

## RESPONSE TO THE GOVERNMENT OBSERVATIONS

13/09/2019

### REFERENCE: UA TUR 6/2019

With reference to the Urgent Appeal dated 12 June 2019 and the Observations of the Government of Turkey (Government Observations hereafter), the International Advocacy for Human Rights in Geneva would like to present its response herewith:

1. This organization refrains from presenting volumes-long rebuttals to baseless accusations levelled against the Gülen movement by the Government and chooses to focus on the material case at hand, even though, there has been concrete evidence that the current Government has abandoned the fundamental safeguards of the rule of law and become repressive and totalitarian, and itself may be considered as an actual “threat to the democratic, secular and constitutional regime of Turkey” (§4 of the Government Observations).
2. The material case is about torturing of former diplomats under police custody. It should be noted that, in the absence of a final ruling from independent “courts”, detainees are only suspects, not “terrorists” or “cheaters”, notwithstanding the absurdity of such claims. Even if independent courts, non-existent in modern Turkey, found them guilty, the victims’ fundamental human rights are safeguarded with the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), the Constitution of Turkey and other relevant international and domestic norms. In other words, a “cheating terrorist” has the right to security of person and prevention of torture, let alone a suspect arbitrarily detained without any factual bases.
3. The Government fails to provide an adequate response to the second question of the Special Representatives on the factual and legal grounds of arrest. The Government Observations (§3) cites overarching accusations of obtaining questions for important official exams and placing its members in prominent schools and universities abroad without presenting any concrete evidence. It is particularly troubling to understand how would the Gülen movement place its members to respected institutions of higher education and how these members would graduate if they do not possess the necessary skills. The suspects were also questioned over an “expert assessment”, which lacks factual, logical and statistical coherence.

### **Introduction: The Prevalent Atmosphere of Fear in Turkey**

4. In the aftermath of the failed coup attempt on 15 July 2016, the Government initiated a widespread attack on all opposition including members of the parliament and other elected officials, suspended all constitutional and legal safeguards for individual liberties with declarations of state of emergency and derogations under the pretext of “immediate threats”, took the Supreme Council of Judges and Prosecutors (the HSYK) under its helm and used it to create an obedient and partisan judiciary by ways of suspensions, transfers and expulsions of judges and prosecutors and, dismissed, arrested and detained tens of thousands either groundlessly or with illegal evidence. The society as a whole were bombarded with, on one hand, unison propaganda and, on the other, threats of being branded a “Fetoist.”

5. Under these circumstances, it is impossible for torture, forceful abduction or kidnapping cases at home and abroad to be independently investigated. The Government has almost absolute control of the media, judiciary, law enforcement and other supposedly independent bodies of the executive.
6. For instance, a physician could be easily coerced into signing a “no battery” report with threats of dismissal from public service, which almost always entails no chances of finding employment in private sector. There is virtually no domestic remedy that could award just compensation for a falsely dismissed public servant. Dismissals could be easily followed with arbitrary arrests and detentions. It is therefore, almost impossible for a torture victim to be examined by an “independent” medical doctor within the meaning of the Istanbul Convention, even without law enforcement officers present.
7. To this date, former judges of the Constitutional Court as well as members of the parliament remain detained for years. In the absence of an independent and impartial judiciary, there is simply no effective remedy for individuals to assert their rights and prove their innocence, as the burden of proof falls to defendants in current legal system in Turkey.
8. On the other hand, the international bodies against torture and other forms of ill-treatment are far from offering swift and effective protection for victims. Even urgently communicating a serious and well-established torture claims to the Government and let alone offering some sort of protection to the victims by the international bodies takes much time. Basically, millions of disenfranchised were left at the mercy of the Government, in its campaign against all forms of opposition, the perceived Gulenists in particular.
9. Under these circumstances, it is crystal clear that victims of torture and other forms of ill-treatment would be hesitant and anxious to claim their rights before either domestic or international bodies. The victims as well as their family members, especially their wives, have been threatened. Their endeavours in claiming their rights could very well attract the wrath of a grim government, which deliberately and systematically employs torture as a means to extract “confessions.” The instant case should be assessed with the above facts in mind.

#### **Statement of the Facts**

10. According to the Ankara Bar Association’s Report (see, Annex), the facts of the current case are as follows.
11. More than hundred former diplomats were taken into custody over charges of membership to a terrorist organization and cheating in recruitment examinations on 20 May 2019.
12. Torture allegations were first publicized with Kocaeli Deputy Ömer Faruk Gergerlioğlu’s tweet on 26 May 2019: “There are allegations of torture in Ankara Directorate of Security.”<sup>1</sup>
13. On 27 May 2019, after receiving the same complaints, a delegation of lawyers from the Ankara Bar Association Prison Board, Human Rights Centre and Lawyers’ Rights Centre, visited the Ankara Police Headquarters. The delegation conducted

---

<sup>1</sup> <https://twitter.com/gergerliogluof/status/1132736930398068746?lang=en>

interviews and examined documents at the Financial Crimes Investigation Bureau (FCIB).

14. On 28 May 2019, the Ankara Bar Association published the “Report on the Allegations of Torture at the Financial Crimes Investigation Bureau of the Ankara Provincial Directorate General of Security.”<sup>2</sup>
15. According to this report, the delegation interviewed six reported victims of torture, while another three were released after they “benefitted” from “Active Remorse Law”.
16. According to concurring statements of six interviewees, they were taken to several extrajudicial “interviews” by police without their lawyers, subjected to pressure in the form of threats and insults to become “confessors”.
17. Five of the six interviewees stated that they were subjected to torture and ill-treatment outside these “interviews”. The other stated he was not subjected to torture but heard of such practices during custody extension hearings and correctly named torture victims.
18. According to concurring victim statements, they were taken to the ground floor of the FCIB and to a dark room marked “No Entrance”, through a narrow corridor. The accompanying officers then left the room and perpetrators of torture came in, pushed the victims against the wall, handcuffed and blindfolded them, made them kneel, dragged them around the floor, hit them with batons and threatened to rape them while moving batons around their bodies.
19. Afterwards, four were stripped totally or partially naked, brought to foetal position, batons were moved around their anal openings and they were threatened to move to the next stage unless they “confess.”
20. The victims stated that they did not recognize faces or voices of perpetrators, who, according to one victim account, claimed to be “outsiders, a professional team.”
21. Five victims told they were too concerned for their safety and well-being to tell the attending physician their ordeal in the company of police officers. However, one victim who suffered from bruises on his knees informed the physician of his condition, which was observed and photographed by the delegation of lawyers. The physician claimed to put his bruises in the medical report, however, a female officer accompanying the victim panicked and started texting. The victim was then taken outside the examination room and not shown the final report. The victim does not know the outcome of this report however, on the next day, the physician gave him a “no battery” report.
22. Once taken back to his ward, one victim was just able to say “There is torture!”, went to sleep, woke up, fainted on his way to bathroom, later fainted once again and were then unable to sleep for 48 hours.
23. Another victim clearly stated in a custody extension hearing that he was subjected to torture. After him, another victim present in the same courtroom said he was tortured too. The presiding criminal peace judge ignored their calls and told them to “tell these things to a doctor.”

---

<sup>2</sup> [http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?BASIN\\_ACIKLAMASI&=3099](http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI&=3099)

24. This Advocacy calls the Special Procedures to examine the translation of the full report<sup>3</sup>, a different translation of which is also attached herewith for ease of reference.
25. Afterwards, at least one suspects was remanded on a statement taken under torture, despite the suspect's declaration that the relevant statement was claimed to be taken under torture.

### **Responses to the Government Observations**

26. The Government cites "difficulty in obtaining evidence" as grounds for extended police custody (§9 of the Government Observations). According to relevant international conventions and domestic law, there must be "concrete evidence and factual findings leading up to a reasonable suspicion (strong suspicion according to Turkish law)" for an individual to be arrested. In other words, a significant body of evidence leading up to a strong suspicion a crime has been committed should have already been "obtained" before the arresting an individual. Therefore, "difficulty in obtaining evidence" could not serve as a basis for custody extension.
27. Moreover, given that four of the five investigations into Foreign Ministry recruitment exams are initiated in 2017 (§9 of the Government observations) and that in essence, these investigations have been based on "expert assessments" on writings of the suspects, which are rife with factual, logical and statistical errors and prepared with incrimination of victims in mind, there should be ample findings available for a criminal peace judge to immediately decide on the suspects' detention. The particularities of the case leave no room for custody extension on such grounds.
28. On a separate note, it is the Government's responsibility to bring suspects "promptly before a judge". A government who is capable of conducting simultaneous operations in 42 different cities and bringing suspects to Ankara should be able to expedite court hearings to timely decide on detention matters. In fact, suspects' custody was extended to allow for conducting extrajudicial "interviews" and torturing suspects to "obtain evidence".
29. The Government claims that none of the numerous medical reports drawn up find "any sign of physical harm in suspects' bodies." (§9 and §13 of the Government Observations). The Bar Report concurs with the Government Observations in the sense that there is no medical report indicating physical harm. Yet, it also adds that "As enshrined in the ECHR and other international conventions, the mere existence of a medical report does not prove that there actually was no torture or ill-treatment." In the material case, one of the victims told the attending physician he was subjected to torture and there were bruises on his knees, but the medical report that is supposed to contain these findings vanished. Neither the Bar delegation, nor the victim was able to locate this report and the victim was issued a "no battery report" on the following day. (see, the Bar Report (Annex) and § 20 of this submission). The medical examinations of the suspects were not undertaken in accordance with the Istanbul Protocol, as independence of physicians are under serious strain (see §5 of this submission) and also police officers were accompanying the suspects.

---

<sup>3</sup> <https://twitter.com/ankarabarasuihm?lang=en>

30. It should also be noted that the victims as well as their families face tremendous and real threats from the most clandestine authorities who act with total impunity. It is also clear that public officials who take part in torture investigations, namely judges, prosecutors, police officers and doctors (all jailed in thousands) do not enjoy protection from punitive government action (see, §5). Therefore, the inexistence of battery claims or reports does not refute the fact that there was torture but rather proves there are no effective remedies available that offer reasonable prospects of success to the victims in reclaiming their rights or determining violations against them. Additionally, the way the medical report indicating bruises on the knees disappeared demonstrates that acts of torture were systematic and deliberate as well as there has been a government effort to obfuscate them.
31. The Government falsely claims that the Bar Report reflects only victim statements and provides no tangible evidence (§12 and §15 of the Government Observations). The Bar Report states, in fact, that “bruises on the knees of one of the individuals were seen and photographed by the appointed team of lawyers.”
32. The Report goes on to declare that it is ready to submit the minutes and official records to the Ankara Chief Public Prosecutor’s Office and the Government actually states that the prosecution obtained all documents from the said lawyers (§16 of the Government Observations). Since these documents must contain photographic evidence of physical harm, it is obvious that the Government tries to conceal information and mislead the public on this case.
33. Moreover, the Bar Report contains assessments, which by definition, cannot be transmissions of victim statements. In one of these assessments, the Bar Association concludes that “Respective narratives of separate victims altogether verify that they were subjected to torture and ill-treatment in an elaborate way to ensure there was no physical evidence of battery or coercion.”
34. The Government underscores the fact that one of the interviewees declared that he was not subjected to torture (§14 of the Government Observations), only to go further to claim that the allegations were products of “FETO/PDY”’s disinformation activities (§13 of the Government Observations). A suspected victim’s statement that he was not tortured is a testament to the authenticity of the victims’ and witnesses’ concurring narrative, which were fully reflected in the Bar Report. A propaganda activity would necessitate repetition of the same exact story over and over again, just as the repeated Government observations against torture, abduction and arbitrary detention cases.
35. Furthermore, the Ankara Bar Association is one of the few remaining secular, independent and respected legal institutions in Turkey. The acts of torture were featured in the international media only after this Association published its findings and vowed to fight for eradicating torture and ill-treatment. It is simply unfathomable that such an association would be a propaganda tool to a disgraced social movement.
36. The Government observations mention two victims (§14 of the Government Observations), one of which (who is detained and as such, might be wary of repercussions of speaking out) declined to give a testimony without consulting his lawyer, while the other said police officers used foul mouth but not physical abuse. Nevertheless, the Bar Report refers to six victims they interviewed and another three released after they “benefitted” from the Active Remorse Law. Moreover,

there are other eyewitnesses, namely fellow suspects held in victims' wards, who were in fact victims themselves as well as first-hand witnesses to the trauma the victims had to endure. In addition, such serious crimes against humanity call for questioning the presiding judge who ignored victims' statements as well as the author of the vanished medical report. This foundation calls on the Government to first, take testimonies of all eyewitnesses, suspects (by act or omission) to torture as well as its obfuscation and release all victim/witness statements, instead of cherry-picking two in a desperate attempt to discredit well-established allegations of torture.

37. Moreover, "an extensive and meticulous" investigation (§16 of the Government Observations) would necessitate securing all raw CCTV footage of the wards, hallways leading to the wards and to the "dark room" the victims were taken as well as identification of police officers who took them there and other "*outsiders*", and members of a "*professional team*." CCTV footage of the medical examination rooms and of the courtrooms victims were brought to as well as the conduct of such examinations and hearings should be worthy of an "extensive and meticulous" investigation too. The prosecution's failure to collect such evidence suggests the investigation in question is, in fact, superficial.
38. The Government also claims that the prosecution "immediately" (§14 of the Government Observations) lodged an investigation. Such an "immediate" investigation into ongoing crimes against humanity would require instant action from prosecutors in securing evidence as well as, if possible, catch perpetrators *in flagrante delicto* to ensure swift delivery of justice and prevent further violations. Yet, such little effort by the prosecution was also too late. According to the Government Observations, the prosecution interviewed the lawyers on 11 June and a victim on 20 June 2019, some 15 to 22 days after the fact. It should be noted that the torture allegations were first voiced by Deputy Gergerlioglu on 26 May 2019. The Bar delegation visited the police headquarters on 27 May and published its report on 28 May 2019. The fact remains that, judging by the recent abduction and torture cases in Turkey, that the Government settles with a bogus investigation confined to taking statements from a couple of victims and witnesses, refrain from interrogating any of the suspects and impede the investigation in an effort to obfuscate government-sanctioned, deliberate and targeted crimes against humanity.
39. The Government falsely claims that in his testimony, one of the lawyers stated that "...the claims reflected in the report were not based on the attorneys' visual observations of the suspects..." (§14 of the Government Observations). This claim contradicts with the Bar Report, which explicitly declares that bruises on the knees of a victim "was personally seen and photographed by the visiting commission." It is impossible for the Bar Association to publish a report stating the said injuries were photographed, if the findings in the report were not based on attorneys' visual observations.
40. Lastly, the Government falsely claims that no complaints of torture or ill-treatment were lodged before the judicial authorities by the victims (§15 of the Government Observations). However, some victims reportedly obtained medical reports and submitted complaints against torture. This fact was concealed by the Government. Regardless, claims of torture could be *ex officio* investigated, as in this case, and there is no requirement of filing a complaint. The reasons for the victims' inaction

stems from several reasons. Firstly, several of them tried to express their ordeal, two before a judge, one before a doctor; yet, they were either ignored or the relevant medical report was concealed. Secondly, the victims were gathered in scores, taken into extrajudicial “interviews” and handed over to perpetrators of torture by the police, with whom their custodies rest. They were then tortured probably by an external team of “professionals”. Their attempts to disclose these violations were met with silent judges and physicians. The current picture is clear: The acts of torture have neither been solitary nor undertaken by lone-wolfs holding personal grudge. Rather, they are, as many similar cases before the Office, government-sanctioned, deliberate and systematic violations of basic human rights. There is simply no remedy with reasonable prospects of success for the victims to reclaim their rights, including the Investigation No: 2019/93760.

41. It should also be noted as a response to the Government’s repeated arguments that the claimants fail to provide any tangible evidence of torture, some victims unsuccessfully tried to raise this issue with a judge, while another with a physician. They had no further options as their custodies rested with the accomplices of this horrific crime, namely the police. The victims used two available avenues for them, court hearings and medical examinations, to no avail. The victims cannot obtain raw CCTV footage of the relevant places, interrogate suspects or tap phone calls, which fall to the responsibility of the Ankara Chief Public Prosecutor’s Office. The Government position entails torture could only be positively proved by witnessing the act itself, which rather dilutes investigations against torture. Under these circumstances, seeking further avenues to reclaim rights would only attract further wrath of the Government, which instigated and sanctioned these vile acts in the first place.

#### **On Turkey’s “Zero Tolerance Against Torture” Policy**

42. The Government goes to great lengths in describing what is in essence an unimplemented body of laws and regulations, just as many other provisions of the international and national norms in current Turkey. The security of tenure, independent and impartial tribunals, the presumption of innocence, liberty as a norm and detention as an exception to it and the burden of proof falling to prosecution, to name a few, are all safeguards enshrined in relevant national and international texts but not observed in Turkey. Moreover, tens of thousands of people have been arrested and detained on totally legal activities such as membership to unions and foundations, subscriptions to journals or newspapers and usage of certain applications. There are many provisions in place in relevant bodies of law, however, none is implemented.
43. While Zero Tolerance Against Torture may be effective to a degree in preventing solitary and personal cases of torture at the hands of some public officials, in the material case, as well as other similar cases, torture is government-sanctioned, deliberate and targeted. With judiciary under the helm of the executive, opposition silenced, international bodies inefficient and reticent, it is not possible to effectively investigate acts of torture sanctioned by the government, committed probably by intelligence agents, aided and abetted by the police, omitted by doctors and judges and obfuscated by the prosecutors. Utmost attention must be given that torture is a policy of the Turkish government, conducted in tandem by its different agencies. In fact, in the aftermath of the 15 July coup attempt, the Government did not even refrain from broadcasting tortured soldiers’ photos and videos on semi-

official Anatolian Agency (AA) and national media<sup>4</sup>, all the while categorically rejecting torture accusations.



(Levent Türkkan, Hürriyet, 21 July 2016)

### Conclusion

44. The statements, facts and findings presented above clearly indicate that some of the former diplomats taken into custody on 20 May 2019 were subjected to government-sanctioned, deliberate and targeted torture and ill-treatment. The probability of a genuine investigation being carried out by the Ankara Chief Public Prosecutor's Office is quite dim, as in previous similar cases. These facts are of utmost importance to examine the material case with due diligence.
45. The Government fails to provide adequate answers to questions raised by the special procedures, particularly to questions 2, 5 and 6.
46. Therefore, this Advocacy calls for a fact-finding mission under the auspices of the High Commissioner to secure all relevant evidence and findings in this case.
47. In line with the proposals found in the Bar Report, this Advocacy kindly requests;
  - To call for suspension and interrogation of all police officers working at the FCIB as suspects,
  - To determine the judge who ignored the victims' complaints of torture and call for legal proceedings on him,
  - To call for questioning of all detainees at the time as witnesses,
  - To secure all raw CCTV footage, authenticity of which to be determined by a credible third party, of the FCIB; the hospital that detainees were brought to for examinations and the court house that detainees were brought to for custody extension hearings,
  - To obtain, in full, all the statements/testimonies, evidence and reports present in the investigation file on torture to assess the nature and the diligence of the investigation,
  - To request the concrete evidences and factual findings leading up to a **strong** suspicion, as per Turkish law, that all 249 diplomats (of which, 129 were detained) cheated in Foreign Ministry recruitment exams,

---

<sup>4</sup> <https://www.youtube.com/watch?v=HbuQCBSUtAQ>

- To request from the Government a copy of the “expert assessments” which constitute the basis for the arrests in question,
- To request from the Government, elaborate and satisfactory answers to questions 2, 5 and 6 raised by the special procedures.

The International Association for Human Rights Advocacy in Geneva would welcome the opportunity to provide your offices with further information or to clarify any issues in relation to this communication.

Yours sincerely,

**Annex:** Translation of the Bar Report