



MISSION PERMANENTE DE LA RÉPUBLIQUE DE TURQUIE
AUPRÈS DE L'OFFICE DES NATIONS UNIES À GENÈVE

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La Mission permanente de la République de Turquie auprès de l'Office des Nations Unies à Genève et d'autres organisations internationales en Suisse présente ses compliments au Haut-Commissariat aux droits de l'homme et fait référence à l'appel conjoint du Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, du le Rapporteur Spécial des Nations Unies sur le droit qu'a toute personne de jouir du meilleur état de santé physique et mentale possible et Rapporteur spécial sur la situation des défenseurs des droits de l'homme, datée du 23 juillet 2019 (Réf : ALTUR 8/2019), a l'honneur de transmettre ci-jointe une note d'information contenant les observations et informations du Gouvernement de la République de Turquie.

La Mission permanente de la République de Turquie saisit cette occasion pour renouveler au Haut-Commissariat aux droits de l'homme les assurances de sa très haute considération.

Genève le, 20.09.2019



PJ : Susmentionnée

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<p style="text-align: center;">INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES (AL TUR 8/2019)</p>

1. With reference to the joint communication dated 23 July 2019, sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders, the Government would like to submit its observations herein below.

I. OVERVIEW

2. As a democratic state governed by the rule of law and a founding member of the Council of Europe, Turkey is devoted to human rights, the rule of law and democracy. It continues to fight against terrorist organizations within the framework of its Constitution and national laws and in compliance with its international obligations. It is Turkey's priority to strike a proper balance between public security and human rights, including the freedom of expression.

3. In all democratic societies, the independent judiciary is entitled to lodge legal proceedings against persons if there is sufficient evidence that they have violated the law. In that regard, no profession gives a person immunity from prosecution. Accordingly, no one is prosecuted because of his/her profession.

**II. PROCEEDINGS AGAINST MEMBERS OF THE CENTRAL COUNCIL OF THE
TURKISH MEDICAL ASSOCIATION**

4. On 1 October 2018, Ankara Chief Public Prosecutor's Office issued an indictment against eleven members of the Central Council of the Turkish Medical Association (TMA) for "inciting the public to hatred or enmity" and "making propaganda of a terrorist organization" due to certain expressions they used in two public statements they published on 1 September 2016 and 24 January 2018.

5. Ankara 32. Assize Court, evaluating the evidence gathered and the charges brought forward by the prosecution, decided that the expressions used in the two statements do not glorify or encourage methods of terrorist organizations that involve the use of force, violence or threat;

and therefore the elements of the crime of "making propaganda of a terrorist organization" are not present in the case.

6. The Court further evaluated that, in their public statements, the Central Council members pictured the legitimate operations of the Turkish security forces against terrorist organizations including PKK, KCK and YPG as an unlawful attack against civilians, noting that similar statements were previously issued by the above-mentioned terrorist organizations and their media offsets.

After assessing the evidence collected in the course of the investigation, including the books and documents belonging to the doctors in question and taking into account their social status and educational background, the Court came to the conclusion that the Central Council members were in a position to understand the extent of the terrorism threat faced by Turkey and the necessity of the counter-terrorism operations. The Court also underlined that, the statements issued by the Central Council members were unavoidably going to have an impact on the public opinion considering the reputable nature of their profession. It therefore assessed that the expressions used in the statements incite enmity among the population.

7. Consequently, in the hearing held on 3 May 2019, the Court ruled that the expressions used in two public statements published by the Central Council members on 1 September 2016 and 24 January 2018 amount to the crime of "inciting the public to hatred or enmity" as set forth in Article 216 of the Turkish Criminal Code (TCC)¹. Accordingly, it convicted twice, the 11 Central Council members to ten months of imprisonment as per Article 216 of the TCC.

8. Legal remedies, both domestic and international, are available against the ruling of the Ankara 32. Assize Court, including the right to appeal before Regional Courts of Justice and the Court of Cassation, right to lodge an individual application before the Constitutional Court, and the right to apply before the European Court of Human Rights.

9. Accordingly, [REDACTED] attorney of the 11 Central Council members, lodged a petition of appeal against the ruling of the Ankara 32. Assize Court on 21 May 2019. The case is currently before the Ankara Regional Court of Justice (Case number: [REDACTED])

¹ Article 216/1 of the TCC reads as follows: "A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to the public order shall be sentenced to imprisonment for a term of one to three years."

III. FREEDOM OF EXPRESSION IN TURKEY

10. Freedom of expression is guaranteed in Article 26 of the Constitution, wording of which is in line with Article 10 of the European Convention of Human Rights (ECHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). Various laws, including the Law on Press (Law number 5187), Internet Law (Law Number 5651) and Law on the Right to Information (Law number 4982) contain a number of provisions that safeguard the freedom of expression. Said provisions are in line with the international norms and standards. In case of a conflict between these provisions and the international agreements concerning fundamental rights and freedoms, the provisions of international agreements prevail, in accordance with Article 90 of the Constitution.

11. Freedom of expression is not an absolute right and can be restricted by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon its essence. Limitations upon freedom of expression are also prescribed in the above mentioned articles of the ECHR and the ICCPR.

12. Article 20 of the ICCPR imposes a clear obligation upon states to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In its "General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred", Human Rights Committee states that the required prohibitions set forth under Article 20 of the ICCPR are fully compatible with the right of freedom of expression as contained in Article 19 thereof, and that the exercise of freedom of expression carries with it special duties and responsibilities.

Human Rights Committee further states in its General Comment No. 11 that, for article 20 of the ICCPR to become fully effective, there must be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation; and that the States parties should take the measures necessary to fulfil the obligations contained in Article 20 of the ICCPR.

13. Furthermore, in his remarks at the launch of the United Nations Strategy and Plan of Action on Hate Speech, UN Secretary-General António Guterres emphasized that addressing hate speech does not mean limiting or prohibiting freedom of speech.

14. It is therefore clear that, any expression which may incite hatred or enmity among the public cannot be considered within the scope of freedom of expression, and that Turkey acts in line with its obligations under Article 20 of the ICCPR by taking the necessary legal action against persons who have published a statement that contains expressions which incite hatred or enmity among the public, according to the ruling of the independent judiciary.

IV. CONCLUSION

15. In line with the explanation provided above, it is the view of the Government that, claims subject to the joint communication “AL TUR 8/2019” should be dismissed, and that the ongoing judicial process should be respected.