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

Z-2023/62441669/37254002 -

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 19 July 2023 (AL TUR 5/2023), has the honour to enclose herewith the information note and its annexes 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, 18 December 2023

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 5/2023)

With reference to the joint communication of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the independence of judges and lawyers dated 19 July 2023, the Government of the Republic of Türkiye would like to submit its responses and observations hereinbelow.

FACTS AND OBSERVATIONS

1. First of all, it should be noted that the Republic of Türkiye is a democratic State governed by the rule of law and established on respect for human rights. According to Article 90 of the Constitution of the Republic of Türkiye (hereinafter, the Constitution), in the event of a conflict between international agreements concerning fundamental rights and freedoms and national legislation, priority is given to international treaties. Being fully aware of its international obligations, the Republic of Türkiye fulfils all of its responsibilities to protect fundamental rights and freedoms by taking the measures envisaged by law and required by democractic governance.

2. The Constitution imposes positive obligations on the State to ensure the welfare, peace and happiness of individuals and society, to protect the Republic and democracy, and to eliminate the obstacles that negatively affect the enjoyment of fundamental rights and freedoms by individuals. As part of its positive obligations, the State takes the necessary proactive measures to protect individuals and promote the enjoyment of human rights.

3. On 6 February 2023, two great magnitude earthquakes occured in Türkiye, causing immense distruction in ten provinces (Kahramanmaraş, Hatay, Osmaniye, Adıyaman, Gaziantep,

Şanlıurfa, Diyarbakır, Malatya, Kilis and Adana). The loss of lives, injuries and material damage that resulted from the earthquake have caused deep sorrow to our entire nation.

4. According to Article 119 of the Constitution, state of emergency may be declared for a period of not exceeding six months in cases of natural disasters. With the Presidential Decree No. 6785, a state of emergency (hereinafter, the SoE) was declared in the above-mentioned provinces for three months as of 8 February 2023 in accordance with the said Article of the Constitution and Article 3/1(a) of the Law on State of Emergency No. 2935. The decision, which was published in the Official Gazette dated 8 Februay 2023 and numbered 32098, was also approved by the Grand National Assembly of Türkiye on 9 February 2023. In this framework, and in accordance with Article 4 of the International Covenant on Civil and Political Rights (ICCPR), a derogation notification was duly submitted to the United Nations Secretary-General.

5. The SoE, which was declared in order to ensure that search and rescue activities in the aftermath of the earthquake could be carried out expeditiously and effectively in the provinces where the earthquake occurred, ended on 9 May 2023, as no decision was taken to extend it.

On the Judicial Proceedings Carried Out in Respect to the Case

a) ***Samandağ Chief Public Prosecutor's Office - Investigation file No. 2023/748:***

6. According to the information, documents and incident reports gathered from the investigation file (No. 2023/748) conducted by the Samandağ Chief Public Prosecutor's Office, the facts of the case are as follows:

7. Regarding the operations at the dumping site within the borders of Yeşilköy Neighborhood of Samandağ District, a campaign with the title "*We will resist until the best is done for our health.*" was initiated to influence public opinion and, on 4 April 2023 at 08:30 a.m., a group of approximately 200 people blocked traffic on the Samandağ-Antakya highway leading to the dumping site in Yeşilköy. According to the information and documents in the investigation file, it is understood that the group in question did not notify the local administrative authority as per the

Law on Meetings and Demonstration Marches No. 2911 (hereinafter, Law No. 2911) and committed acts that endangered highway traffic safety, thereby exceeding the limits of their constitutional freedom of movement.

8. Gendarmerie officers duly told the group that the highway should be kept open, but it remained blocked in an unsafe manner due to the group's persistence in continuing the concerned acts. Thus, the security forces warned the group that traffic safety was endangered and their action was illegal and constituted a crime, and made the following announcement three times: "*Dear citizens, your action constitutes a crime […] Please stop this action and disperse, otherwise legal action will be taken against you and force will be used*". However, the crowd did not disperse and started throwing stones targeting the Gendarmerie officers. As a result, officers intervened in line with the principle of proportionality. During the intervention, some of the officers were injured and filed a complaint against the suspects for being assaulted during the brawl and for insulting the State and its institutions, including the gendarmerie (through slogans such as "*murderous state*" and "*murderous gendarmerie*") (Annex-1).

9. The Public Prosecutor sent a written instruction to the law enforcement officers in accordance with Article 91 of the Code of Criminal Procedure (hereinafter, the CCP) to identify and detain suspects that may have violated Law No. 2911. The detainees were reminded of their rights under Article 147 of the CCP, evidenced by the fact that they signed the statement indicating that they had been so informed (Annex-2).

10. The detained individuals were duly questioned in the presence of a lawyer and they were also reminded of their legal rights under Article 147, such as "*to choose a defense counsel and to benefit from their legal assistance, to notify their relatives, to learn the charges against them, and not to provide any explanation about the charged crime*". This was also written down in the statement signed by them and their defense counsels. As can be seen in the statement, the suspects were reminded of their rights as follows:

"*The offense charged against the individual was explained (Article 147/1(b)). The individual was informed that he/she has the right to choose a lawyer and that he/she could benefit*

from legal assistance; his/her lawyer could be present during the statement-taking or interrogation; if he/she was not in a position to choose a lawyer, one would be assigned by the bar association if he/she so requested (Article 147/1(c)); he/she could immediately notify one of his/her relatives of his/her arrest (Article 147/1(d)); he/she has the right not to make an explanation about the charged crime (Article 147/1(e)) and he/she can request the collection of concrete evidence in order to discard suspicion."

11. The detained individuals were released upon the instruction of the Public Prosecutor, after the completion of interrogation procedures at 01:30 a.m. of the same night (Annex-3). There are currently no suspects in pre-trial detention or under judicial control.

12. The defenses of Aytekin Aktaş and some other suspects could not be taken because they did not come to testify or could not be reached. Therefore, the investigation is still ongoing.

b) ***Samandağ Chief Public Prosecutor's Office - Investigation file no. 2023/760:***

13. According to the investigation file (no. 2023/760), the complainants filed a complaint on 20 April 2023 concerning the events that took place in Samandağ District on 4 April 2023, indicating the license plates of some vehicles assigned to the gendarmerie team that was on duty on that date. Investigation procedures are ongoing.

c) ***Samandağ Chief Public Prosecutor's Office - Investigation file no. 2023/1346:***

14. According to the investigation file (no. 2023/1346), the complainant Aytekin Aktaş filed a complaint to Hatay Chief Public Prosecutor's Office through his attorney in relation to the events that took place in Samandağ district on 4 April 2023, one month after the date of the incident. The file was sent by Hatay Chief Public Prosecutor's Office to Samandağ Chief Public Prosecutor's Office due to lack of jurisdiction. Investigation procedures are ongoing.

Regarding the Legal Grounds for the Alleged Use of Force and Compliance of the Measures in Question with International Human Rights Law

a) Legal bases for the alleged use of force

15. According to Article 17 of the Constitution entitled "*Personal Inviolability, Corporeal and Spiritual Existence of the Individual*":

"*Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence.*

The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent.

No one shall be subjected to torture or maltreatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

The act of killing in case of self-defence and, when permitted by law as a compelling measure to use a weapon, during the execution of warrants of capture and arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during state of emergency, do not fall within the scope of the provision of the first paragraph."

16. Pursuant to Article 3 of Law No. 2911, titled "*Right to Assembly and Demonstration Marches*":

"*Everyone has the right to organize meetings and demonstration marches without prior permission, for specific purposes not criminalized by law, without arms and assaults, in accordance with the provisions of this Law.*"

17. Article 10 of the same Law, titled "*Notification*" reads as follows:

"***In order to convene a meeting, a notification signed by all members of the organization committee shall be submitted to the governorate or district governor's office of the place where the meeting will be held, at least forty-eight hours before the meeting and during working hours***.

In this notification; a) The purpose of the meeting, b) The date, location and beginning and ending times of the meeting, c) The clear identities, professions, residences and if any, workplaces of the chairman and members of the organizing committee shall be stated and the documents specified in the regulation shall be attached to the notification. In return for this notification, a certificate of receipt showing the date and time must be given."

18. Article 20 of the said Law, with the heading "*Provisions to be Applied in Demonstration Marches*" reads as follows:

"*Notifications for marches to be held on public roads within cities and towns must specify the place of assembly to be chosen for the march, the route to be followed and the place of dispersal, provided that the routes and directions announced in accordance with Article 6 are complied with.*"

19. Article 22 of the said Law, titled "*Prohibited places*" reads as follows:

"*(...) meetings shall not be held in parks, temples, buildings and facilities providing public services and their annexes, and within the area within one kilometer of the Grand National Assembly of Türkiye.* ***In public squares, it is obligatory to comply with the arrangements to be made by governorships and district governorships to ensure the passage of the public and transportation vehicles****.*"

20. According to Article 23 of the said Law, titled "*Unlawful meetings and demonstration marches*":

"*Meetings or demonstration marches held a****) without giving notice in accordance with the provisions of Articles 9 and 10****, or before or after the day and time specified for the meeting or demonstration march, (...) e)* ***without complying with the procedure and conditions stipulated in Article 20 and the prohibitions and measures stipulated in Article 22,*** *(...) shall be deemed to be unlawful.*"

21. Article 24 of the same Law, titled "*Dispersal of a Meeting or Demonstration March*" states that:

"***In cases where meetings or demonstration marches start in violation of the Law; members of the security forces shall take the necessary measures with the available means, provided that they notify the highest local authority as soon as possible. The chief of the security forces intervening in the incident shall warn the crowd to disperse and inform them that, otherwise, they will be dispersed by force. If the crowd does not disperse, it shall be dispersed by force****.*"

22. Article 32 of the said Law, with the heading "*Resistance*" is as follows:

"*Those who participate in unlawful meetings or demonstration marches and insist on not dispersing despite warnings and use of force, shall be sentenced to imprisonment from six months to three years. If this offense is committed by the organizers of the assembly or demonstration march, the penalty to be imposed according to the provision of this paragraph shall be increased by half.*

In case of resistance against law enforcement officers by using force or threat despite the warning and use of force, an additional penalty shall be imposed for the offense defined in Article 265 of the Turkish Penal Code No. 5237 (hereinafter, the TPC).

In the event that an assembly or demonstration march is dispersed by exceeding the limit of authority without meeting one of the conditions specified in Article 23 or without fulfilling the provisions of Article 24, the penalties to be imposed on those who commit the acts referred to in the above paragraphs may be reduced by up to one-fourth, or the penalty may be waived."

23. Article 16 of the Law on Police Duties and Powers No. 2559 (hereinafter, Law No. 2559), titled "*Use of Force and Weapons*" is as follows:

"*In the event that the police encounter resistance in the performance of their duties, they may use force in order to break this resistance and are authorized to use force to the extent necessary to disperse it.*

Within the scope of the authority to use force, physical force, material force and, when the legal conditions are met, weapons may be used in gradually increasing proportions according to the nature and degree of resistance and in a manner so as to neutralize those resisting.

(...)

Before the use of force, those concerned shall be warned that force will be used directly if they continue to resist. However, considering the nature and degree of resistance, force may be used without warning.

(...)

In the face of an attack against themselves or others, the police shall defend themselves within the framework of the provisions of the TPC on legitimate defense, without being bound by the conditions regarding the use of force."

24. Article 25 of Law No. 2559, on "*Duties and Powers of Police Officers*", reads as follows:

"*In places where there is no police organization, provincial, district and parish gendarmerie commanders and gendarmerie station commanders shall perform the duties and exercise the powers stipulated in this Law.*"

25. Article 24 of the TPC, entitled "*Provisions of a Statute and Orders from a Superior*", found under Section II titled "Reasons Absolving or Diminishing Criminal Liability", reads as follows:

"*A person who carries out the provisions of a statute shall not be subject to a penalty.*

A person who carries out an order which is given by an authorized body and the execution of which is compulsory as part of his/her duty, shall not be held culpable for such act.

An order constituting an offence should never be executed in any circumstances. Otherwise, the person who carried out the order and the person who gave the order shall be culpable.

Where the examination of the lawfulness of the order is not allowed as per the law, the person giving the order shall be culpable for its execution."

26. Article 27 of the TPC, titled "*Exceeding of Limits*" reads as follows:

"*Where the limits of criminal culpability are unintentionally exceeded and the act was committed by recklessness and is subject to a penalty, the penalty imposed, in respect of offences of recklessness, shall be reduced by one-sixth to one-third.*

If the limits were exceeded in the course of legitimate self-defence as a result of excitement, fear or panic and can be regarded as excusable, the offender shall not be subjected to a penalty."

27. Article 256 of the TPC, titled "*Excessive Use of Force*" reads as follows:

"*Any public officer, having the authority to use force, who uses an amount of force in the course of his duty which exceeds that required by such duty, shall be subject to the provisions relating to intentional injury.*"

28. Article 257 of the TPC, titled "*Misuse of Public Duty*" reads as follows:

"*Excluding any situation defined elsewhere as a separate offence in law, any public officer who secures an unjust financial benefit for other persons or causes any loss to the public or damage to individuals by acting contrary to his/her duty, shall be sentenced to a penalty of imprisonment for a term of six months to two years.*"

29. Article 148 of the CCP, entitled "*Prohibited Procedures During Statement-Taking and Interrogation*", reads as follows:

"*The submissions of the suspect or accused shall stem from their own free will. Any bodily or mental intervention that could impair their free will, such as misconduct, torture, administering medicines or drugs, exhausting the person, deception, physical coercion, or threatening, using certain equipment, is prohibited.*

No advantage that would be against the law shall be promised.

Submissions obtained through forbidden procedures shall not be used as evidence, even if the individual had given consent.

Submissions obtained by the police without the presence of the defense counsel shall not be used as a basis for judgment, unless these submissions have been verified by the suspect or the accused in front of the judge or the court.

In cases where there is a need for taking the statement of the suspect again in relation to the same event, this procedure shall only be conducted by the public prosecutor."

30. Circular No. 158 on "Investigations into Human Rights Violations and Allegations of Torture and Ill-Treatment" dated 20 February 2015, issued by the General Directorate of Criminal Affairs of the Ministry of Justice, sets out the principles and guidelines to be followed in investigations into allegations of torture and ill-treatment. The final, operative provisions of the Circular stipulates that special care and attention be given to the following issues:

"*1- In order to ensure fundamental rights and freedoms, especially the right to a fair trial and other universal rights, to prevent individuals and institutions from being victimized, to maintain public confidence in the judiciary, to prevent violations of human rights and damage to the international reputation of our country; public prosecutors, who have the main authority and responsibility in the conduct of investigations, should ensure that the investigation phase is carried out in a fast, effective, fair, and comprehensive way, by collecting evidence in a timely, complete and lawful manner, in line with the principles set forth in international conventions, judgments of the European Court of Human Rights (ECtHR), the Constitution, laws, regulations and circulars, to prevent human rights violations arising from such investigations,*

2- Investigations into allegations of human rights violations, torture and ill-treatment should be conducted in an effective and adequate manner by the chief public prosecutor or a public prosecutor appointed by the chief public prosecutor, rather than by law enforcement officers,

3- International conventions to which Türkiye is a party, ECtHR judgments and relevant legal regulations on these issues should be carefully monitored and implemented,

4- Measures should be taken to raise awareness with the purpose of preventing human rights violations and ensuring that torture and ill-treatment does not take place."

b) *Compliance with international human rights law and jurisprudence*

31. According to Article 19 of the Constitution, titled "*Personal Liberty and Security*"*:*

> "*Everyone has the right to personal liberty and security. No one shall be deprived of his/her liberty except in the following cases the procedure and conditions regarding which are prescribed by law.*"

32. Article 9 of the Constitution stipulates that judicial power shall be exercised by independent and impartial courts, while the CCP sets out in a clear, comprehensible and foreseeable manner the basic principles and procedures according to which investigations and prosecutions for alleged crimes shall be conducted, in line with the provisions of the European Convention on Human Rights (ECHR) and the ICCPR.

33. Detention, which is regulated in Article 91 of the CCP, is the temporary restriction of the liberty of the arrested person in a manner that does not harm his/her health within the legal period, until he/she is brought before an authorized judge or released, in order to complete the proceedings against him/her. It is also defined as placing the arrested person under the supervision and control of the police.

34. According to the ECtHR, the principle of "*reasonable grounds*" for arrest constitutes one of the fundamental safeguards against arbitrary deprivation of liberty under Article 5/1 (c) of the ECHR. The existence of reasonable suspicion means that an objective observer must be convinced that there are facts or information indicating that the person concerned has committed the offense. However, the qualification of "reasonable grounds" depends upon all circumstances (*Fox, Campbell and Hartley v. the United Kingdom*, *§ 32*). The fact that the person concerned has not been charged or brought before a judge does not necessarily mean that the deprivation of liberty does not have a legitimate aim in accordance with Article 5/1(c). The existence of such an objective must be considered apart from its realization. As per Article 5/1(c) of the ECHR, in order to bring a charge, it is not necessary for the police to collect sufficient evidence at the time of arrest or detention. The object of questioning during detention under Article 5/1(c) is to further the criminal investigation by way of confirming or dispelling the concrete suspicion grounding the arrest. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (*Murray v. the United Kingdom, § 55*).

35. In the context of the events referred to in the present communication, the investigation process described above was initiated in accordance with the provisions of the CCP, and the detention decisions regarding the suspects were taken by independent judicial authorities considering the circumstances of the specific case. In other words, these decisions were not arbitrary and did not contain any manifest error of discretion, and the charges against the suspects were based on concrete evidence. Furthermore, the suspects were reminded of their legal rights to have the opportunity to be represented by counsel during the investigation.

36. International principles and standards applicable with regard to the events at issue, in particular the United Nations and Council of Europe conventions, were adopted and incorporated into national law under constitutional guarantee. In this regard, it should also be highlighted that the Istanbul Protocol has become a text of domestic law, especially in the investigation of torture and ill-treatment allegations. On the other hand, at the very time of arrest, entry and exit from detention centers or penal institutions, medical reports are obtained from suspects, defendants or convicts.

37. In the national context, various oversight bodies, including the Human Rights Investigation Commission and Ombudsman Institution of the Grand National Assembly of Türkiye, Human Rights and Equality Institution of Türkiye, public prosecutors and justice inspectors, as well as controllers of penal institutions and monitoring boards; and at the international level, the European Committee for the Prevention of Torture and the UN Committee Against Torture, are always able to monitor detention centers and prisons. Moreover, the Decree Law No. 682 dated 23 January 2016 issued during the SoE, stipulating the dismissal from civil service of public officials involved in torture, is a clear indication of Türkiye's firm commitment to combating torture.

38. Türkiye has been successfully implementing a "*zero-tolerance policy on torture*" since many years. As a result of this policy, Türkiye is one of the few countries in the world that has abolished the prescription for the crime of torture. This amendment made on Article 94 of the TPC ensures that torture allegations are investigated and, if deemed necessary, prosecuted regardless of the time elapsed since the act was committed.

39. Thus, Türkiye has taken all necessary measures to ensure that allegations of torture and ill-treatment are duly investigated and prosecuted by independent and impartial judicial authorities.

c) ***Regarding freedom of expression and freedom of assembly and demonstration***

40. Articles 25 and 26 of the Constitution regulate "*Freedom of Thought and Opinion*" and "*Freedom of Expression and Dissemination of Thought*" respectively, thus guaranteeing the enjoyment of these freedoms at the highest level. Although freedom of expression is one of the

building blocks of a democratic society, it is not absolute and may be subject to certain limitations determined within the framework of the principle of the rule of law. Therefore, freedom of expression is subject to the grounds for restriction set out in Article 10 of the ECHR, Article 19 of the ICCPR and Article 26 of the Constitution.

41. The restrictions stipulated in Article 10 of the ECHR are as follows:

"*The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*"

42. Article 19 of the ICCPR also states that:

"*(This right) may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.*"

43. Similar to the ECHR and the ICCPR, according to the Constitution:

"*The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, non-disclosure of information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.*"

44. Furthermore, it has also been confirmed in ECtHR judgments that freedom of expression is not an absolute right. Expressions containing elements such as hate speech, incitement to crime, praise for violence cannot benefit from the protection provided by the ECHR. In the *Bayar and Gürbüz v. Türkiye* judgment, it was emphasized that expressions against the fundamental values of justice and peace and also those that contain elements of hate speech or incitement to violence cannot be considered within the scope of freedom of expression.

45. Similarly, Article 34 of the Constitution regulates the "*Right to Hold Meetings and*

Demonstration Marches" as follows:

"*Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others.*"

46. These limitations are set out in Article 11 of the ECHR as follows:

"*No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*"

47. Article 21 of the ICCPR provides that:

"*No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*"

48. Thus, the right to hold meetings and demonstration marches is also not absolute and may be subject to certain restrictions, as specified in Article 11 of the ECHR, Article 21 of the ICCPR, and Article 34 of the Constitution. In this regard, reference should also be made to Article 34/3 of the Constitution, which states that:

"*The formalities, conditions, and procedures to be applied in the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.*"

Law No. 2911 on Meetings and Demonstration Marches was enacted pursuant to this paragraph.

49. The prevention or prohibition of meetings and demonstration marches is regulated in Articles 17 and 19 of Law No. 2911. Accordingly, for the purposes of national security, public order, prevention of crime, protection of public health and public morals or the rights and freedoms of others, the regional governor, governor or district governor may postpone a certain meeting or demonstration march for a period not exceeding one month or prohibit it if there is a clear and imminent danger that a crime may be committed. Article 22/2 of the same Law clearly

states that "***the regulations to be made by governorships and district governorships in order to ensure the passage of the public and transportation vehicles in public squares must be complied with***".

50. According to the ECtHR, notification and even permission procedures for public events do not give rise to a violation of the right stipulated under Article 11 of the ECHR, as long as the purpose of the procedure is to ensure taking of reasonable and appropriate measures to facilitate the smooth conduct of the meeting or demonstration (*Sergey Kuznetsov v. Russia, § 42*). Organizers of meetings must comply with the rules governing this process by acting in accordance with existing regulations (*Primov and Others v. Russia, § 117*).

51. The notification requirement serves not only the purpose of ensuring that the enjoyment of the right to assemble is compatible with the legitimate rights and interests of others (including the freedom of movement) but also aims to prevent disorder and crime. The institution of preliminary administrative procedures to balance these conflicting interests appears to be a practice frequently resorted to by member states in cases where demonstrations are taking place in public places (*Éva Molnár v. Hungary, §37*).

52. Furthermore, in a number of cases where demonstrators have committed acts of violence, the ECtHR has held that such demonstrations fall within the scope of Article 11 of the ECHR, but that the interferences with this right were legitimate because they were aimed at maintaining public order, preventing crime and protecting the rights and freedoms of others (*Osmani and others v. Former Yugoslav Republic of Macedonia; Protopapa v. Türkiye, § 104-112; Gülcü v. Türkiye § 93-97*). In *Bozduman v. Türkiye*, the ECtHR pointed to the fact that the security forces respected the freedom of peaceful assembly, as long as no acts of violence were committed in usage of this freedom. However, in the concrete case, the Court stated that the applicant and the demonstrating group in which he was participating had committed acts of violence against the security forces and held that the application was therefore manifestly ill-founded.

53. Again, General Comment 37 of the UN Human Rights Committee (§ 19) specifies which situations are not protected under Article 21 of the ICCPR. In this regard, it is stated that:

"*The conduct of specific participants in an assembly may be deemed violent if authorities can present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent. Isolated instances of such conduct will not suffice to taint an entire assembly as non-peaceful, but where it is manifestly widespread within the assembly, participation in the gathering as such is no longer protected under Article 21.*"

54. Finally, it should be underlined that in the last three years, more than 99% of the public meetings/demonstrations in Türkiye took place without any intervention. 0.6% (278) of the 46,555 meetings/demonstrations in 2021, which were organized in violation of the law and could not be halted through dialogue, were intervened within the framework of the legal authority to use force, and 64% of the illegal protests were resolved through dialogue. Of the 64,993 meetings/demonstrations in 2022, 0.5% (335) that were organized unlawfully and could not be halted through dialogue, were intervened by use of force, and 52% were resolved by dialogue. In 2023 (as of 17 August), 42,525 meetings/demonstrations took place and force was used in 0.4% (152) of the 292 unlawful meetings/demonstrations, in full respect of the principles of necessity and proportionality. During these police interventions, thirty security officers were injured.

CONCLUSION

55. The Constitution of the Republic of Türkiye, a democratic State governed by the rule of law, duly protects and promotes human rights (Article 2). In this context, the Constitution guarantees at the highest level "*Personal Liberty And Security*" (Article 19), "*Freedom of Thought and Opinion*" (Article 25), and "*Right to Hold Meetings and Demonstration Marches*" (Article 34).

56. On the other hand, Article 9 of the Constitution stipulates that judicial power shall be exercised by independent and impartial courts, while the CCP, in line with the provisions of the ECHR and the ICCPR, sets out in a clear, comprehensible and foreseeable manner the basic principles and procedures according to which investigations and prosecutions shall be

conducted.

57. It is beyond question that fundamental rights and freedoms are not unlimited and the limits of rights in democratic countries are set out in the Constitution and laws. These limits are also shaped by international conventions and the jurisprudence of international bodies established by these conventions. The judicial authorities in Türkiye conduct investigations and issue judgments by duly taking into account the case law established by these international bodies.

58. In a country where the rule of law prevails, no one has the privilege to commit crimes with no repercussions. All crimes are investigated by independent and impartial public prosecutors and perpetrators are tried by independent and impartial courts.

59. On the other hand, it is considered that the earthquakes of 6 February 2023, which were described as the "*Disaster of the Century*", the SoE declared for three months as of 8 February 2023 and the derogation notifications duly submitted to the United Nations Secretary-General should be taken into account in any evaluation to be made with regard to the concerned communication.

60. Finally, it should be reiterated once again that the investigation procedures mentioned in the joint communication letter received from UN Special Rapporteurs are yet being conducted. Thus, the ongoing domestic legal processes should be respected and their results should be awaited.

ANNEXES

Annex-1: Record of statements regarding investigation file no. 2023/748
Annex-2: Detention warrant regarding investigation file no. 2023/748
Annex-3: Public Prosecutor's Office's interview minutes on investigation file no. 2023/748