organization. They exploited religious themes and focused their activities particularly on students and youth groups.

Fetullah Gülen communicated his views through sermons and speeches recorded and distributed on audiocassettes and videotapes. Communal gatherings and summer camps were other methods used to disseminate Gülen's views to a larger group of followers.

By the end of 1970's, Gülen had already become a leader of a distinct religious cult. The organization, while portraying itself as a charity-oriented civil society organization, was in fact a secretive, highly hierarchical, anti-democratic, religious formation around the persona of Fetullah Gülen. The organization gradually turned from a religious movement into a secretive operational structure aimed to transform the society by taking control of the Turkish state from within.

3. FETÖ/PDY used different methods in order to infiltrate into state institutions; such as, unlawfully obtaining the questions of important official exams (the Public Personnel Selection Exam and the University Student Placement Exam etc.) and making its members pass these exams by way of cheating; placing its members in public institutions and also in prominent schools and universities abroad, dismissing the non-members by fabricating false documents and evidence to initiate judicial and administrative investigations against them; placing its members to these cadres.

4. Efforts of the organization to take control of the state apparatus accelerated in the mid-2000s. Members of the organizations who had already taken key positions in the judiciary and the

police resorted to illegal methods to purge the opponents of the organization, including those in the army. Forged documents, faked evidences, sham trials, illegal wiretapping and blackmailing were used for this purpose. In short, the organization became a Parallel State Structure (PDY) posing a threat to the democratic, secular, constitutional regime of Turkey.

5. The Government's efforts to eradicate this threat intensified well before the 15 July coup attempt. The National Security Council (NSC) has taken various decisions, identifying FETÖ/PDY as terrorist organization constituting an imminent and serious threat to Turkey's national security. The first decision in this manner, was taken on 26 February 2014. As of this date, various assessments were made on FETÖ/PDY in NSC meetings. The organization's "parallel structure" was underscored on 30 December 2014.

In the meeting that was held shortly before the 15 July Coup Attempt, on 26 May 2016, FETÖ/PDY was included in the list of terrorist organizations. All public institutions have been informed of this decision and the recommendations of the NSC have been submitted to the Council of Ministers.

6. The fact that the FETÖ/PDY is an armed terrorist organization had been established with the decision rendered by the Erzincan Assize Court prior to 15 July 2016. In addition, numerous cases were brought against the organization and its members after 15 July 2016. In this regard, members of the armed terrorist organization FETÖ/PDY, including public officials, were convicted in numerous cases, and the members of FETÖ/PDY who participated in the coup attempt were sentenced to aggravated life imprisonment for attempting to eliminate the order set forth in the Constitution of the Republic of Turkey. Some of these judgments were upheld by the Court of Cassation and finalized. The Turkish Constitutional Court also stated in its various judgments rendered on the individual applications that FETÖ/PDY is an armed terrorist organization.

7. 15 July coup attempt, through which FETÖ aimed to overthrow the elected President and Government of the Republic of Turkey and to dismantle the constitutional order in order to establish an oppressive and totalitarian system, was the last and bloodiest resort of the organization to survive in Turkey, during which a total of 251 citizens were killed and more than 2.000 people were injured.

8. Even though the threat posed by FETÖ/PDY has been largely eliminated during the State of Emergency declared after the 15 July coup attempt, investigations are still being lodged against

persons suspected to be members of or affiliated with the terrorist organization. These investigations and judicial proceedings include those who are suspected to have cheated in the entrance exams of various state institutions as a part of the grand strategy of FETÖ/PDY to infiltrate into key public institutions in order to take control of the Turkish state from within.

The investigation lodged against persons subject to the joint urgent appeal from Special Procedures, details of which will be provided below, should be seen in this light.

II. PARTICULAR CIRCUMSTANCES OF THE PRESENT COMMUNICATION

9. In the context of the investigations lodged in relation to the reports of cheating in the entrance exams of the Ministry of Foreign Affairs (Investigations numbered 2019/31173, 2017/175544, 2017/175552, 2017/175558, 2017/175562), 129 persons were taken under custody on 20 May 2019. Some of the suspects stayed in custody until 31 May 2019. According to the Provisional Article 19 of the Anti-Terror Law, for certain collective crimes including those committed as part of the activities of a terrorist organization, the limit for the period of custody is 4 days. This period can be extended twice by a judge due to the extensive scope of the investigation or difficulty in obtaining evidence. Suspects have to be heard by the judge before such a decision can be taken.

Accordingly, the Magistrates Court decided to extend the period of custody upon the hearings held on 23 May and 27 May 2019. Medical reports were drawn up daily for each suspect. According to these reports, there is no sign of physical harm on the suspects' bodies.

10. Suspects were held in 5 different detention rooms belonging to the Department of Public Security and Department of Trafficking in addition to the Department of Financial Crimes of the Ankara Police Department in order to accommodate all suspects in suitable conditions.

11. During the time they were in custody, 129 suspects have met with 139 lawyers 658 times in total. Suspects' relatives were informed of their initial custody and 2 extensions thereof.

12. After the emergence of certain claims of ill-treatment against the suspects in the media, a group of lawyers who are members [redacted] to Ankara Police Department on 27 May 2019 in order to talk to the suspects regarding the said claims.

The lawyers, after interviewing six suspects and examining the investigation file, wrote up a report which was published on the [redacted] website. The report focuses solely

on the claims of ill-treatment of the suspects the lawyers have interviewed and fails to present any tangible evidence to support the said claims. In fact, one of the suspects interviewed mentions that he was not subjected to torture or ill-treatment, but heard claims of ill-treatment from other suspects.

13. As a terrorist organization, FETÖ/PDY is known to employ active propaganda and engage in disinformation activities to mislead the public opinion and national and international institutions by presenting itself as a religious community that is a victim of human rights abuses.

Accordingly, none of the medical reports on the six suspects issued before or after they were interviewed by lawyers contain a detection of a sign of physical harm on their bodies. Copies of all medical reports on the six suspects the lawyers have interviewed were presented to Attorney [redacted] a member of [redacted] who was among the lawyers that came to the Ankara Police Department to interview the suspects.

14. Nevertheless, all claims of torture or ill-treatment, regardless of the source thereof, are meticulously investigated in Turkey in accordance with the comprehensive legislation and the "zero tolerance against torture" policy, details of which will be presented further on.

Accordingly, Ankara Chief Public Prosecutor's Office immediately lodged an ex officio investigation (Investigation numbered 2019/93760) regarding the claims made in the press and in the report of the [redacted] about allegations of ill-treatment of the suspects. Ankara Chief Public Prosecutor's Office requested all the information, statements and documents regarding the said claims of ill-treatment from [redacted] Public Prosecutor's Office also held interviews on 11 June 2019 with the attorneys [redacted] who were among the lawyers that interviewed the suspects, as witnesses in the investigation.

Attorney [redacted] in his testimony as one of the witnesses, stated that the minutes of the interview they had held with the suspects were accurate and that his signature was among the signatures under the minutes. He further stated that the claims reflected in the report were not based on the attorneys' visual observations of the suspects, but solely on the claims they heard during the interview.

[redacted] also stated in their testimonies that the minutes of the interviews, which had their signature underneath, were accurate, however the report was comprised of the claims of the suspects they have interviewed.

Ankara Chief Public Prosecutor's Office also took the testimonies on 20 June 2019 of two of the suspects that were interviewed by [redacted] on 27 May 2019 as victims. One of the suspects, [redacted] stated that he was held in custody at the Department of Financial Crimes of the Ankara Police Department for 9 days and was subsequently detained within the scope of the investigation carried out by Ankara Chief Public Prosecutor's Office. He also stated that he wanted to give his testimony after consulting his lawyer.

Another suspect, [redacted] was also interviewed by Ankara Chief Public Prosecutor's Office as a victim in the context of the investigation numbered 2019/93760. In his testimony, he has stated that he was held in custody at the Department of Financial Crimes of the Ankara Police Department for 12 days, and that the police officers who have taken his testimony used vulgar expressions against him, however he has not been subjected to physical abuse.

15. As can be understood from the explanations provided above, there is no complaint or appeal lodged before the law enforcement agencies or the judicial authorities by the persons (or the attorneys thereof) who were suspects under the investigations numbered 2019/31173, 2017/175544, 2017/175552, 2017/175558, 2017/175562 regarding the claims of torture or ill-treatment. There is no tangible evidence to support the said claims and the entire content of the report drawn up by [redacted] is based on the claims of the suspects that were interviewed.

Furthermore, suspects whose testimonies were taken by Ankara Chief Public Prosecutor's Office as victims have made no claims further than that of mentioning other suspects' claims of ill-treatment, whose names they do not even know.

16. Ankara Chief Public Prosecutor's Office has immediately lodged an ex officio investigation regarding the claims of ill-treatment of the suspects, and taken their testimonies as victims, in addition to taking the testimonies of the group of lawyers who came to Ankara Police Department on 27 May 2019 in order to interview the suspects regarding the said claims. It has further obtained all documents regarding the claims of the suspects from the said lawyers. Consequently, an extensive and meticulous investigation is being carried out by the judiciary regarding all claims of torture or ill-treatment.

III. TURKEY'S "ZERO TOLERANCE AGAINST TORTURE" POLICY

A. General Framework

17. Turkey has adopted a "zero tolerance against" torture policy since 2003, and passed various pieces of legislation that sets forth heavy sanctions for the crimes of torture and ill-treatment. In accordance with the recommendations of the European Committee for the Prevention of Torture (CPT), it has made significant improvements in this area in order to meet international human rights norms and standards.

18. Prohibition of torture and all forms of degrading treatment or punishment is stipulated in Article 17/3 of the Turkish Constitution. According to Article 77 of the Turkish Criminal Code (TCC), if the crime of torture or degrading punishment is committed with political, racial, philosophical or religious incentives against a certain section of the society, it is then considered a crime against humanity, in which case the statute of limitations do not apply. Furthermore, according to Article 94 of the TCC, under which the crime of torture was specifically defined, a prison sentence between 3 and 12 years is stipulated for public officials who inflict physical or mental pain upon a person. Article 94 further stipulates that there is no statute of limitations for the crime of torture.

B. Legislative and Administrative Amendments

19. In 2002, Article 13/2 was added to the Law on Public Officials (Devlet Memurları Kanunu), according to which the State has the right to recourse to the public official who committed the crime of torture or inhuman or degrading treatment or punishment (hereinafter "the crime of torture") if the European Court of Human Rights (ECtHR) rules on compensation for violation of the prohibition of torture. The purpose of this article is to deter public officers from committing the said crime.

20. In 2003, the previous legislation, which allowed for converting the prison sentence received for the crime of torture to pecuniary punishment and required the permission of the superior officer in order for a civil servant to be investigated for the crime of torture, was abolished.

21. The new TCC entered into force in 2005. The new law sets forth heavier penalties for the crime of torture, and stipulates aggravated life sentence for the perpetrator of the crime of torture in case of the death of the victim.

22. Turkey is a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) since 27 September 2011.

23. The statute of limitations for the crime of torture was abolished with the amendment made in 2013 in Article 94 of the TCC.

24. In 2016, Annex Article 1 was added to the Code of Criminal Procedure (CCP), according to which public prosecutors must carry out investigations regarding the crime of torture as a matter priority, the criminal cases opened against law enforcement officials must be regarded as urgent by the courts, and appeal process in the proceedings concerning the crime of torture must be prioritized. This amendment gives judicial proceedings regarding the crime of torture precedence over other proceedings.

25. Emergency Decree Number 682 entered into force in 23 January 2017, according to which torture is considered as a ground for dismissal from public service.

C. National Preventive Mechanisms

26. According to Article 92 of the CCP and Article 26 of the Regulation on Arrest, Custody and Questioning, Public Prosecutors, as a requirement of their judicial duties, inspect custodial prisons, questioning rooms in addition to overseeing all procedures of arrest and custody, and the periods thereof. According to Article 9 of the said regulation, medical reports must be issued by competent physicians throughout the period of custody and upon the termination as well as the decision on the extension thereof.

27. Camera systems are in place in 1203 out of all 1268 Police Headquarters, in 303 custodial prisons in the Police Departments of Public Security in all 81 provinces, and in 1946 out of all 2012 custodial prisons within the Gendarmerie General Commands.

28. Law Enforcement Supervision Commission (Kolluk Gözetim Komisyonu) was established in 2016 in order to enhance the efficiency and transparency of the law enforcement units, and to create a common ledger for all prosecutions and disciplinary procedures against law enforcement officials for their actions or the crimes they are suspected to have committed.

29. All penal institutions can be monitored at any time by national and international monitoring mechanisms. They are also monitored by inspectors of the Ministry of Justice, controllers of the Directorate General for Prisons and Detention Houses and public prosecutors in charge of

penal institutions. Furthermore, Human Rights Boards, both of provinces and districts, can visit and monitor penal institutions.

30. Ombudsman Institution and the Human Rights and Equality Institution of Turkey (which is the National Preventive Mechanism as part of the preventive system established by the OPCAT) investigate complaints of torture and ill-treatment and monitor, without permission from the authorities, all places where persons are deprived of their liberty.

31. As part of the Parliamentary supervision, members of the Human Rights Inquiry Committee of the Turkish Grand National Assembly can monitor places where persons are deprived of their liberty and can hold interviews with convicts and persons under custody or detention.

32. In addition to all national preventive mechanisms, after the 15 July coup attempt, a unit was established within the Ministry of Justice to track all claims in the media of torture or ill-treatment, to convey said claims to relevant authorities in order for them to investigate and to declare to the public the outcome of the said investigations.

D. International Monitoring Mechanisms

33. Turkey maintains close cooperation with international mechanisms for the prevention of torture such as the CPT, the UN Committee Against Torture (CAT) and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

34. Places where persons are deprived of their liberty are open to monitoring of the CPT and the SPT.

35. It should also be emphasized that the ECtHR has not granted any requests for an interim measure in the applications lodged concerning claims of ill-treatment of persons who were detained after the 15 July coup attempt.

IV. CONCLUSION

36. In light of the explanations provided above, it is the view of the Government that, claims subject to the joint urgent appeal "UA TUR 6/2019" should be dismissed.

37. The Government would like to further point out that an investigation (which is ongoing) was lodged ex officio by the Turkish Judiciary regarding the said claims before they were conveyed to Turkey by the Special Procedures in the joint urgent appeal "UA TUR 6/2019" dated 12 June 2019.