



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 the Joint Communication from Special Procedures dated 14 October 2020 (AL TUR 18/2020), has the honour to enclose herewith the observations provided by 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, 10 December 2020

Encl: As stated.



Office of the High Commissioner for Human Rights  
Palais des Nations  
1211 Geneva 10

## **GOVERNMENT OF TURKEY'S OBSERVATIONS IN REPLY TO THE JOINT COMMUNICATION (AL TUR 18/2020) FROM THE UNITED NATIONS SPECIAL PROCEDURES**

In reply to the Joint Communication AL TUR 18/2020 dated 14 October 2020 sent by the Special Rapporteur on the independence of judges and lawyers, the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Government of Turkey would like to submit its observations herein below.

### **Observations regarding FETÖ terrorist organization**

On 15 July 2016, Turkey was faced with an unprecedentedly large-scale and brutal coup attempt perpetrated by the Fethullahist Terrorist Organization (FETÖ). FETÖ, a clandestine terrorist organization which insidiously infiltrated into critical government posts, attempted to destroy democracy, and take over the democratically elected Government on 15 July. Terrorist acts perpetrated by FETÖ on that night cost the lives of 251 Turkish citizens and injured over 2000. Several key institutions representing the will of the Turkish people, first and foremost the Parliament, were heavily assaulted.

In order to restore the Turkish democracy and protect the rights and freedoms of the Turkish citizens, structures into which FETÖ infiltrated thousands of its members for decades within all branches of government as well the military and the judiciary needed to be completely rooted out. State of Emergency (SoE) was declared shortly after the attempted coup, which was endorsed by the Turkish Parliament on 21 July 2016.

Throughout the SoE, Turkey acted in line with its international human rights obligations while maintaining its close cooperation and dialogue with international organizations including the United Nations and the Council of Europe. SoE was terminated on 19 July 2018.

Effective domestic legal remedies, including the right to lodge an individual application before the Constitutional Court, which is recognized by the European Court of Human Rights (ECtHR) as an effective domestic remedy, are available in Turkey. In addition to existing domestic remedies, Inquiry Commission on State of Emergency Measures was established with a view to receiving applications regarding administrative acts carried out pursuant to Decree Laws enacted during the SoE. Further remedies are available against the decisions of the Commission. The ECtHR recognized the Commission as a domestic remedy. Furthermore, an application can be lodged before the ECtHR after the exhaustion of domestic remedies.

Even before the attempted coup, FETÖ was known to employ complex strategies to advance its agenda. These included blackmailing politicians and bureaucrats, cheating on a mass-scale in public exams in order to place its members in key government posts, practicing social engineering, manipulation and indoctrination, presenting fabricated stories to spark off judicial proceedings against its opponents through its extensive network of media outlets, businesses, schools and NGOs.

FETÖ is now employing the strategy of presenting itself as the victim of human rights violations to hide its crimes. Its members deliberately try to deceive and manipulate

international public opinion by spreading false allegations against Turkey. These include unfounded claims of arbitrary arrest and detention, torture and even enforced disappearances while its members go in hiding at the orders of their leader. In fact, it is FETÖ itself that perpetrated grave human rights violations in Turkey, including cold bloodedly killing innocent civilians thus violating the very fundamental right to life of hundreds of Turkish citizens.

In line with the explanations provided above, Turkey requests the Special Procedures not to allow FETÖ and its members to abuse these mechanisms and to dismiss their allegations.

Turkey will continue to uphold human rights and freedoms and maintain its long-standing cooperation with international organizations.

### **Specific observations regarding the allegations in the Joint Communication**

During an investigation opened back in 2017 regarding the membership to FETÖ terrorist organization of a former Police Commissioner, a lawyer named Emine Kurt submitted a procuration letter to the Ankara West Chief Public Prosecutor's Office, stating that she and another lawyer named Said Emre Alçın were the suspect's defense counsels.

When the procuration letter in question turned out to be a counterfeit, Ankara West Chief Public Prosecutor's Office opened another investigation, claiming that certain lawyers were cooperating in order to defend the interests of FETÖ within the legal system and requested a warrant to intercept their communications with each other.

After Ankara West Magistrates' Office granted the said warrant, the suspects' communication with each other revealed that they provided legal services to persons in order to defend the interests of FETÖ terrorist organization.

The lawyers in question also made use of their access to the national judiciary informatics system in order to learn at an early stage if there was an investigation or an arrest warrant against members of FETÖ in order to help them hide or flee abroad.

Based on this and further evidence gathered, Ankara Chief Public Prosecutor's Office concluded that, in order to defend the interests of FETÖ terrorist organization, the lawyers in question acted collectively in an organized manner that was beyond the nature of legal services provided by a lawyer and on 9 September 2020, ordered 60 suspects (48 lawyers, 7 trainee lawyers, 3 dismissed judges, 1 dismissed judge candidate and 1 law school graduate) to be put under custody.

Their four-day custody period (*because the crime in question is collective*) was extended twice with the decision of Ankara 2<sup>nd</sup> Magistrates' Office. Even though the Ankara Chief Public Prosecutor's Office requested all suspects to be put under detention, only 14 were detained upon the decision of Magistrates' Offices. 35 were released with judicial control measures. There are arrest warrants regarding 11 (*as of 4 November 2020*).

The judicial process regarding 60 suspects is ongoing. All decisions therein, including arrest, custody and detention are given by competent authorities and are subject to appeal. The entire process is conducted on the basis of relevant legislation which is in line with international

standards including those prescribed in the International Covenant on Civil and Political Rights and the European Convention on Human Rights.

Contrary to the allegations in the Joint Communication, no procedural laws/safeguards were violated. In fact, the lawyers' offices were searched on the basis of a warrant and in the presence of other lawyers as required by Article 130 of the Law on Criminal Procedure. The lawyers, pursuant to the same article, requested certain objects to be confiscated during the search, such as notebooks and files, to be sealed in separate envelopes with a note on the cover that they were objects pertaining to the lawyer-client relationship. The Chief Public Prosecutor's Office therefore had to appeal to the Ankara Magistrates' Office in order to grant a permit to investigate the contents of the said envelopes. The envelopes were only opened upon the decision of the Magistrates' Office.

### **Measures taken by the Government of Turkey in order to counter the spread of COVID-19 in custodial prisons and penitentiary institutions**

The allegations in the Joint Communication that the lawyers were subjected to ill-treatment and that no meaningful precautions were taken against COVID-19 are completely baseless.

In order to prevent the spread of COVID-19, all custodial prisons and penitentiary institutions are regularly disinfected. All personnel wear masks at all times. Before they are taken under custody, all persons undergo medical examination which also includes checking any possible symptoms of COVID-19 such as fever or cough as well as investigating the person's history of contact with other COVID-19 cases. Inmates' body temperatures are regularly checked and they are transferred to medical institutions if there is an anomaly. Persons are kept alone in cells to the best extent possible. They are also transferred to custodial prisons alone. If that's not possible due to risk of fleeing or the number of suspects under the same investigation, they are then transferred in buses instead of small vehicles with personnel in protective clothing. Persons put under detention upon the completion of their custody period undergo COVID-19 tests before they are placed in penitentiary institutions.

Accordingly, lawyers subject to the abovementioned investigation underwent medical examination before they were placed in the custodial prison. Medical reports indicate that they did not show any COVID-19 symptoms and their body temperature was normal.

Lawyers' body temperatures were also checked and their masks were changed at different hours everyday while they were in custody. They were also regularly provided disinfectant. Lawyers' signatures are present on the charts kept by the custodial prison regarding their regular body temperature tests and mask changes.

### **Conclusion**

In line with the explanations provided above, the Government of Turkey requests the Special Procedures to dismiss the allegations in the Joint Communication.