



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 des autres organisations internationales en Suisse présente ses compliments au Haut-Commissariat aux droits de l'homme et se référant à la communication conjointe des procédures spéciales du 09 avril 2021 (AL TUR 6/2021), a l'honneur de joindre à la présente les observations 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 08 juin 2021



PJ : Comme indiqué.

Haut-Commissariat aux droits de l'homme  
Palais des Nations  
1211 Genève 10

**INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM THE  
MANDATE HOLDERS OF SPECIAL PROCEDURES DATED 9 APRIL 2021  
(AL TUR 6/2021)**

1. With reference to the letter AL TUR 6/2021 of the Special Procedures regarding ongoing legal proceedings related to the death of Mr. Tahir Elçi the Government of the Republic of Turkey (the Government) would like to submit its observations herein below.

**A) Observations on preliminary issues**

2. Under the Turkish constitutional system, the term “minorities” encompasses only groups of persons defined and recognized as such under the multilateral or bilateral agreements to which Turkey is party. In this context, according to the Lausanne Peace Treaty, Turkish citizens belonging to non-Muslim minorities fall within the scope of the term “minority”. All Turkish citizens, nonetheless, whether or not they are recognized as minority, enjoy the same level of protection and rights in accordance with the principle of “equality before the law”.

3. PKK is a terrorist organization which claimed thousands of innocent civilian lives and Turkey has long fought against. It has been designated as a terrorist organization by a number of countries and regional/international organizations, including US, EU and NATO. Thus, references in the communication that connote giving equal weight to both Turkish security forces and aforementioned terrorist entity are totally unacceptable.

4. The Government acknowledges the obligation, where potentially unlawful deprivations of life occur, to investigate and, where appropriate, prosecute the perpetrators of such incidents. It also underscores that domestic courts are best placed in assessing evidence and handling procedural issues, and that regional or international protection mechanisms have reiterated the subsidiary nature of their role and remained cautious in taking on the role of a first-instance tribunal of fact. In any case, the Government firmly opposes the instrumentalization of special procedures in amplifying spurious allegations.

**B) Factual background of the incident**

5. Terror attacks by PKK/KCK have intensified in the summer of 2015 in the south-east region of Turkey. Members of the terrorist organization have employed methods, in addition to their armed attacks, of digging trenches, some of which were planted with explosives, and of constructing barricades on roads in certain neighborhoods to disturb social life and public order.

6. Starting from August 2015, in various urban centers, including in the town of Sur where the incident subject to the present communication took place, curfews were imposed in response to the escalation of violent attacks with a view to protect civilians from violence and re-establish the public order.

7. As result of terrorist acts perpetrated by PKK against both civilians and security forces, hundreds of people lost their lives, and thousands of others were injured. Between July 2015 and February 2016, a total of 53 civilians lost their lives, and 160 civilians were injured. 3 out of 53 murdered civilians and 21 out of 160 injured victims were in Sur. Moreover, between July 2015 and January 2016, 861 members of security forces were martyred and 4358 of them were wounded. Buildings and infrastructure were also heavily damaged by those attacks.

### **C) Events surrounding the death of Mr. Elçi**

8. Three members of the PKK attacked, on 27 November 2015, a patrolling police car in Diyarbakır and injured police officers. One of the terrorists, who ran away after the armed assault, was identified, and seen next day while taking a taxi together with another member of the terrorist organization. While trying to stop the taxi in Suriçi, police officers were fired over, two of them died and one was injured.

9. After the attack, the terrorists escaped from the place of incident, heading to the area known as “Four-Legged Minaret” where Mr. Elçi made his press statement. A gunfight broke out between the terrorists and the police officers who were present there for security.

10. Mr. Tahir Elçi lost his life and two journalists were injured during the gunfight. The autopsy report later confirmed that the death was due to firearm injury.

### **D) Summary of proceedings**

11. The Public Prosecution Office of Diyarbakır immediately launched a criminal investigation into the death. The Chief Prosecutor, together with two public prosecutors from his office, directly handled the case.

12. All necessary steps were promptly taken for the collection and custody of evidence, including taking witness statements, performance of an autopsy and conduct of a crime-scene inspection. However, crime scene inspections were disrupted three times by armed and bomb attacks of the terrorist organization targeting on-site investigations. In addition, the bullet that hit the deceased could not be retrieved despite all the searches.

13. In the course of the investigation:

- Around 60 witnesses were heard, including police officers who were in and around the crime scene.
- All camera recordings in and around the crime scene were obtained and examined.
- Forensic examinations were conducted on the findings of the crime scene.
- The report by "Forensic Architecture" which was submitted to the investigation by relatives of the deceased was scrutinized, and based on the aforementioned

institution's evaluations an additional report was taken from the Institution of Forensic Medicine.

- Following a substantive inquiry, police officers were interrogated as suspects.
- Pursuant to the arrest warrant issued for him, the member of the terrorist organization who was involved in the incident was brought before justice.

**14.** Following the investigation phase concluded in 4 years 4 months, a bill of indictment was filed against three police officers, under the charge of reckless killing, and against one PKK member, under the charge of intentional killing with probable intent.

**15.** The first public hearing was held on 21 October 2020. Due to the public health situation related to the Covid-19 pandemic, the hearing was conducted in the largest courtroom of the courthouse with the presence of parties and a limited number of participants, including politicians, civil society and media representatives. The complainant party was represented at the hearing by 55 lawyers.

**16.** The court commenced the hearing concordant to the relevant procedural rules observing the sequence stipulated by the law. Accordingly, it was first to interrogate the suspects present at the hearing. However, the lawyers insistently interrupted the proceedings with loud heckling, without asking for the floor and/or respecting the order, and demanded that the defendants be interrogated not via video-conference but in-person, that their intervention requests be ruled before any other action.

**17.** The court ruled out the requests by the lawyers and urged them to refrain from disrupting the order of the hearing, also reminding them that any conduct against that may give rise to disciplinary consequences requiring contravener's temporal but immediate exclusion from the courtroom.

**18.** The lawyers of the complainants further requested the recusal of the whole judicial panel in the session, and the hearing was accordingly adjourned to 3 March 2021. The request and the objection to its rejection were duly handled by competent authorities, assize courts of Diyarbakır No.11 and No.12, respectively.

**19.** The second public hearing was conducted on 3 March 2021. Having taken into account the objections to the visibility of video communication system, the Court provided a larger screen in order for the complainants and their lawyers could more conveniently follow up the proceedings. The Court also ruled on the intervention requests at the beginning of the second hearing.

**20.** The next public hearing is set to be held on 14 July 2021.

### **E) Specific observations on the allegations raised in the communication**

**21.** At the outset, conclusion of the investigation phase in 4 years and 4 months cannot, *per se*, be deemed as an undue delay attributable to the authorities, apart from the profound challenges peculiar to the case as summarized above. The quality and pace

of the process has been closely related to the undoubtedly required extensive work, on one hand, and the security situation circumscribing the investigation, on the other. The Government is of the view that obligation of effective investigation should be understood in a process-driven context, as taking every step reasonably available to the authorities.

**22.** In many cases the European Court of Human Rights (ECtHR), considering specific challenges exclusive to the case, such as nature of the crime, commitment of the killing by an unknown perpetrator, and efforts needed to dismantle a criminal organization, concluded that the investigations were not devoid of effect and it could not be maintained that the authorities took no action with regard to the incident, although there were lengthy delays (ECtHR, Bayrak v. Turkey 42771/98; Adıyaman v. Turkey 58933/00).

**23.** Rules and procedures regarding judicial investigations, as well as duties and powers of public prosecutors, are regulated by the Code of Criminal Procedure (CCP-No:5271). According to article 160 of the CCP, public prosecutor who is informed by any means whatsoever of a situation bearing an impression that a crime has been committed is obliged to investigate the facts in order to decide whether or not there should be a prosecution. Enjoying the same constitutional guarantees vested in judges, public prosecutors are functioning independently and prosecution services have been provided with sufficient resources in carrying out investigative duties. Commencing the prosecution phase is the prerogative of public prosecutor, while it also corresponds to an obligation if the collected evidence constitutes sufficient suspicion that a crime has been committed, according to the letter of article 170 of the CCP.

**24.** The legal qualification of the facts as to each suspect was determined by the Public Prosecution Office of Diyarbakır. In consideration of the findings attained during investigation, police officers' acts and omissions were qualified under "conscious recklessness". That point renders the assertion, as contained in the communication, that the charges against the officers would carry a possible sentence of between two and six years, baseless.

**25.** Drawing hasty conclusions on the involvement of the suspects in the incident by relying on one particular expert report and accepting its postulations as established truth would be in total contradiction with judicial independence and make proceedings redundant. Whether the source of the communication genuinely seeks for promoting judicial accountability for those responsible or it only endeavors to whitewash the member of the terrorist organization who is under the suspicion of crime emerges as a key concern at this point. The Government would like to bring to the mandate holders' attention that some witnesses, as their statements were reflected in the bill of indictment, told prosecution service that the suspect U. had acted deliberately under the instructions of the terrorist organization, PKK.

**26.** The margin of appreciation vested in public prosecutors and the exercise of their power should be respected, particularly in relation to their interpretation and qualification of the events, and indicting individuals. It would, nevertheless, be the Court itself, following a thorough trial, establishing the truth. As clearly stated in article 225 of the CCP, the court is not bound by the considerations of either parties. Nothing could bar the court from altering the legal qualification of the facts. Competent judge has absolute power to assess the evidence provided that is legally obtained, presented at the hearing and is discussed in his/her presence (art.217-CCP).

**27.** The relevant provisions of the CCP frame the conditions for joinder and severance of cases. Accordingly, legal and/or factual connection both in a narrow or broad sense may serve, if deemed necessary, as a basis for merging the cases (art.8-12). There seems to exist an explicit legal and factual connection between the cases in question, within the meaning of the provisions referred. It is not, nevertheless, a just cause for refusal of the indictment, as it is legally confined to certain deficiencies listed in the law.

**28.** As to the contention regarding alleged prediction of the incident by and inaction of the law enforcement, given the course of events and the absence of any tangible evidence, it cannot be asserted, other than by conjecture or speculation, that the rapid unfolding of the events which led up to the tragic loss of two police officers first, and subsequently that of Mr. Elçi, had indeed been forecasted. As for the assertion regarding the police officers' alleged failure in using their firearms carefully and diligently during the hot pursuit, this certainly was brought up by the prosecution in the indictment.

**29.** The Government firmly opposes the claim, that on-site investigation was not carried out up until March 2016. Reiterating the explanations above, it recalls the immediate mobilization of prosecution and the initiation of crime scene investigation on the same day. Heavy assaults of the terrorist organization interrupted the examination.

**30.** There was no undue delay in the process of identification and interrogation of suspects, but a margin of appreciation depending upon the progress of the investigation. Public prosecutors, bearing the main responsibility of ensuring the effectiveness of the inquiries by full collection of evidence, are best positioned in determining the time frame for the steps to be taken.

**31.** Eradicating inconsistencies in the statements of those who are subject to proceedings is the responsibility of competent court under the clear guidance of the CCP provisions, namely, article 212 in terms of witnesses, and article 213 in terms of defendants. Cross-examination rights of the parties have been also secured in this context (art.201).

**32.** While the claim regarding refusal of the requests to examine witnesses lacks any ground, the Government yet wishes to underscore that certain conditions apply to the right to call witnesses, at first determination of relevance of their testimony to the subject matter of the case. As also underlined by the ECtHR this request has to be

advanced by sufficient reasons (ECtHR, Murtazaliyeva v. Russia par. 160-165). Apart from that, among the witnesses who have been heard by public prosecution were also police officers in charge of monitoring the press conference on the day of the incident. It should, furthermore, be noted that parties to the case have also the right to demand from the court to call and examine a particular witness and in case of its rejection, to directly bring the witness along to the court, as envisaged by article 178 of the CCP.

**33.** The allegation that the recordings from the security cameras and the MOBESE were tampered or missing is not correct. Video recordings from open sources, press and law enforcement officers have been analyzed in the investigation; thus, expert reports, including the one submitted by complainants to the prosecution, could be prepared. It should be noted that the report prepared by Forensic Architecture is based on these findings submitted to the investigation file.

**34.** Referring to article 191 of the CCP, which sets the sequence of actions following commencement of a hearing, the Court decided to interrogate the defendants first, and to evaluate intervention requests late. This seems to have given rise to a procedural controversy, though, not to have apparently been an impediment for the complainants to question the defendants, since cross-examination takes part in a later stage of proceedings. Indeed, intervention requests were approved afterwards, at the beginning of the second hearing, and the cross-examination of the defendants were performed during the same session.

**35.** The video-conference system, known by the acronym SEGBIS, for distant participation of individuals in court proceedings, has a clear legal basis. Technical features of the system meet procedural standards in criminal proceedings requiring effective participation. The Government appreciates the deceased's peers' enthusiasm to take part in legal proceedings, in pursuit of justice; yet it also observes the particular challenge that representation of the complainants by high number (55) of lawyers has imposed on the conduct of the proceedings. By providing larger screens for the second hearing, the Court met the objections and resolved the issue.

**36.** The government is assuming that the mandate holders are well aware of court etiquette. Non-observance of disciplinary rules, such as insistent heckling, entails procedural consequences in any court setting. While it is not for the government -nor for the mandate holders- to weight the arguments put forward by the parties and to infer their relevance, it is beyond any doubt that the lawyers' course of action at the hearing, as reflected in the minutes, cannot be accepted as a proper way of voicing demands, or objecting the decisions by the panel of judges.

**37.** The government finally is of the view that reaching conclusions on the present case by the Special Rapporteurs before the proceedings are finalized in a manner that could be interpreted as an intervention is inappropriate and could prejudice the ongoing proceedings. The government also wishes to remind the mandate holders that the complainants can exercise their legal rights at the prosecution phase and can apply for legal remedies once the proceedings are finalized.