



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 Communication from Special Procedures dated 14 October 2022 (AL TUR 9/2022), 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, 9 December 2022



Encl: As stated.

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

## INFORMATION NOTE IN REPLY TO THE COMMUNICATION FROM THE SPECIAL PROCEDURES

(Reference: AL TUR 9/2022)

1. With reference to the letter of the Special Rapporteur on the independence of judges and lawyers dated 14 October 2022, the Government would like to submit its observations herein below.

### I. FACTS AND OBSERVATIONS

#### On the independence and impartiality of the judges in general

2. Guarantees related to the independence and impartiality of the judges in the Turkish legal system are provided for in the Constitution, in other words at the highest legal level, as well as in other relevant laws. According to Article 138 of the Constitution, judges shall be independent in the discharge of their duties and they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming to the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

3. Security of tenure of judges are safeguarded in Article 139 of the Constitution. Accordingly, judges and public prosecutors shall not be dismissed, or unless they request, shall not be retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post. According to Article 140 of the Constitution, the qualifications, appointment, rights and duties, salaries and allowances of judges and public prosecutors, their promotion, temporary or permanent change in their posts or place of duties, the initiation of disciplinary proceedings against them and the imposition of disciplinary penalties, the conduct of investigation concerning them and the subsequent decision to prosecute them on account of offences committed in connection with, or in the course of, their duties, the conviction for offences or instances of incompetence requiring their dismissal from the profession, their in-service training, and other matters relating to their personnel status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

#### On the denunciation of the Istanbul Convention

4. Alongside with numerous safeguards in place in both the legislation and practice, the protection mechanisms and preventive measures in the Istanbul Convention, are already embedded in Turkish legal and administrative system since 2012, with the Law on the Protection of Family and Prevention of Violence Against Women no. 6284. The purpose of the law is to regulate the procedures and principles with regard to the measures to be taken in order to protect women, children, family members who have been subjected to violence or at the risk of violence and individuals who are the victims of stalking and to prevent violence against those people.

5. Article 80 of the Istanbul Convention allows any Party to denounce it at any time. Becoming a party to an international instrument as well as a decision to withdraw from it, is a sovereign right of States. Türkiye's denunciation of the Istanbul Convention is within its sovereign rights set forth in the Convention and within public international law practices and customary law. It should be noted that the Istanbul Convention has been subject of debate since the day it came into force, not only in Türkiye, but in many other Council of Europe countries. 9 members of the Council of Europe are not party to the Convention.

6. Denunciation of the Istanbul Convention, in this sense, does not affect the legislative and administrative measures in place in terms of protection, support and empowerment of victims of violence and is in line with the international law. Türkiye has, on many occasions, reiterated that its determination to fight violence against women remains strong. Comprehensive measures in legislation and in practice as well as contribution to efforts at the international level are proofs to this end.

*On the composition and functioning of the Council of Judges and Prosecutors (CJP)*

7. Pursuant to Article 159/3 of the Constitution, the Chairman of CJP is the Minister of Justice (MoJ). The Minister cannot, in his capacity as the Chairman, participate in chamber meetings nor plenary meetings related to disciplinary proceedings. The Deputy Minister of the MoJ is a natural member of the Council. 3 members of the Council are elected by the President among the judges and prosecutors from the judicial justice, 1 member from among the judges and prosecutors of the administrative justice; 3 members are elected by Turkish Grand National Assembly from among the members of the Court of Cassation, 1 member from the members of the Council of State, 3 members from faculty members working in the legal departments of higher education institutions and lawyers.

8. Owing to its independent and impartial structure, CJP is not subject to political influence. According to Article 159/1 of the Constitution, CJP shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges.

9. CJP shall conduct the proceedings regarding the admission to the profession of judges and public prosecutors of civil and administrative courts, appointment, transferring to other posts, delegation of temporary powers, promotion, and being reserved to the first category, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties and removal from office. With the 2017 Constitutional amendment adopted by referendum, supervising whether the judges and public prosecutors perform their duties in accordance with laws and other regulations (administrative circulars, in the case of judges); investigating whether they have committed offences in connection with, or in the course of their duties, whether their behaviour and conduct are in conformity with requirement of their status and duties and if necessary, inquiries and investigations concerning them are assigned to the Council's inspectors, upon the proposal of the related chambers and with the permission of the President of CJP.

10. The powers and duties of CJP with regard to supervising judges are limited to abovementioned provisions, as provided by the Constitution and the relevant laws. The Government is of the view that the concerns presented in the letter in this regard are unsubstantiated and do not provide any grounds for concerns in relation to the composition and functioning of the CJP and whether the independence and impartiality of judges are affected by it.

*On the appointment of new members to the Council of State*

11. Appointments to the Council of State are made pursuant to Article 155/3 of the Constitution. Accordingly, three-fourths of the members of the Council of State shall be appointed by CJP from among the first category administrative judges and public prosecutors, or those considered to be of this profession; and the remaining quarter by the President of the Republic from among officials meeting the requirements designated by law.

12. Said provision is in force since the adoption of the Constitution in 1982. On the other hand, assignments to the Chambers of the Council of State in terms of division of work are decided internally by the Presidency Board of the Council of State, members of which are internally selected by the General Assembly of the Council of State. In other words, an executive organ of the State cannot by law directly appoint a new member to a certain Chamber of the Council of State to examine

a certain case, such as the cases against the denunciation from the Istanbul Convention subject to the present letter. In this sense, the Government is of the view that inferring that the President of the State had been intervened in a certain proceedings before the Council of State is unreasonable in the first place.

13. Regardless, the former Deputy Minister of Justice who was appointed as a member of the Council of State, did not participate in the hearings of cases against the denunciation from the Istanbul Convention and was not involved in the decisions given by the relevant Chamber of the Council of State in this regard.

14. It should also be noted that, pursuant to Article 68 of the Constitution and the relevant laws, judges cannot become members of political parties.

15. As such, the Government is of the view that the allegations in the present letter suggesting that the President of the State had somehow involved in the Istanbul Convention proceedings by appointing a member to the Council of State, are unfounded in terms of both legal and factual perspectives.

16. As for the Special Rapporteur's concerns over the former Deputy Minister of Justice's statements on the social media with regard to denunciation from the Istanbul Convention, it should be noted that Deputy Minister had posted his comments before he was appointed as a judge and as mentioned above, he did not even participate in the proceedings.

On the amendments introduced with the Law no. 7413

17. At the outset, the Government would like to state that the allegations in the present letter concerning the legislative amendment introduced on 28 June 2022 with the Law no. 7413, are purely a misconception of facts and reflected misleadingly in terms of its purposes. Below are explanations to better understand the legal background of said amendment.

18. With the amendment made to the Law no. 2575 on the Council of State on 9 February 2011, the Board of Administrative Litigation Chambers of the Council of State's (BoALC) structure and working methods are redesigned in order to give effect to the European Court of Human Rights' (ECtHR) *Fazlı Aslaner v. Türkiye* judgment (App. no: 36073/04). The ECtHR in its said judgment had found that, the fact that members of a chamber of the Council of State who participated in examining the first appeal of an administrative case have also been participating in the examination

of the second appeal of the same case as members of the BoALC, violates the right to a fair trial. The amended provision which now states that “*In examining appeals or objections against the decisions given by the Administrative Chambers of the Council of State as a first instance court, those who participated in the decision in these Chambers cannot be assigned to the Board of Administrative Litigation Chambers*”, was introduced to correct the flaw in the legislation and was seen sufficient by the Committee of Ministers of the Council of Europe in terms of giving effect to the ECtHR’s judgment.

19. In addition to the aforementioned amendment, in order to prevent similar violations in the future, Provisional Article 24 of the Law no. 2575 was amended in 2 July 2012 to specify the composition of the BoALC and its working methods. According to the mentioned provision, for three years after its publication, the BoALC shall be composed of 20 members, with at least one member from each administrative chamber who will only serve on the BoALC on a permanent basis. With the first amendment made in 2014, the duration of the provision’s stay in force was extended to be until 31 December 2016. With the second amendment made in 2016, the number of members of the BoALC was changed to 14 and the duration of the provision’s stay in the force was extended to be until 31 December 2019. With the third amendment made in 2017, the duration was extended to be until 31 December 2022. And finally with the fourth amendment made in 23 June 2022, which is subject to concerns in the present letter, the duration of the said provision’s stay in the force, was extended to be until 31 December 2026.

20. In short, said amendment was first introduced to give effect to the aforementioned judgment of the ECtHR as part of general measures taken which dates back long before Türkiye had declared denunciation from the Istanbul Convention and it regulates the general composition of the BoALC and its’ working methods, rather than allegedly providing an extension of the term of office of the members of the BoALC as misinterpreted in the present letter. It has been, as explained above, subjected to long series of amendments, and latest of which has nothing to do with the denunciation from the Istanbul Convention proceedings before the Council of State.

*On the proceedings before the Council of State with regard to cases against the denunciation of the Istanbul Convention*

21. Procedural processes with regard to the proceedings before the Council of State have been duly conducted in accordance with the law and decisions were given on the basis of contents of the files submitted and the statements from the parties.

22. In administrative justice, a joinder of cases decision may be given to join the legally related cases before different courts at the same court in such a form that each case is heard separately. However, unlike civil justice, there is no provision in administrative law for joinder of cases before the same court due to legal relation. As such, there is no requirement in law to join the cases against the denunciation from the Istanbul Convention, filed to the same chamber of the Council of State. It should also be noted that no request in this regard had been submitted by the parties.

23. In the proceedings before the Council of State, principles of procedural economy and the right to administration of justice within a reasonable time had been upheld, as much as the circumstances allowed. At times, collective hearings for 10 cases in average were held for 10-11 hours in average up until late hours of the day. However, considering the very large number of cases filed to the Council of State, the hearings naturally had to be held in different dates so as not to impede the right to a fair trial of the parties. As such, the Government does not share the concerns in the letter suggesting that the handling of the cases were performed poorly and is not of the view that the right to a fair trial of the parties had been violated.

24. As for the concerns in the present letter over alleged disproportionate enrichment of the Presidency's attorney, the Government would like to state that attorney fees are awarded based on the Minimum Attorneyship Fee Tariff issued by the Union of Bar Associations every year and published in the Official Gazette and it does not take into account any other considerations concerning individuals. The Government is also of the view that the present letter fails to provide reasonable explanations on how awarding the usual attorneyship fee to one side at the end of the proceedings in accordance with the law would somehow lead to punishing the plaintiffs or deterring others in the future.

*On the recusal of the judge request and insult against a judge*

25. On 28 June 2021, a stay of execution request as part of the case no. 2021/1479 before the Council of State was rejected. Upon this decision, the attorney of the plaintiff side had posted some statements regarding the decision on the social media. One of the member judges examining the case filed a criminal complaint against the attorney, claiming that said statements on the social media

consist heavy insults beyond mere criticism. The attorney filed a recusal of the judge request, after. In this sense, the criminal complaint against the attorney was filed before the recusal of the judge request was made and it was made due to insult allegations, not because of the recusal of the judge request itself.

26. On the other hand, it is a fundamental right of the public official who thinks that she/he has been insulted during the performance of her/his duty to file a criminal complaint to protect her/his personal rights. The Government is of the view that there is no legal basis in claiming that the right to a fair trial has been violated due to legitimate exercise of rights.

*On the allegations of restricting women from attending the hearings and reading their press statements*

27. To facilitate a wide participation of all the stakeholders to the proceedings, hearings on 28 April 2022, 7 June 2022, 14 June 2022 and 23 June 2022 were held in the conference hall of the Council of State. Contrary to the allegations in the letter, all real and legal persons who wish to participate in the hearings were able to attend the hearings without any restriction or any intervention. No measures were taken to restrict persons from giving their press statements either. The attitude of the Court towards the participants was also appreciated during and after the hearings by both sides and was also received positively in the social media.

## **II. CONCLUSION**

28. In light of the factual and legal explanations made above, the Government is of the view that none of the concerns voiced in the Special Rapporteur's letter amounts to a violation of the right to a fair trial or the principle of the procedural economy.