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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 United Nations Office of the High Commissioner for Human Rights and with reference to the joint communication dated 26 March 2020, sent by the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment; the Working Group on enforced and involuntary disappearances; and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning allegations in respect of the death of Zaki Mubarak Youssef (Ref: AL TUR 2/2020), please find attached the observations of the Government of the Republic of Turkey.

The Permanent Mission of the Republic of Turkey to the United Nations Office in Geneva and Other International Organizations in Switzerland avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

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Geneva, 22 May 2020



Enc. As stated

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

**OBSERVATIONS OF THE GOVERNMENT OF THE REPUBLIC OF  
TURKEY IN REPLY TO THE JOINT COMMUNICATION FROM SPECIAL  
PROCEDURES**

**(AL TUR 2/2020)**

1. With reference to the joint communication dated 26 March 2020, sent by the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment; the Working Group on enforced and involuntary disappearances; and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning allegations in respect of the death of Zaki Mubarak Youssef, the Government of the Republic of Turkey 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.

3. As all fundamental freedoms, the right to liberty and security is guaranteed in the Turkish Constitution. It is regulated in Article 19 which underlines that all shall enjoy personal liberty and security, and stipulates certain conditions which may justify its limitation. These conditions are in line with the limitations that may be imposed on the right to liberty and security according to Article 5 of the European Convention on Human Rights (the ECHR) and Article 9 of the International Covenant on Civil and Political Rights (the ICCPR).

4. Article 90 of the Constitution states that in case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

5. According to Article 19 of the Constitution and the above-mentioned articles of the ECHR and the ICCPR, a lawful detention of a person, after the decision by a competent court, constitutes a legitimate limitation of the right to liberty and security.

6. Moreover, the jurisprudence of the European Court of Human Rights (the ECtHR) considers that reasonable suspicion, based on concrete evidence and facts, of having committed a crime should exist in order to proceed to any measure limiting the right to liberty.

7. 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. All proceedings conducted with regard to Mubarak Youssef were carried out in accordance with the relevant legislation as well as Turkey's international obligations.

## **II. PARTICULAR CIRCUMSTANCES OF THE PRESENT COMMUNICATION**

### **A . Legal grounds justifying the arrest and detention of Mubarak Youssef**

8. Within the scope an investigation initiated by Istanbul Chief Public Prosecutor's Office (investigation no.2019/67320) on the charges of "International Espionage" and "Political and Military Espionage", an arrest warrant was issued regarding Youssef (registered as Zaki Y.M. Hassan in Turkey).

9. On 15 April 2019, Youssef was arrested by the Police at 22.30 after an identity check revealing that he was holder of a Bulgarian Passport (document no.860077979). Youssef was informed regarding the grounds of his arrest and his legal rights. After his arrest, upon Youssef's request, his daughter and his son were informed about the situation of their father. Therefore, his family was aware of Youssef's arrest.

Following his arrest, on 16 April 2019 at 00.50 (i.e. on the same night), he was taken to Haseki Training and Research Hospital where he went through a medical examination that revealed he had no physical sign of violence. The same conclusion was reached by all the medical examinations he was subject to during the period of time he was under custody at the police department.

Contrary to the allegations, during his custody, Youssef had access to a lawyer from Istanbul Bar Association, namely Yekta Yunus Yanar, on 18 April 2019.

10. On 19 April 2019, Youssef was brought before Istanbul 2<sup>nd</sup> Magistrate's Office. The judge informed him about the ongoing investigation on the charges of securing information of the state that must be kept confidential for the purpose of political and military espionage as well as international espionage. Youssef was also informed that he had the right to choose a lawyer and, if not, that a lawyer would be appointed according to Article 147 of the Criminal Code of Procedure ("the CCP"). Youssef has declared that he wished to plead with the lawyer appointed by Istanbul Bar Association, Yekta Yunus Yanar. Youssef gave his testimony before the judge with the intermediary of an interpreter and in presence of his lawyer.

11. On the same day, Istanbul 2<sup>nd</sup> Magistrate's Office ruled for pretrial detention on the grounds that there was concrete and strong evidence indicating that Youssef had committed the aforementioned crimes.

12. In fact, Turkish criminal law indicates explicitly the grounds needed to justify a detention in Article 100 of the CCP. A judge can issue a detention decision only if the specific circumstances of the case meet the conditions foreseen in the said article. Therefore, all decisions of detention must be based on the grounds mentioned in Article 100/2 of the CCP.

Turkish criminal law considers that detention decision should be taken in exceptional situations and, therefore, stipulates strict conditions and procedures in order to apply it. Turkish judicial system has set mechanisms to control the lawfulness of detention decisions such as the review of the detention by the relevant judge no more than every thirty days, the possibility to object to a detention decision and the right to lodge an individual application before the Constitutional Court, recognized by the ECtHR as an effective domestic remedy.

The strict conditions for issuing a detention decision together with the possibility to review this decision at several levels are precluding risks of arbitrary deprivation of liberty. Turkish legislation provides sufficient legal safeguards enabling detainees to challenge decisions depriving them of liberty.

13. On the other hand, the ECtHR case law considers that reasonable suspicion, based on concrete evidence and facts, of having committed a crime should exist in order to proceed to any measure limiting the right to liberty.

Reasonable suspicion requires the presence of an event or information sufficient to convince an objective observer that the accused person may have committed an offence (*Fox, Campbell and Hartley v. The United Kingdom*, no. 12244/86 12245/86 12383/86, 30 August 1990, par. 32, *O'Hara v. The United Kingdom*, 37555/97, par.34).

The ECtHR also states that, in order to extend the detention period, the existence of reasonable suspicion alone is not sufficient for the continuation of detention. There should also be a requirement of public interest to justify the deprivation of liberty.

14. Regarding the present case, Istanbul 2<sup>nd</sup> Magistrate's Office based its decision on concrete evidence such as digital materials and documents, screenshots of messages exchanged and testimonies of witnesses. The nature and qualification of the crimes combined with the presence of concrete elements indicating that a crime was committed justify the pretrial detention of Youssef.

Moreover, Youssef's detention is also founded on the existing risk of obfuscating evidence. The presence of the risk that the suspect could flee since he did not provide any residential address constitutes another legitimate ground for detention. Consequently, taken into consideration the gravity of the charges, Istanbul 2<sup>nd</sup> Magistrate's Office considered that judicial control measure would be insufficient. The detention decision is therefore based on concrete charges and tangible evidence and is in compliance with the requirements of the CCP as well as with the ECtHR case law.

15. During the time Youssef was detained (between 19 - 28 April 2019), the records of Silivri Penitentiary Institution indicate that he did not make any phone calls, receive or send any letters. Those records also establish that he met with his lawyers, Gonca Kılıç and Yekta Yunus Yanar, on 23 April 2019 as well as with another lawyer, Muhlis Balık,

on 26 April 2019. Therefore, contrary to the allegations, Youssef had access to his lawyers during the time he spent in custody and detention.

## **B . Investigations initiated upon the death of Mubarak Youssef**

16. Before analyzing the circumstances of the present communication and the allegations regarding torture and ill treatment, the Government wishes to remind that Turkey, in line with its international obligations, has set a strong legal framework aimed at preventing and punishing human rights violations. In addition, the ECtHR case law indicates that Turkey has adopted an adequate legal framework regarding the prevention of torture and ill treatment.

17. Turkey has adopted a solid legal framework for the prevention of torture, implements a “zero tolerance policy against torture” and is determined to maintain this policy at all time. According to Article 2 of the Law no.5275 on the Execution of Sentences and Security Measures, cruel, inhuman and degrading behavior cannot be used in the execution of punishment and security measures. Therefore, the law prohibits torture and ill-treatment against those detained or convicted to prison sentences. Prompt and effective investigations of all torture allegations are carried out and complaint mechanisms are available to victims of such allegations. Furthermore, Article 94 of the Turkish Criminal Code stipulates that statute of limitations shall not apply to offences of torture. The Government also wishes to underline that torture is considered as a ground for dismissal from public service since 2017 in accordance with the Decree Law no: 682.

18. If an allegation of torture arises, judicial and administrative investigations are immediately launched. In other words, all allegations of torture and ill-treatment are promptly brought to the attention of the relevant authorities and duly investigated by the judicial and administrative bodies. Parliamentary supervision mechanism is also in place.

19. Turkey is a party to all major international instruments against torture and ill treatment, including the European Convention for the Prevention of Torture, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (OPCAT).

20. Turkey also maintains a close cooperation with international mechanisms created under this international legal framework such as the European Committee for the Prevention of Torture (CPT), the UN Committee Against Torture (CAT) and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). Places where persons are deprived of their liberty are open to monitoring by the CPT and the SPT, which carry out periodic and ad hoc visits. They have unlimited access to places of detention and the right to enter such places without restriction.

21. In the present case, Youssef was detained at Silivri Penitentiary Institution (Block A, 8<sup>th</sup> Corridor, Single room no.60). On 28 April 2019, during the morning inspection, the officer checked his room at 8.16 am and recorded that everything was normal. During the regular distribution of food, Youssef did not show up at his door, thus the officer on duty checked inside his room through the small opening at the door at 10.22 and noticed that the detainee was motionless and down on his knees in front of the bathroom door.

22. Administrative and judicial investigations were promptly initiated following Youssef's death. A report was established by the Director of the Penitentiary Institution and, on the same day, Silivri Public Chief Prosecutor's Office was informed of the death of the detainee. The Public Prosecutor proceeded to the examination of the corpse, noted that Youssef used the drawstring of his sweatpants in order to hang himself and that there was not any visible sign of physical violence. On the same day, the corpse was transferred to the Istanbul Forensic Medicine Institution in order to proceed to a detailed classic autopsy. The corpse was handed over to an officer of Consulate of Palestine in Istanbul on 11 May 2019, less than a month after Youssef's death.

23. Silivri Chief Public Prosecutor's Office promptly initiated an investigation related to Youssef's death (investigation no.2019/4905), upon the request of the Directorate of Silivri Penitentiary Institution, regarding the officers on duty on that date as well as the directors within the scope of the Turkish Criminal Code. An expert report was also prepared in order to analyze relevant footages. The report issued on 31 May 2019 did not point out any unusual situation or any inconsistencies. Witnesses gave their testimonies to Silivri Chief Public Prosecutor's Office.

24. The report of the Forensic Medicine Institution dated 9 May 2019 established that the death of Youssef was due to hanging with the drawstring of his sweatpants, that the blood, hair and nail analysis did not indicate the presence of any suspicious substance such as alcohol, drugs, medication or cyanide. It is worth mentioning that the classic autopsy was conducted in accordance with the standards determined by the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. All internal organs and tissues examined during the autopsy were returned to the body and the autopsy was finalized once the incisions were closed.

25. Within the scope of the investigation initiated by Silivri Chief Public Prosecutor's Office, the crime scene investigation, autopsy and expert reports as well as pictures and footages of the crime scene were examined meticulously. The investigation did not reveal any negligence or act that would instigate the deceased to commit suicide. Thus, the investigation concluded that no one was involved, even by negligence, in Youssef's death. A decision of non-prosecution was issued on 9 July 2019.

26. Administrative investigation was also initiated by the penitentiary institution. The institution's Disciplinary Board decided that there was no evidence indicating the involvement of the penitentiary institution's officers in the death of Youssef and therefore concluded that there is no need for disciplinary penalty.

27. Consequently, the allegations regarding torture and ill-treatment are baseless, prompt administrative and judicial investigations were initiated upon Youssef's death and the autopsy was conducted according to the legal framework.

### **III. CONCLUSION**

28. In light of the explanations provided above, the Government argues that the allegations asserted in the joint-communication are unfounded and therefore should be dismissed.