



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

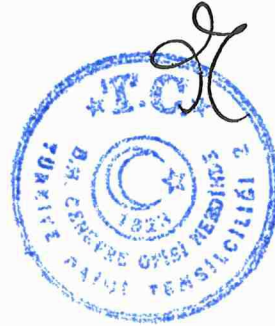
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The Permanent Mission of the Republic of Turkey to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the Joint Communication from Special Procedures dated 13 September 2021 (AL TUR 11/2021), 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, 11 November 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 11/2021)

1. With references to the letter of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 13 September 2021 and the press release of the Special Rapporteur on the situation of human rights defenders dated 17 September 2021 regarding Ali Ulvi and Aysin Büyüknöhutçu, the Government would like to submit its observations herein below.
2. The Government, first of all, regrets to see that the mandate holders have issued a press release regarding the killing of Büyüknöhutçu couple before the Government could provide its own observations and the full facts about the case. It is especially concerning that the mandate holders, who are supposed to advocate for promoting human rights, have apparently disregarded the presumption of innocence of the persons involved in the present case and came up with conclusions without having full knowledge of the facts.
3. The Government regretfully observes that this has become a consistent behaviour of Special Procedures in recent communications. The Government considers that issuing a press release regarding an ongoing criminal case without gathering all the facts, information and observations from the Government; and on top of that, falsely accusing individuals while completely relying on limited information from unknown sources, does not comply with the mandate of the Special Procedures in terms of principles of cooperation, genuine dialogue and good faith.
4. The Government, in this aspect, would like remind the Special Procedures of their responsibility to discharge their duties in accordance with the *Code of Conduct for special procedure mandate holders of the Council* of 18 June 2007, which stresses the importance of “ensuring universality, objectivity and nonselectivity in the consideration of human rights issues, and the elimination of double standards and politicization” and states that the promotion and protection of human rights “should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings”.

5. The Government would like to state that it has nonetheless maintained full cooperation and genuine dialogue with the Special Procedures in addressing human rights issues and providing information to the Special Procedures on the communications received. According to Communications Reports of the Special Procedures encompassing the last four reporting periods (between 1 March 2020 and 31 May 2021) to the Human Rights Council, the Government **substantively responded to 30 of the 31 communications sent.**¹

6. The Government, in the same spirit of cooperation and good-faith, would like to present the following facts and information regarding the present communication.

I. FACTS

7. On 9 May 2017, an investigation was launched against suspects [REDACTED] and [REDACTED] with suspicion of committing intentional homicide and armed robbery offenses regarding the killing of Büyüknohutçu couple.

8. [REDACTED] with his wife, moved in to his father-in-law's shed in Finike after they became unemployed and became broke, before the incident. They became neighbours to and got acquainted with Büyüknohutçu couple. Büyüknohutçu invited [REDACTED] to their house afterwards and even lent [REDACTED] money to get medication to his wife.

9. [REDACTED] was a drug user. There were traces of morphine, codeine and heroine as per his health report. According to witness reports taken from his neighbours, he was also suspected of pickpocketing.

10. [REDACTED] in his first questioning taken by the gendarmerie and during his crime scene visit, stated that he alone committed the killings. However, in his testimony before the Prosecutor and the Court, he stated that he was instigated by a person who allegedly was working at a certain marble quarry in the area.

The investigation on whether there were instigators involved in the crime

¹ In the last four reporting periods of the Special Procedures, AL TUR 11/2020 dated 10 July 2020 was the only communication not replied substantively by the Government of Turkey, as the Special Procedures did not provide identity information of the individuals subject to the communication and the Government thus was not able to conduct further investigation on the individuals.

11. Considering the discrepancies between [REDACTED] statements, a comprehensive investigation was launched on whether there were instigators involved in the homicide.

12. Information that [REDACTED] provided was thoroughly followed-up including through camera recordings, phone records, bank accounts, and further questioning of relevant persons. The findings revealed inconsistencies on [REDACTED] allegations. He was brought to questioning again on 1 June 2017. [REDACTED], this time, admitted that his narrative was completely fictional and fabricated in hopes to obtain a reduction of his sentence.

13. [REDACTED], in his defense stated that, in order to steal money to afford drugs, he broke in to one of his neighbours' house under severe heroin withdrawal, saw a hunting rifle in the house, took it to sell it, visited Ali Büyüknohutçu to ask him some money at night while carrying the rifle, was startled by the dogs near the house and panicked when Ali Büyüknohutçu directed a flashlight towards him which led to shooting him. He stated that he does not know why he shot his neighbour despite being acquainted with. He, nevertheless, broke into the house, saw Aysin Büyüknohutçu screaming and shot her to silence her. He stole some valuables and left.

14. During the prosecution stage, [REDACTED] committed suicide in prison. He left suicide notes addressed to his wife, his mother and one of his cellmates. These notes were also examined by the authorities as part of the investigation. In the notes, [REDACTED] wrote that he was a drug addict and he alone committed the crime senselessly under heroin withdrawal to steal money for drugs.

15. Considering all the findings above alongside with [REDACTED] statements on 1 June 2017 and also the fact that the financials of marble quarries in the area, which were alleged to be the instigators, would not normally support such amounts of money transaction, it was concluded that there were no instigators involved.

16. On 16 November 2018, [REDACTED] of the Büyüknohutçu couple submitted a petition to the authorities stating that someone who claimed to have important information on the killing of the couple contacted him. Around the same time, one of the former employees of the marble quarry provided the authorities a voice record of the phone conversation he made with another former employee. The phone record, according to the former employee, implies that the owner of marble quarry had instigated the homicide. The investigation was thereupon re-opened. In this context, statements of the person who claimed to have important information and employees of the marble quarry were taken, the voice record was analysed, the owner's bank and phone records were

investigated and camera recordings of the working place were examined. According to the analysis of the authorities, the voice record concerned work-related personal disputes between the employees. The former employee stated that he was frustrated because he was laid off from his job and he did not have any information on the killing. Therefore, a decision of non-prosecution was given as it was concluded that there were no tangible evidence to prosecute.

17. On 27 February 2020, lawyer of the Büyüknöhuçü couple's ██████ submitted a petition to the authorities stating that there were instigators involved in the killing. The investigation concluded that there were no tangible evidence to prosecute.

The investigation on ██████ death

18. ██████ was found dead in the ward bathroom of Alanya L Type Penal Institution on 20 September 2017 early in the morning. Both judicial and administrative investigations were launched immediately. Within the scope of the investigation, ██████ cellmates were questioned, the camera recordings of penal institution were examined, a forensics report was taken and a disciplinary investigation was conducted against 3 personnel of the penal institution. According to the witnesses, ██████ was last seen writing some letters late at night. The camera recordings show that, after ██████ finished writing letters, he went to ward bathroom and did not come out. The forensics report concluded that ██████ used his shorts' string to hang himself. The letters ██████ was writing were found to be suicide notes, addressed to one of his cellmates, his wife and his mother, admitting that he alone committed the murders under drug withdrawal. Considering all the findings and the defenses of the penal institution personnel, it was found that the penal institutional personnel did not act in negligence on the suicide of ██████.

19. It was therefore concluded that the witness statements and the camera recordings are matching, that ██████ committed suicide under heavy remorse considering the suicide notes he left behind, and that there is no evidence to raise suspicion on whether ██████ was killed intentionally or by an act of negligence. Therefore a decision of non-prosecution was given by Alanya Chief Prosecutor's Office.

The proceedings against ██████

20. ██████ was investigated for jointly committing intentional homicide and armed robbery offenses. The investigation concluded that she was not involved in killing and that there are

no tangible evidence to prove otherwise. Thus, she was acquitted from these charges. On the other hand, a criminal complaint charging her with “destruction, concealing or altering evidence” offense was filed. However, as the acquittal decision on previous charges was not finalized yet, a decision of non-prosecution was given concerning “destruction, concealing or altering evidence” offense. The Chief Prosecutor’s Office stated that an investigation on the aforementioned offense could be launched once the acquittal decision is finalized.

The defamation case against Ali Ulvi Büyüknohutçu

21. There was no judicial dispute between the person whom ██████ informed the authorities of instigating the homicide and Büyüknohutçu couple.

22. On the other hand, Ali Ulvi Büyüknohutçu, in 2013 and 2014, filed two criminal complaints against a different marble quarry in the area for harming the environment and unlawfully cutting trees offenses. The marble quarry, in turn, filed a defamation case and a damages case against Büyüknohutçu, which were both rejected.

III. OBSERVATIONS

23. In conducting the investigation regarding the killing of Büyüknohutçu couple and the death of ██████ the judicial authorities;

- questioned and took statements from more than 15 witnesses including the owner and employees of the marble processing business, the neighbours of Büyüknohutçu couple and relatives of ██████ couple,
- examined the bank, phone and land registry records of the persons investigated, analysed the camera recordings,
- did comprehensive crime scene investigation, took forensics reports, examined the notes ██████ left behind,
- took heed of every petition submitted to the authorities that may have new information on the case and expanded the investigation thereupon for further research.

24. Criminal investigations and proceedings are conducted by independent and impartial judiciary of Turkey. The higher courts, upon appeal, shall examine whether criminal prosecutions by the first instance courts were conducted in accordance with the law. In this respect, whether the facts and evidence pertaining to a criminal case were collected and evaluated in compliance with the law, that

whether the allegations and defences were discussed thoroughly and that whether the final decision was given based on concrete, consistent and nonconflicting evidence, are subject to review by higher courts. The domestic judicial authorities are, naturally, better placed to access all the facts pertaining to a criminal case and assess all the evidence adduced before them than international mechanisms relying on limited information provided by unknown sources.

25. In this vein, the Government is of the view that whether the criminal investigation and prosecution regarding the killing of Büyüknöhutçu have been duly conducted in accordance with the law, should be ultimately up to judicial authorities to evaluate.

26. Nevertheless, the Government would like to state that the Special Procedures' concerns and assumptions regarding the present case are unfounded and based on incorrect information. As mentioned above, ████████ death was investigated, motives of ████████ on the killing of the couple was thoroughly examined, ████████ was acquitted as there were no tangible evidence suggesting her involvement in the killing of Büyüknöhutçu couple and employees and the owner of the local marble quarry, contrary to the information received by the Special Procedures, were questioned.

27. As for the defamation case against Büyüknöhutçu, the Government would like to state that, any person can file a criminal complaint or sue another person under the law. In line with the principle of equality before the law, no one has absolute immunity from being subjected to law.

28. The Government also would like to draw attention to the fact that, the defamation case and the damages case against Ali Ulvi Büyüknöhutçu were concluded in 2013 and 2014, far before his death and certainly not immediately before as mandate-holders suggest in the press release.

IV. CONCLUSION

29. On the killing of Büyüknöhutçu couple, the judicial authorities conducted a comprehensive investigation. The domestic courts concluded that according to the evidence, there were no instigators involved and the crime was committed by ████████, who was under severe drug withdrawal and in need of money, who also broke in the house of the Büyüknöhutçu couple and stole valuables. There were no motives as to undermine the work of individuals who are advocating for the protection of environment. The proceedings against ████████ for jointly committing intentional homicide and armed robbery offenses are currently ongoing before the Court of Cassation.

30. The Government would like to reiterate that the press release of the Special Rapporteur on the situation of human rights defenders dated 17 September 2021 does not comply with the presumption of innocence as well as the principles set forth in the *Code of Conduct for special procedure mandate holders of the Council* of 18 June 2007. The Government expects from the mandate-holders to uphold their responsibilities with regard to principles of cooperation, genuine dialogue, objectivity and non-selectivity in future communications.