



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 Urgent Appeal from Special Procedures dated 6 December 2021 [Ref: UA TUR 13/2021], 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, 3 February 2022



Encl. As stated

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

GOVERNMENT OF TÜRKİYE'S OBSERVATIONS IN REPLY TO THE JOINT COMMUNICATION (UA TUR 13/2021) FROM THE UNITED NATIONS SPECIAL PROCEDURES

In reply to the Joint Communication UA TUR 13/2021 dated 6 December 2021 sent by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Government of Türkiye would like to submit its observations herein below.

Observations regarding FETÖ terrorist organization

On 15 July 2016, Türkiye 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, Türkiye 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 Türkiye. 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 Türkiye. 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 Türkiye, 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, Türkiye requests the Special Procedures not to allow FETÖ and its members to abuse these mechanisms and to dismiss their allegations. Türkiye will continue to uphold human rights and freedoms and maintain its long-standing cooperation with international organizations.

Specific observations regarding the allegations in the present Joint Communication

Facts regarding the medical and penal condition of Ayşe Özdoğan

Within the scope of the investigation against Özdoğan on “*being a member of an armed terrorist organization*” charges, the evidence collected and considering the best interest of Özdoğan’s child, a judicial control decision on Özdoğan was given on 8 April 2019 in which she was required to report to the authorities to give her signature 3 days a week.

On 12 December 2019, the Court of first instance ordered arrest of Özdoğan and sentenced her to 9 years 4 months and 15 days of imprisonment. In the judgment, the Court also ordered a medical report of Özdoğan to be provided to ascertain whether the execution of her sentence would pose a danger to her health. On 23 December 2019, the Health Board of the Oncology Department of the Akdeniz University Hospital, reported that her stay in the penal institution would indeed pose a danger to her health. The Court thereupon released Özdoğan on 26 December 2019.

On 18 February 2021, the judgment is finalized with the Court of Cassation’s approval decision of the first instance court’s decision. Özdoğan, on 29 June 2021, lodged an individual application to the Constitutional Court, with an interim measure request to defer the execution of her sentence, stating that she is a cancer patient and her admission to the penal institution would pose an irreparable damage to her health.

On 1 October 2021, a report by İstanbul Forensics Institute was issued which states that Özdoğan’s sentence could be continued to be executed given that she continues receiving medical treatment at recommended intervals at the penal institution’s infirmary and that her condition shall be re-evaluated should there is a progression or alteration on her illnesses. She was then transferred to the penal institution.

On 2 October and 4 October 2021, the penal institution referred Özdoğan to the Denizli State Hospital. The hospital’s oncology department recommended Özdoğan’s treatment to continue at Akdeniz University Hospital.

On 19 October 2021, the Constitutional Court, considering that Özdoğan’s medical conditions will be subjected to re-evaluation as according to the report of the İstanbul Forensics Institute and that the deferral of the execution of her sentence is being initiated, refused Özdoğan’s

deferral request and ordered her hospitalization to Akdeniz University Hospital where she would get treated. She was then referred to the said hospital.

However, on 27 October 2021, with a signed letter, she refused her hospitalization and stated that she wants to return to the penal institution (see Annex).

On 24 November 2021, another report was prepared by İstanbul Forensics Institute recommending that Özdoğan be referred to a hospital and the execution of her sentence be deferred for 3 months. Özdoğan was thereupon released and her sentence was deferred for said period.

In the release decision, it was also ordered that Özdoğan's medical condition shall be re-evaluated 10 days before the end of the 3-month suspension period, to ascertain whether she is fit to continue her sentence in the penal institution.

Özdoğan, during both her time in Denizli T type and Antalya L type penal institutions, had full access to medical care within the penal institutions and the State hospitals and was able to get treatment for all of her health complaints.

Concerning her cancer, the Akdeniz University Hospital initially planned to hospitalize and give the patient chemotherapy treatment, as her disease is classified as “relapsed/progressive”. Özdoğan, however, as mentioned above, refused the treatment. On 24 December 2021, she applied to the hospital. Accordingly, the hospital ordered MR and BT scans and planned to administer paclitaxel and carboplatin therapy.

As explained above, all measures are taken to ensure her integrity and access to adequate healthcare is provided.

Annex: Ayşe Özdoğan's letter to the penal institution dated 27 October 2021. (In original and in unofficial translation)