



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

2020/62441669/31103786 - 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 letter from Mr. Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers, dated 2 January 2020 (Ref: AL TUR 10/2019, Sultani Temel), has the honour to enclose herewith an information note comprising the response of the Government of the Republic of Turkey.

The Permanent Mission would also like to convey the following observations:

The Government of the Republic of Turkey observes that its detailed explanations since 2016 regarding the applications made by the former judges and prosecutors who are the members of Fetullahist Terrorist Organisation have not been comprehended well by the Special Rapporteur. Therefore the Government would like to reiterate that the judges and prosecutors were not dismissed by the decree laws, and well before the coup attempt of 15 July 2016, Council of Judges and Prosecutors initiated probe about 2146 judges and prosecutors on 24.3.2015 and 7.4.2015 with two separate files since they were involved in the investigations and prosecutions that created annoyance among Turkish society by opening lawsuits that are intentional, biased and without evidence. Although Turkey has been carrying out all her obligations stemming from the international law and paying due attention to the principles of universal law, it is being observed that those unsubstantiated allegations are repeated continuously.

Within this context, before asking any explanation from the Government, it is expected that future applications by those people should be subject to preliminary examination by the Special Rapporteur within the perspective of non-politicized manner by taking into account all our informative notes including but not limited to our note with reference OL TUR 5/2017.

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, 2 March 2020

Encl: As stated.

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 2
JANUARY 2020**

(Reference: AL TUR 10/2019)

1. With reference to the letter of the Special Rapporteur on the Independence of Judges and Lawyers dated 2 January 2020 regarding Sultani Temel, the Government would like to submit its observations herein below.

I. OVERVIEW

2. At the outset, the Government would like to recall that in its several responses submitted to the Special Rapporteur¹, detailed information was provided regarding the terrorist threats faced by Turkey, in particular the grave nature of the threat posed by the Fethullah Terrorist Organization (FETÖ), measures taken against FETÖ and other terrorist organizations in Turkey, safeguards implemented towards ensuring independence and impartiality of judges, the declared State of Emergency which ended on 18 July 2018, the Decree Laws as well as Turkey's derogations to European Convention on Human Rights (ECHR) and International Covenant on Civil and Political Rights (ICCPR).

3. The Government would also like to share its observations that the claims put forward regarding issues such as health conditions, fair trial and independence of judges in the recent communications concerning FETÖ affiliates, are often systematically repeated without legal basis and substance despite Turkey's absolute fulfillment of its obligations under international human rights law and its respect to fundamental principles of law.

4. Finally, the Government would like to raise its concerns about the politically motivated nature of the alleged claims put forward in the recent communications concerning FETÖ affiliates, suggesting that the sources of these communications are pursuing political purposes rather than defending human rights. Nevertheless, in line with spirit of cooperation with UN Special Procedures, the Government provides the following information on the specific case.

¹ See information notes in reply to AL/TUR/5/2017 and AL/TUR/7/2018.

II. FACTS COLLECTED BY THE AUTHORITIES

5. Sultani Temel was taken into custody by Sakarya Chief Public Prosecutor's Office on 16 July 2016 with the charge of “being a member of an armed terrorist organization”. After her statement was taken by the Chief Public Prosecutor in the presence of her lawyer, she was released with a judicial control decision on 19 July 2016.

6. On 16 July 2016, she was suspended from duty by the Plenary Session of High Council of Judges and Prosecutors (hereinafter referred to as “Council”) in accordance with articles 77/1² and 81/1³ of the Judges and Prosecutors Law no. 2802. She was then dismissed from profession by the Council on 24 August 2016.

7. In the decision of dismissal from profession; along with the investigation file, statement records, court decisions, information and documents obtained from the Chief Public Prosecutor's Office, the charge attributed and the nature of the investigation carried out, the Council concluded that there is enough evidence suggesting that Temel is associated with FETÖ, thus ordered her dismissal from profession in accordance with the Article 3/1 of Decree Law no. 667⁴.

8. Pursuant to Article 33 of the Judges and Prosecutors Law No. 6087, Temel had been given the opportunity to request re-examination within 10 days from the notification of the dismissal decision. Temel later filed an action for annulment to the Council of State against the dismissal decision. The case is pending due to the ongoing criminal proceedings against her.

9. On 17 January 2017, she was taken into custody in light of the new evidence obtained in the investigation against her. On 27 January 2017, she was detained by Tokat Criminal Magistrate's Office in accordance with Article 100 of the Criminal Code of Procedure (CCP), considering the

² Article 77/1 of the Law no. 2802 provides; “If it is considered that the continuation of the duty of the judge or prosecutor under investigation will damage the safety of the investigation or damage the authority and reputation of the judiciary, High Council of Judges and Prosecutors may suspend the judge or prosecutor from duty as a temporary measure or assign the judge or prosecutor in another jurisdiction until the conclusion of the investigation.”

³ First sentence of Article 81/1 of the Law no. 2802 provides; “Suspension from duty as a result of disciplinary investigation may continue for a maximum of three months.”

⁴ Article 3/1 of the Decree Law no. 667 provides; “Continuation in the profession of those who are considered to be a member of, or have relation, connection or contact with terrorist organizations or structure/entities, organizations or groups established by the National Security Council as engaging in activities against the national security of the State, shall be found to be unsuitable and their dismissal from the profession shall be decided by the (...) Plenary Session of the High Council of Judges and Prosecutors in so far as judges and prosecutors are concerned. (...)”

nature of the attributed offenses, danger of absconding and existence of reasonable suspicion. On 5 October 2017, she was released pending trial with home detention measure.

10. On 6 June 2018, she was convicted for “being a member of a terrorist organization” offense under Article 341/2 of Turkish Penal Code (TPC) and sentenced to 8 years and 9 months in prison. The Court, evaluating various witness statements and other incriminating evidences against her, concluded that Temel’s membership to the FETÖ terrorist organization is an indisputable fact. The periods she spent in custody and detention were deducted from her punishment under Article 63 of TPC. She was informed that she could appeal against the decision in accordance with Article 268 of CCP within 7 days.

11. She then appealed against the decision. On 11 December 2018, Istanbul Regional Court of Justice refused the appeal, deciding the conviction is lawful and justified. The case is currently under review by the Court of Cassation.

12. Temel also lodged three individual applications to the Constitutional Court on 26 December 2016, 2 May 2017 and 19 July 2018. The Court found the first application inadmissible due to non-exhaustion of domestic legal remedies. The second application, which includes same allegations with the present communication, is currently under review. For the third application, the Court decided on dismissal of the claims.

III. OBSERVATIONS IN REPLY TO THE COMMUNICATION

A. The suspension from duty and dismissal from profession decisions given by the independent and impartial Council are lawful.

13. Article 159 of the Constitution provides; “*Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges.*” Article 3/6 of the Law no. 6087 provides; “*The Council is independent in performing its duties and exercising its powers. No body, office, authority or person can give orders and instructions to the Council.*” Article 3/7 of the Law no. 6087 provides; “*The Council acts within the framework of the principles of justice, impartiality, integrity, honesty, consistency, equality, competence and merit, taking into account the independence of the Courts and the principles of judgeship and prosecution.*” Article 4 of the Law no. 6087 gives the Council the authority to suspend judges or prosecutors from duty and to decide about those who are not deemed

suitable to stay in the profession. According to Article 62 of the Law no. 2802, the disciplinary penalties that may be imposed to judges and prosecutors by the Council include dismissal from profession.

14. Upon receiving complaints that some members of the judiciary who have been involved in cases such as Ergenekon and Balyoz⁵ have been conducting unlawful judicial proceedings, the Council launched an investigation in 2014 on the matter. Consequently, it is understood that some judicial members acted in favor of FETÖ's interests under the directions of the leader of the terrorist organization.

15. Within the scope of the investigation and in accordance with articles 77/1 and 81/1 of the Law no. 6087, the Council concluded that the situation of the concerned persons is incompatible with the indispensable principles of independence and impartiality of judges. The Council thus decided for temporary suspension from duty for those including Sultani Temel.

16. Consequently, the judges and prosecutors who are determined to be a member of FETÖ were unanimously dismissed from profession by the Plenary Session of the Council on 24 August 2016.⁶

17. As stated above, the action for annulment suit filed by Temel against her dismissal from profession and the public action filed against Temel are both currently under review by higher Courts. Her second individual application, which includes same allegations with the present communication, is also under review by the Constitutional Court.

18. Regarding the dismissals of judges and prosecutors, it should be noted that The European Court of Human Rights (ECtHR), declared an application inadmissible which was made without exhausting domestic remedies, finding that it is possible to file an action to the Council of State and subsequently to the Constitutional Court which are effective domestic remedies.⁷

⁵ Detailed information was provided in the information note in reply to the communicated AL/TUR/5/2017 regarding Ergenekon and Balyoz cases and FETÖ's involvement.

⁶ The reasoned decision in Turkish can be accessed at <https://www.hsk.gov.tr/Eklentiler/files/karar.pdf>.

⁷ See Çatal v. Turkey, application no: 2873/17 and Press Release no: ECHR 086 dated 10.03.2017 at para. 3 and 4: "*The Court has rejected Ms Çatal's application, finding that she did not exhaust domestic remedies. The Court observed in*

B. Criminal proceedings regarding Temel is conducted in compliance with the law.

19. Temel remained in custody between 16 July 2016 and 19 July 2016 and between 17 January 2017 and 27 January 2017. According to Article 10 of the Decree Law no. 684 which come into force on 23 January 2017, a person can remain under custody for 7 days if he/she is suspected for crimes falling under the scope of Counter Terrorism Law no. 3713. In case of numerous suspects or difficulties to collect evidence, the duration of custody can be renewed for an additional 7 days.

20. Considering the seriousness and complex nature of the offences she is charged with, Temel's time spent in custody on both occasions are proportional and in accordance with both the domestic law and international conventions.

21. Temel benefited from legal assistance in all phases of the judicial proceedings. She was notified of the charges against her, of her right to choose a defense lawyer, to have her lawyer present during statement taking process, or to ask a defense lawyer to be appointed by the Bar Association to assist her if she could not afford one, as well as other rights such as communication with her family, providing evidence in her favor and demanding for the collection of these. Accordingly, she met with her lawyer 15 times and wrote petitions to the judicial authorities 11 times. Meeting records with her lawyer are provided in Annex-1 of this document. It is evident that she is able to freely exercise her right of defense.

22. The Court decisions regarding the detention and the continuation of the detention concerning Temel is justified and in accordance with the principles of necessity, proportionality and legality. However, after evaluating the situation that her spouse is also in detention and the fact that she has a child that needs parental care, the Court decided that the judicial control provisions would be sufficient, thus ordered her release pending trial on 5 October 2017. (See Annex – 2)

particular that a new remedy was available to Ms Çatal, provided for in Legislative Decree no. 685, enabling her to challenge her dismissal before the Supreme Administrative Court (judicial review). The Supreme Administrative Court's decision could then, where applicable, be challenged before the Constitutional Court (individual application). Following an application to the Constitutional Court and a ruling by that court, anyone could, if necessary, lodge with the European Court of Human Rights a complaint based on the Convention. Legislative Decree no. 685 had therefore put an end to the dispute as to whether the domestic courts had jurisdiction to judicially review the measures taken by the Supreme Council of Judges."

23. It should also be noted that article 141/1 of CCP states that those who claim to be unlawfully detained or their period of detention was unlawfully extended can file an action for compensation. Temel did not apply for such measure.

C. The allegations concerning ill-treatment of Temel in detention are of an abstract nature and not supported by any credible evidence.

24. Temel did not put forward any complaints to officials or to the judicial authorities that she was threatened, subjected to ill-treatment or tortured. The Government in its previous replies provided detailed information about various safeguards in place against torture and ill-treatment. Considering the fact that Temel did not put any complaints to the authorities on the matter and in light of the safeguards implemented in Turkey, the Government is of the opinion that the allegations concerning ill-treatment should be disregarded since it is clearly driven by political motive.

D. Health and safety conditions of the Penal Institution is sufficient. Temel's basic needs are being met and necessary measures are taken to ensure her physical and mental integrity.

25. The rooms in the Penal Institution comply with the standards set out in the relevant Recommendations of the Committee of Ministers of the Council of Europe and the standards set by the European Committee for the Prevention of Torture. The detention centers and the Penal Institutions are open to the examinations of relevant national and international institutions.

26. The Erzurum Type E Closed Penal Institution, where Temel has been placed, has an institution physician who provides first examination treatment services. If advanced examination, treatment or rehabilitation is required, the institution sends the patient to the state or university hospitals. All necessary examinations and treatments are covered free of charge under government coverage by law. The Institution also has 2 permanent psychologists and one additional psychiatrist appointed by the Ministry of Health on certain days. Upon patient's request or when deemed necessary by the experts, interviews are made with the patient which are recorded and if necessary, the patient will be sent to a hospital.

27. On the first health examination of Temel dated 8 June 2018, no signs of disease or disability were diagnosed by the institution physician. First examination services related to mental problems are carried out by institution psychologists. On several occasions, she was sent to the Erzurum Regional Hospital Psychiatry Clinic where she was treated.

28. During her time in the Institution, Temel met with her lawyer 15 times, used her phone rights 103 times, sent 65 letters, received 67 letters and has been visited on closed visit days 58 times. (see Annex-1 and Annex-3)

29. In light of the explanations above, the Government would like to state that it fulfills its obligations in terms of the health and other basic needs of Sultani Temel. In addition, the Government would like to present that, out of 35 applications filed to the ECtHR regarding conditions in penal institutions by individuals affiliated by FETÖ, 33 of them were rejected by ECtHR while 2 of the remaining applications are currently under review by the Court.

E. Necessary measures are taken regarding Temel's daughter's education and development.

30. Article 65 of the Law on the Execution of Sentences And Security Measures no: 5275 provides:

“ (1) Children between the ages of 0-6, whose mothers are convicted but have no one outside to provide protection for them, can stay with their mothers. During the day, these children are housed in the nursery and day-care center in the Penal Institution or in the Social Services and Child Protection Agency or in other institutions and organizations.

(2) Children who stay with their mothers are given food and drinks according to their age and condition and needs.

(3) Children over the age of three can be placed in kindergartens or orphanages with the decision of a judge. These children are provided interaction with their mother from time to time based on a schedule and method to be determined.”

The fact that the children can stay in a penal institution with their mothers is not an imposition of the State, but is a preference of the mother. The mother may as well choose the option to accommodate her child in social service institutions. The children are sent safely by the institution service to the day-care centers or preschool education institutions designated outside the institution upon the request of the mother. However, Sultani Temel did not make a request to this end. She stated that her daughter is sent to school by her father.

31. Temel does not keep her daughter with her continuously at the Penal Institution. Duration of her daughter's stay with Temel is at short intervals. Accordingly Temel's daughter stayed with her mother on the dates between 06/06/2018 - 25/08/2018, 05/09/2018 - 07/09/2018, 15/10/2018 - 30/10/2018, 25/03/2019 - 08/04/2019, 17/06/2019 - 08/07/2019, 19/08/2019 - 26/08/2019, 14/10/2019 - 04/11/2019 and 08/01/2020 - 20/01/2020. During these stays, educational materials and toys are provided by the institution in order to ensure the child's cognitive and social development.

IV. CONCLUSION

32. In the light of the reasons explained above, the Government states that since the suspension from duty and dismissal from profession decisions are given by an independent body and the judicial proceedings conducted are in compliance with both domestic and international law for the reasons explained above; and considering the fact that there is no indication that she was ill-treated or tortured, along with the fact that necessary measures are taken to ensure both Temel's and her daughter's physical and mental integrity and the safeguards implemented towards ensuring independence and impartiality of judges, the allegations in the present communication are unfounded and therefore should be dismissed.

Annexes

- 1-** Penal Institution visitation records with her family as well as her lawyer
- 2-** Court decision on release pending trial dated 5 October 2017
- 3-** Phone records in the Penal Institution.