



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 to the Joint Communication from Special Procedures dated 20 May 2021 (AL TUR 9/2021), 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, 14 July 2021

Encl: As stated.



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

**INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM THE
SPECIAL PROCEDURES**

(Reference: AL TUR 9/2021)

1. With reference to the joint letter from the Special Procedures dated 20 May 2021, the Government would like to submit its observations herein below.
2. At the outset, the Government would like to recall that in its several responses submitted to the Special Procedures¹, 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 (FETO), measures taken against FETO and other terrorist organizations in Turkey, the 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 in penal institutions, inmate rights and effectiveness of domestic remedies in the recent communications concerning FETO 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. The Government would like to remind the Special Procedures of the "*Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council*" and stresses the importance of ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, elimination of double standards and politicization and the principles of impartiality, constructive international dialogue and cooperation in their communications. In this vein, the statement made by the Special Rapporteur on the situation of human rights defenders titled "*Stop mis-using the law to detain human rights defenders, urges UN expert*" on 9 June 2021 violates the aforementioned Code of Conduct as it was released before receiving the Government's response in due time, overshadowing the objectivity and reliability of the mandate-holders in forming their opinions. In this sense, the

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

Government regrets that the mandate-holders did not uphold their responsibility with regard to principles of cooperation and genuine dialogue set forth in the Code of Conduct.

5. Nevertheless, the Government, in the spirit of cooperation and good-faith, would like to present information regarding the present communication. The Government observes that individuals except Talip Nayir, Turan Canpolat, Feti Ün and Fevzi Kayacan were subjects of previous communications. The Government therefore would like to submit its observations regarding aforementioned individuals' judicial proceedings and penal institution conditions in the following paragraphs.

Judicial proceedings and penal institution conditions regarding Talip Nayir

6. Nayir was investigated on suspicion of membership to FETO. The investigation revealed that he had a personnel connection with FETO affiliated persons and institutions, attended meetings of FETO according to witness statements and was using encrypted program ByLock, which is exclusively used by FETO members. He was arrested accordingly considering strong suspicion of crime supported by concrete evidence and risk of absconding. The prosecution phase confirmed Nayir's membership to FETO and he was sentenced to 10 years imprisonment under Article 314/2 of the Turkish Penal Code and Article 5/1 of the Law on Combatting Terrorism.

7. Nayir was first admitted to Erzincan T type Closed Penal Institution. Due to security concerns, he was then transferred to Tokat T type Closed Penal Institution and from there, Gümüşhane E type Closed Penal Institution. **His access to his lawyer was never restricted. The ward he is currently staying has a capacity of 10 people, occupancy of which never exceeded this number.**

Judicial proceedings and penal institution conditions regarding Turan Canpolat

8. Canpolat was investigated on suspicion of membership to FETO. The investigation revealed that he was involved with FETO's judicial structure according to witness statements, posted remarks in the social media in favor of FETO and was using ByLock. He was arrested accordingly considering strong suspicion of crime supported by concrete evidence and risk of absconding. The prosecution phase revealed that he deposited money in FETO affiliated Bank Asya upon instructions from the organization. Canpolat was sentenced to 10 years imprisonment under Article 314/2 of the Turkish Penal Code and Article 5/1 of the Law on Combatting Terrorism.

9. Canpolat was visited by his lawyers and family 580 times in total during his time in Malatya E type Closed Penal Institution, where he was first admitted to. He was also visited by his lawyers 12 times in Elazığ T type penal institution. The ward Canpolat is currently staying in a single-person room fitted with appliances such as a television, a fridge, a desk and a chair. **He benefits from outdoor exercise, social activities, weekly visits and phone calls same as other inmates staying in 3-person or single person wards. He was subjected to same treatment regime as with other inmates and was not put in solitary confinement.** (There are only 2 types of wards in Elazığ T type penal institution: single-person rooms and 3-person rooms.) He has the right to appeal against current placement as per Article 5 of the Law No. 5275 on the Execution of Penalties and Security Measures.

Judicial proceedings and penal institution conditions regarding Feti Ün

10. Ün was investigated on suspicion of membership to FETO and making propaganda of the organization. The investigation revealed that he deposited money in FETO affiliated Bank Asya upon instructions from the organization, made a televised propaganda of the organization under Fethullah Gülen's directions and visited Gülen afterwards. According to witness statement, he is a high-ranking member of FETO. Considering strong suspicion of crime and the nature and penalty of the crimes attributed, judicial control measures deemed insufficient and he was arrested accordingly. Ün was sentenced to 12 years imprisonment under Article 314/2 of the Turkish Penal Code and Article 5/1 of the Law on Combatting Terrorism.

11. Ün was first admitted to Menemen T type Closed Penal Institution. He was then transferred to Denizli T type Closed Penal Institution. He had access to the investigation and prosecution file. **Ün did not request access to a computer.** He has access to his lawyers in all phases from the investigation to the final decision. He was visited by his lawyers and family 47 times in Menemen T type Closed Penal Institution and 200 times in Denizli T type Closed Penal Institution.

Judicial proceedings and penal institution conditions regarding Fevzi Kayacan

12. Kayacan was investigated on suspicion membership to FETO. 14 lawyers from Konya Bar notified authorities about Kayacan for being a member to FETO. There were also many other witnesses stating that he was involved in FETO's judicial structure. The judicial proceedings revealed that he facilitated intern lawyers' membership to FETO and made connections within the judiciary under instructions from FETO. Kayacan was sentenced to 10 years and 6 months imprisonment under Article 314/2 of the Turkish Penal Code and Article 5/1 of the Law on Combatting Terrorism. He

has a pending application to the European Court of Human Rights (ECtHR) about his right to fair trial.

13. Kayacan was visited by his lawyers 19 times in Konya E Type Penal Institution and 626 times in Sincan F Type High Security Penal Institution no:2. His relatives visited him 35 times in the Konya Institution and 75 times in the Sincan Institution. The ward he is currently staying has a capacity of 3 people, occupancy of which never exceeded this number.

14. Allegations suggesting that Kayacan was deprived from access to medical care are far from the truth. He was treated 102 times by the infirmary of penal institution, 74 times by State Hospital in the penal institution campus, 12 times by the Sincan State Hospital and 5 times by the Sincan Oral and Dental Health Centre.

15. Kayacan also applied for interim measure to the ECtHR claiming that he should be released from the penal institution due to his health and the COVID-19 pandemic. The Court found the application inadmissible.