



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

Z-2024/62441669/39268016 - URGENT

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 27 December 2023 (AL TUR 10/2023), has the honour to enclose herewith the information note 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, 30 December 2024



Encl: As stated.

Office of the High Commissioner for Human Rights
Palais Wilson
Rue des Pâquis 52
1201 Geneva

INFORMATION NOTE IN REPLY TO THE COMMUNICATION FROM THE SPECIAL PROCEDURES

(Reference: AL TUR 10/2023)

1. With reference to the letter of the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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 dated 27 December 2023, regarding “Saturday Mothers/Cumartesi Anneleri”, the Government would like to submit its observations herein below.

I. OVERVIEW

2. According to Article 34 of the Constitution, 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 committing crime, protection of public health and public morals or the rights and freedoms of others as per Article 34 § 2 of the Constitution and Article 17 of the Law on Meetings and Demonstrations no. 2911, and as well as Article 21 of the ICCPR.

3. The formalities, conditions, and procedures to be applied in the exercise of the right to hold meetings and demonstration marches are set forth by law. According to Article 10 of the Law on Meetings and Demonstrations; 48 hours prior to a meeting, the relevant authorities of the place the meeting is planned to be held, shall be notified.

4. The notification obligation envisaged under Article 10 the Law no. 2911 aims only to ensure the safety of the meeting and public, in general.

5. It is also acknowledged by the ECtHR that prior notification serves not only the aim of reconciling the right of assembly with the rights and lawful interests (including the freedom of movement) of others, but also the aim of preventing disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures appears to be common practice in member States when a public demonstration is to be organised (see Judgments of the ECtHR on *Kudrevicius and Others v. Lithuania*, no. 37553/05, § 148, 15 October 2015; and on *Berladir and Others v. Russia*, no. 34202/06, § 42, 10 July 2012).

6. The prior notification obligation should not be considered as a permission. The Constitutional Court has explained this point in many of its judgments. It underlines to this end that failure of prior notification before the demonstration and/or gathering outside the areas determined by the administration per se would not render the demonstration or gathering non-peaceful (see Judgments of the Constitutional Court on *Eylem Onuk*, no. 2015/8018, 15 December 2018; and on *Ömer Faruk Akyüz*, no. 2015/9247, 4 April 2018).

7. According to Article 23 of the same Law, if the notification is not submitted prior to the meeting, the meeting shall be considered unlawful. Under Article 24, the participants of such illegal meetings shall firstly be notified of their meeting's illegal status and if the meeting is not ended upon such notification, a warning shall be made, stating that proportionate force will be used in case the participants do not disperse after the warning.

8. The principles regarding the law enforcement's authority to use force are stipulated in detail in the Law no. 2559. According to Article 16 of the said Law, if the police encounters resistance while doing their duty, they are authorised to use force in order to break it. Depending on the nature and degree of the resistance, the police may use physical and material force in a gradually increasing proportion to render the resisters ineffective.

9. Furthermore, there exists a Directive on Procedures and Planning of Interventions Before and After Demonstration Marches issued for the law enforcement officers.

II. FACTS

10. Prior to the gathering of Saturday Mothers in the İstanbul Galatasaray Square on 25 August 2018 (700th Week Event), the demonstrators did not formally notify the local authorities. The Beyoğlu Governor's Office declared the meeting unlawful pursuant to Articles 10 and 17 of the Law no. 2911 in pursuance of the aims of public order, prevention of committing crime, protection of public health and public morals and the right and freedoms of others.

11. At around 10:00 a.m. on the date of the meeting, around 50 people were seen gathering at the Square and setting up broadcasting systems. The authorities thereupon loudly announced that the event was unlawful and gave a written notice showing the reasons thereof to a representative of the Human Rights Association present in the group. As the crowd continued to grow, the authorities kept loudly announcing through sound equipment that the meeting was unlawful.

12. As the protestors did not disperse and kept shouting slogans towards the security forces despite the announcements, the security forces moved in to separate the persons identified as “the sensitive group” from the crowd in order to protect them and not to let this group be affected by a possible intervention. As opposed to the perception trying to be created by some selective photos posted on the social media, the aim was to protect the sensitive group. This group was not taken into custody.

13. Despite all the verbal warnings and written notifications, the protestors kept shouting slogans and throwing injurious objects towards the security forces. Upon the demonstrators’ physical assault, an intervention was duly made by using physical force, pepper spray and non-pressurised water proportionately in line with the aforementioned Law no. 2559.

14. Prior to the intervention, the law enforcement officers tried to reconcile with the protestors to end their demonstration. However, some of the protestors were seen pulling the collar of a law enforcement officers, some officers got bitten, some others experienced physical injury due to kicking and punching. In total, 8 police officers were injured during the incident.

15. During the intervention, 46 suspects were duly arrested, reminded of their legal rights, referred to hospitals and released after taking their statements. None of the demonstrators were placed in detention.

III. OBSERVATIONS

16. In order to organise a peaceful assembly in a democratic society, a notification is necessary to inform the authorities in advance to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others. Prior notification serves the aims of reconciling, protecting the rights and lawful interests of others and prevention of disorder or crime (see Judgment of the ECtHR on *Eva Molnar v. Hungary*, no. 10346/05, § 37, 7 October 2008).

17. Making public assemblies a subject to an authorisation or notification procedure does not normally encroach upon the essence of the right as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature (see judgment of the ECtHR on *Sergey Kuznetsov v. Russia*, no. 10877/04, § 42, 23 October 2008). Organisers of public gatherings should respect the rules governing that process by complying with the regulations

in force (see Judgment of the ECtHR, *Primov and Others v. Russia*, no. 17391/06, § 117, 12 June 2014).

18. Pursuant to Article 10 of the Law on Meetings and Demonstrations, in order to organise a meeting, relevant authorities shall be formally notified with a written letter containing the meeting's purpose, the date and place of the meeting, identities of the organisers and their occupation and signatures of the organising committee. However, in the present case, the organisers failed to formally notify the authorities. Hence, the meetings were considered illegal as per the Law concerning the aims of public order, prevention of committing crime, protection of public health and public morals and the right and freedoms of others.

19. Especially, during the meeting dated 25 August 2018, the security forces duly intervened in the meeting to restore the public order on the grounds that the demonstrators physically assaulted the officers and the crowd did not disperse despite the warnings.

20. Subsequent to the Constitutional Court's judgment finding a violation, the group was allowed to organise meeting and demonstration march in the aforementioned location with a certain number of participants and they are still able to do so.

21. The interventions giving rise to the case and pursuing legitimate purposes, were seen necessary in a democratic society and in line with the domestic provisions as well as international principles.

22. On the other hand, the judicial proceedings duly conducted by the independent and impartial judiciary cannot be labelled as "*judicial harassment*" or "*systematic pattern of judicial persecution of human rights defenders*".

23. Pursuant to Article 158 § 1 of the Code of Criminal Procedure ("the Law no. 5271") notifications or complaints concerning crimes allegedly committed may be filed before the Chief Public Prosecutor's Office or law enforcement authorities. Articles 160 and 161 of the Law no. 5271 regulate the duties and powers of public prosecutors to conduct effective investigations into offences alleged committed.

24. As soon as public prosecutor is informed of a fact that creates an impression that an offence has been committed, either through a notification or any other way, he/she shall *ex officio* conduct an investigation and examination under Articles 160 and 161 of the Law no. 5271. The public prosecutor

may conduct any kind of inquiry directly or through law enforcement, such as police, gendarmerie etc. He/she may request any kind of information from all public officers so as to achieve the material truth and ensure a fair trial.

25. The members of the law enforcement, who have been appointed to conduct an inquiry, shall be obliged to immediately notify the public prosecutor under whose command they perform their duties of the incidents they have started to handle, the individuals who have been arrested, and the measures applied, and shall be obliged to execute all orders of this public prosecutor without any delay. The other public officers shall also be obliged to supply the information and documents that are needed during an ongoing investigation to the requesting public prosecutor without any delay.

26. The public prosecutor shall be obliged to immediately act, within the framework of the powers and duties given to him/her by the law, upon a rumour or complaint in respect of commission of an offence, to conduct investigating procedures in order to reveal the merits of the incident, and if elements of a crime have been indeed constituted, he/she shall be also obliged to identify the perpetrator and to bring him/her before the law for a trial.

27. Accordingly, the public prosecutors have complied with the principles of independence and impartiality of the judiciary, and conducted or have being conducted diligently the investigations of which the members of the Saturday Mothers Group are the parties.

28. In this regard, the suspects, who had participated in the meeting held on 25 August 2018, were legitimately subjected to the judicial proceedings for the offence of acting in breach of the Law on Meetings and Demonstration Marches during the incidents. As mentioned above, the participants were released after submitted their statements and benefited from legal assistance.

29. Consequently, whereas Article 10 of the Law no. 2911 imposes an obligation of a prior notification to organise meetings and demonstration marches, it does not require a permission of any organisation or institution. The aim of the notification is, indeed, to protect public order and ensure security of individuals, especially the participants.