



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

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The Permanent Mission of the Republic of Türkiye 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 21 March 2022 (AL TUR 3/2022), has the honour to enclose herewith the observations provided by relevant Turkish authorities.

The Permanent Mission of the Republic of Türkiye avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 20 May 2022

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
MANDATE HOLDERS OF SPECIAL PROCEDURES DATED 21 MARCH 2022
(AL TUR 3/2022)**

1. With reference to the letter AL TUR 3/2022 of the Special Procedures regarding ongoing legal proceedings related to the charges against Sedef Kabaş, the Government of the Republic of Türkiye (the Government) would like to submit its observations herein below.

A) Preliminary observations

2. The Government reiterates its firm conviction on the absolute necessity in respecting, protecting and promoting freedom of expression as one of the essentials of a democratic society and as one of the basic conditions for its progress and development. The Government also recognizes, in this vein, the crucial role that media and journalists play, provided they do not overstep certain bounds, in particular in respect of the reputation and rights of others.

3. Attributing an act, or fact, to others in a manner that may impugn their honor, dignity or prestige, or attacking their honor, dignity or prestige by swearing is criminalized under Turkish Penal Code (TPC). Insulting public officials and the President are covered by Articles 125(3) and 299 of the TPC, respectively. Such provisions protecting the honor and reputation of individuals, as well as that of the head of state, also exist and continue to be applied in many other countries. Voicing dissent and criticism are explicitly excluded from the scope of their application according to well-established case-law.

4. It is the prerogative of the judiciary to launch investigations and to conduct prosecutions where any crime has allegedly been committed. The Government cannot intervene in legal proceedings undertaken by competent judicial authorities obliged to act impartially and independently.

5. However, legal avenues providing effective remedies are open to and available for all who claim that their rights have been infringed upon, including the situations where the alleged violations stemmed from a decision rendered by a first instance court. Individuals concerned are entitled to appeal against those decisions before the regional courts of justice and finally before the Court of Cassation, following which they could also pursue an individual application before the Constitutional Court. After exhausting domestic remedies, they could also have their cases examined by the European Court of Human Rights (ECtHR).

6. The Government would like to take the opportunity to refer to the Human Rights Action Plan, which was announced on 2 March 2021. Prepared with broad participation of all stakeholders and NGOs, the Plan includes comprehensive set of activities to raise the standards of freedom of expression and press freedom. In this context, reviewing the relevant legislation in light of the human rights standards, facilitating the professional activities of journalists and ensuring the safety of journalists as an overarching principle are specified among the planned activities.

B) Main observations on the case subject to the communication

7. Kabaş was indicted under Articles of 125 and 299 of the TPC for insulting two ministers and the President on account of her defamatory statements publicly delivered during a TV program on-air. At the end of the trial, she was partially acquitted and partially convicted of the crimes she had initially been charged. All the measures in the course of proceedings were taken by competent authorities in full respect to the rights and procedural guarantees concerning a fair trial as enshrined in the Turkish Constitution, the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).

8. As understood from the first instance court ruling, Kabaş criticized the President, voicing some thoughts on non-inclusive or polarized character of the current politics. She then continued with an expression which had nothing to do with the context and was deemed to be amounting to insult by the judicial authorities.

9. The competent court adjudicating the case made clear reference to the well-established jurisprudence of national and regional bodies, including ECtHR, and framed the importance of respecting freedom of expression, also noting that it applies “not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population”.

10. The court of first instance, as was also reflected in the ECtHR case-law, considered that politicians, government high ranking officials and public figures were subject to wider limits of acceptable criticism than ordinary individuals. It further recalled the principle which set out by the ECtHR that politicians inevitably and knowingly laid themselves open to close scrutiny of their every word and deed by both journalists and the public at large; they must have consequently display a greater degree of tolerance.

11. Nonetheless, no one had to endure insults, according to the Court, and a clear distinction had to be made between criticism and swearing. Under no circumstances could the latter be deemed as legitimate exercise of freedom of expression, namely criticism. It is worth mentioning at this juncture that the ECtHR held that protection of reputation extended to politicians too, even when they were not acting in their private capacity, provided that the balance struck between competing interests was satisfactory.

12. Under the circumstances of the case, the court has sought to strike such a fair balance while weighing the facts and evidence brought before it, within the margin of appreciation it is vested with.

13. Drawing on the points summarized above, the court found no *actus reus* in the statements made against two Ministers and ruled the acquittal of the defendant for the related charges.

14. On the other side, it dismissed the charges related to the statement posted on social media but convicted the defendant of insulting the President for the statement

she made on the TV show. While reaching its conclusion, the court of first instance relied on the apparent lack of any connection between the main idea pursued during the conversation and the statement found to be a negative value judgement amounting to insult. The court also unconditionally released the defendant, taking into account of the low severity of the penalty imposed and time she had spent under arrest.

15. The defendant appealed against the ruling. She also lodged an individual application, claiming that her right to liberty and security has been violated. Both are pending before the Regional Court of Justice and the Constitutional Court, respectively.

16. As for the administrative fine imposed on the TV network which the alleged defamatory statements were publicly delivered, the Radio and TV Authority reasoned its decision referring to Article 26 of the Constitution, Article 10 of the ECHR and the case law of the ECtHR (in particular, *Lingens v. Austria*, App. no. 9815/82), Article 3 of the Press Law and Articles 8 and 32 of the Law on Establishment of Radio and Television Networks and Broadcasting Services.

C-) Conclusion

17. Since the legal proceedings have not been finalized yet, the Government would like to state its comments below without prejudice to any potential outcome of the ongoing legal process.

18. The Government would like to underscore that the interference in question has been prescribed by law, namely by Article 299 of the TPC, which is clear in terms of its legal formulation. Interpretation and application of the aforementioned article by the court in the present case was also foreseeable given the case-law of high courts on the matter. It should also be noted that the interference complained of pursued the legitimate aim of protecting the reputation or the rights of others.

19. The Government further would like to clarify that criminal proceedings under Article 299 of the TPC, including the one against Sedef Kabaş, have been initiated not with the aim of silencing dissent or preventing them from contributing to public debates, contrary to the allegations put forward by mandate holders, but to protect the rights or reputation of others, because the disputed content targeting the President was degrading and defamatory under the law.

20. In this respect, the Government is of the view that the provisions safeguarding the rights and reputation of others, as exercised by the authorities in the present case, are in line with Article 19/3 (a) of the ICCPR, which envisages that the freedom of expression may be subjected certain restrictions that are provided by law and are necessary for respect of the rights or reputations of others.