

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/18, 32/32, 34/5, 32/2 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the indefinite ban on public LGBTI-related gatherings or events by the Governor of Ankara.

Concerns at the lack of legal and policy protections for lesbian, gay, bisexual, transgender and intersex individuals in Turkey, in particular during the state of emergency, and exacerbating a generally threatening environment for expression related to sexual orientation and gender identity, were raised by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression following his official visit to Turkey in November 2017 (A/HRC/35/22/Add.3). In particular, the Special Rapporteur raised concerns that lesbian, gay, bisexual, transgender and intersex people have a pervasive fear of being targeted by the Government, a result of bans on their groups, targeting by pro-government media, lack of protection for lawyers and advocates, restrictions on their ability to hold marches or otherwise express their views and blocks on social media applications which are friendly to their situation.

According to the information received:

During the state of emergency in force between 21 July 2016 and July 2018, a number of emergency decrees and legislation were passed restricting the right to peaceful assembly, amongst other freedoms.

In this context, Ankara Governor banned a Lesbian, Gay, Bisexual and Transgender (LGBT) film festival on 15 November 2017, the day before it was due to start, citing "public safety" and "terrorism" risks. Four movies by German

directors were scheduled for screening as part of the festival, which was planned for 16-17 November 2017 in Ankara and was organized by the German Embassy, Pink Life QueerFest and Büyülü Fener Cinema Hall.

In a statement, Ankara's governor office noted that the festival's content "could incite grudges and enmity toward a part of society". The Governor's statement added that intelligence suggested that "terror organizations are seeking to attack dissident groups or individuals" and that the "screening could be provocative and draw reactions". Therefore, within the scope of taking necessary precautions so as to ensure the peace and security, the immunity of the person, the safety of the person concerned and the public welfare within the boundaries of the province under Article 11(c) of the Provincial Administration Law No. 5442, the governor of Ankara banned the film festival according to the article 17 of the Law on Meetings and Demonstrations March No. 2911 and according to article 11 (f) of the State of Emergency Law No. 2935.

Article 17 of Law 2911 states that a governor may postpone a particular meeting from being held for a period of not more than one month in order to protect national security, public order, crime prevention, general health, and public morals or the rights and freedoms of others, or ban the meeting from being held if there is a clear and immediate danger that criminal offenses will be committed. Article 11 of the Law on the State of Emergency provides that when there is a state of emergency, additional preventive measures enlisted in paragraphs a-p, may be taken to protect general security and public order and to prevent the spread of violence, including "inspecting, recording and, if deemed necessary, banning broadcasting and dissemination of words, writings, pictures, films, records, sound and image bands".

The organizers Pink Life Queerfest reacted by stating that this decision deprives LGBTI people of their constitutional rights and reminded that the duty of the Governorship is not to ban a festival but take necessary action to protect it. Michael Roth, Deputy Europe Minister in the German Foreign Ministry also criticized the decision via his Twitter account announcing the display of rainbow flags through embassy building as a response to the ban.

On 19 November 2017, the Governor of Ankara announced the decision to issue an indefinite ban on any public LGBTI-related gatherings or events, including film screenings, theatres, panels, conferences, and exhibitions in the province. Since then, with the exception of the Middle East Technical University student Pride march, which went ahead in May despite the ban, the visibility of the LGBTI communities and ability to exercise the right to peaceful assembly have been dramatically reduced.

In its reasoning, the Governor stated that public events held by LGBTI persons "may incite hatred and hostility in one group towards another social group, giving rise to dangerous situations in terms of public security; the protection of the rights

and freedoms of the groups and individuals who participate in the events might be jeopardized; and some social groups could react and cause provocations because of certain social sensitivities.”

The ban was adopted on the basis of Article 17 of the Law on Meetings and Demonstrations No. 2911 and Article 11(f) of the Law on State of Emergency No. 2935.

According to information at our disposal, the decision taken by the Governor of Ankara goes beyond what is authorised by the domestic law as neither law No. 2911 nor Law No. 2935 authorise the Governor of Ankara to ban indefinitely all public events. Law No. 2911 allows either the suspension of a particular meeting for not more than one month or a ban of a particular meeting if there is “a clear and immediate danger” that criminal offenses will be committed. Moreover, the preventive measures that can be taken by the administration in public emergencies mentioned in article 11 of the Law on State of Emergency is enlisted in an exhaustive manner and does not authorise the imposition of a blanket ban on any public events which are to be held in the future. Finally, the indefinite ban contradicts the Constitutional safeguards for the limitation of rights. According to the Turkish Constitution even the state of emergencies has temporal limits: they cannot be declared more than six months and cannot be extended more than four months each time (Art. 120 and 121 of the Constitution). Nevertheless, at the outset, the Governor of Ankara’s decision imposing an indefinite ban on assemblies goes beyond the temporal limits of the state of emergencies prescribed by the Turkish Constitution.

Since November 2017, no public events, irrespective of their content or form, could be held or planned by any LGBTI groups in Ankara, except the Pride March mentioned above. This prohibition has severely restricted the right of peaceful assembly and have deprived LGBTI groups of opportunities to disseminate information about their areas of work and to promote the human rights of LGBTI persons.

The state of emergency ended on 18 July 2018 but the Parliament enacted an anti-terrorism law on 23 July 2018 that retains numerous emergency provisions. This omnibus legislation incorporates a number of emergency-type restrictive measures into ordinary laws and severely restricts the rights to freedom of movement and assembly on public order grounds. One of the provisions relates to Article 11(c) of the Provincial Administration Law (No. 5442) which authorises provincial governors to take preventive measures for maintaining peace, security, right to physical integrity and the public order in provinces. According to information at our disposal, this legislation gives governors broad discretionary power to take restrictive measures, such as prohibiting persons from entering or leaving certain locations in their provinces for up to 15 days, preventing all movement or banning public assemblies at particular locations or times, if deemed necessary, to prevent crime, to protect public order and security.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern at the recent indefinite ban on public LGBTI-related gatherings or events in Ankara. We also express our concern that this ban takes place in a climate that has become increasingly restrictive for the expression of views deemed critical or dissenting.

We also express grave concern about the adoption of the anti-terrorism law on 23 July 2018 which incorporates a number of emergency-type restrictive measures and exceptional powers into ordinary laws, including broad discretionary powers to the Governors to limit or prohibit freedoms of movement and assembly, without providing the necessary guarantees of prior independent authorization and judicial review as well as any mechanism for their transparency and oversight. Furthermore, we are equally concerned about the impact of these measures on the enjoyment of the fundamental rights and freedoms, especially by minorities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain if Turkey is planning to implement its international human rights obligations and ensure that any restriction on fundamental freedoms is compliant with the principles of non-discrimination, legality, necessity and proportionality.
3. Please indicate what measures have been taken or are envisaged to ensure that LGBT people are not discriminated against on the basis of their sexual orientation or gender identity and to guarantee their legitimate right to freedom of expression and opinion, as well as their freedom of assembly and association.
4. Please provide details on the threats to participants or public order upon which ban on LGBTI-related public gatherings and events was based.
5. Please explain whether the Governor of Ankara envisaged other measures than the ban to protect organizers and participants to LGBTI-related events and gatherings and guarantee their effective enjoyment of their right to peaceful assembly and freedom of expression.

6. Please provide information about the omnibus law adopted by the Parliament on 23 July 2018 and other measures taken to revise counter terrorism and security related legislation that restricts or prohibits the legitimate exercise of the right to peaceful assembly and freedom of expression in line with international human rights standards, in particular with articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights; the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.
7. Please provide details about the measures taken by your Excellency's Government to ensure that the provisions of the law do not contribute to the normalization of exceptional and intrusive practices, which are allowed under international law only in case of emergency, provided that the proper procedure for derogation is followed.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, without expressing at this stage an opinion on the facts of the case, we would like to recall articles 2, 17, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is party since 23 September 2003. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Sexual orientation and gender identity are prohibited grounds of discrimination under international law. Under article 1 of the Universal Declaration of Human Rights, '[a]ll human beings are born free and equal in dignity and rights', and '[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status' (article 2 of the Declaration). The Human Rights Committee also found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3).

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

We would like to underscore that both regional and international human rights bodies affirm that the means open to the state to regulate terrorism by law are limited (*Klass and Others v. Germany*, 1978 para 49). Even as States engage in counter-terrorism, a necessary task when faced with serious threats to the nation, the methods and means of response must be legal, necessary and proportional and in the European human rights treaty context, subject to democratic control.

We would like to remind your Excellency's Government that any measure derogating from or limiting human rights obligations must meet strict criteria set out in international human rights law. More particularly, there is consistent jurisprudence from the European Court of Human Rights that affirms the need to use such powers in a proportional and necessary way. Human rights law and practice is clear that exceptional powers, in particular without any mechanism for their transparency and oversight, are not meant to be made permanent, and doing so places a grave burden on the full enjoyment of human rights by all citizens equally, and may undermine the very spirit of the rule of law.

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasized that States have obligations to, inter alia, protect rights to freedom of thought and expression, association and peaceful assembly without discrimination on the grounds of sexual orientation or gender identity. To that end, they should review and repeal discriminatory provisions in domestic legislation that have a disproportionate impact on the exercise of these rights by LGBT persons and others advocating for their rights. The High Commissioner for Human Rights has recommended that States repeal laws that impose discriminatory restrictions on freedom of expression, association and assembly and ensure that antidiscrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 18 and 79(b)(c)).

We would like to recall that, in a joint statement on free expression and association, UN and regional human rights experts stated that they “categorically reject arguments that such restrictions to the rights of LGBTI people are necessary to protect public morals, health or the well-being of vulnerable people.”¹ The right to peaceful assembly has been reaffirmed by a number of Human Rights Council resolutions as well, including resolutions 15/21, 21/16 and 24/5. Furthermore, in its resolution 24/5, the Human Rights Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote those rights. This has been reaffirmed in the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2014 (A/HRC/26/29, para 22).

While the right to freedom of peaceful assembly is not an absolute right under international human rights law, and it ‘can be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others’ (Human Rights Council resolution 15/21, OP 4); these restrictions should be the exception and not the rule.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights,

¹ Joint statement by UN Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and of association, right to health, and human rights defenders African Commission on Human and Peoples’ Rights, Special Rapporteur on Human Rights Defenders in Africa, Inter-American Commission on Human Rights and OSCE Representative on Freedom of the Media, “Free expression and association key to eliminating Homophobia and Transphobia” (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

ratified by Turkey on 23 September 2003, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We would like to draw the attention of your Excellency’s Government to Principle 3 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which provides that in time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a State may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government’s other obligations under international law.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1, 2, and 6 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring your Excellency’s Government’s attention to its article 17, which provides that in the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Moreover, in accordance with article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Turkey on 23 September 2003, everyone has the right to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, the right to take part encompasses the right to participate, access and contribute to cultural life. Participation covers in particular the right of everyone — alone, or in association with others or as a community — to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one’s own cultural practices and to express oneself in the language of one’s choice. Everyone also has the right to seek and develop cultural knowledge and expressions and to share them with others, as well as to

act creatively and take part in creative activity. Contribution to cultural life refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community (E/C.12/GC/21, paras. 14 and 15). This right is particularly important for academics, whose functions include the promotion of debate about issues of importance for society.