



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

2020/62441669/31388062

The Permanent Mission of the Republic of Turkey 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 letter by the Special Rapporteurs, dated 11 May 2020 (Ref: AL TUR 6/2020), has the honour to enclose herewith an information note, comprising the response of the Government of the Republic of Turkey.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 11 June 2020



Encl. As stated

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

## **INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES DATED 11 MAY 2020 (AL TUR 6/2020)**

### **Observations regarding FETÖ terrorist organization**

On 15 July 2016, Turkey was faced with an unprecedentedly large-scale and brutal coup attempt perpetrated by the Fethullahist Terrorist Organization (FETÖ). FETÖ, a clandestine terrorist organization which insidiously infiltrated into critical government posts, attempted to destroy democracy, and take over the democratically elected Government on 15 July. Terrorist acts perpetrated by FETÖ on that night cost the lives of 251 Turkish citizens and injured over 2000. Several key institutions representing the will of the Turkish people, first and foremost the Parliament, were heavily assaulted.

In order to restore the Turkish democracy and protect the rights and freedoms of the Turkish citizens, structures into which FETÖ infiltrated thousands of its members for decades within all branches of government as well the military and the judiciary needed to be completely rooted out. State of Emergency (SoE) was declared shortly after the attempted coup, which was endorsed by the Turkish Parliament on 21 July 2016.

Throughout the SoE, Turkey acted in line with its international human rights obligations while maintaining its close cooperation and dialogue with international organizations including the United Nations and the Council of Europe. SoE was terminated on 19 July 2018.

Effective domestic legal remedies, including the right to lodge an individual application before the Constitutional Court, which is recognized by the European Court of Human Rights (ECtHR) as an effective domestic remedy, are available in Turkey. In addition to existing domestic remedies, Inquiry Commission on State of Emergency Measures was established with a view to receiving applications regarding administrative acts carried out pursuant to Decree Laws enacted during the SoE. Further remedies are available against the decisions of the Commission. The ECtHR recognized the Commission as a domestic remedy. Furthermore, an application can be lodged before the ECtHR after the exhaustion of domestic remedies.

Even before the attempted coup, FETÖ was known to employ complex strategies to advance its agenda. These included blackmailing politicians and bureaucrats, cheating on a mass-scale in public exams in order to place its members in key government posts, practicing social engineering, manipulation and indoctrination, presenting fabricated stories to spark off judicial proceedings against its opponents through its extensive network of media outlets, businesses, schools and NGOs.

FETÖ is now employing the strategy of presenting itself as the victim of human rights violations to hide its crimes. Its members deliberately try to deceive and manipulate international public opinion by spreading false allegations against Turkey. These include unfounded claims of arbitrary arrest and detention, torture and even enforced disappearances while its members go in hiding at the orders of their leader. In fact, it is FETÖ itself that perpetrated grave human rights violations in Turkey, including cold bloodedly killing innocent civilians thus violating the very fundamental right to life of hundreds of Turkish citizens.

In line with the explanations provided above, Turkey requests the Special Procedures not to allow FETÖ and its members to abuse these mechanisms and to dismiss their allegations.

Turkey will continue to expand human rights and freedoms and maintain its long-standing cooperation with international organizations.

### **Specific observations regarding arbitrary detention allegations in the joint communication**

Independence and impartiality of the judiciary are main principles of Turkish democracy. Each decision is issued by independent and impartial courts where the right of defense is applied without any hindrance. The Constitution sets the principles of independence of the judges and the security of tenure of judges and public prosecutors.

The grounds needed to justify a detention are explicitly mentioned in Article 100 of the Code of Criminal Procedure. A judge can issue a detention decision only if the specific circumstances meet the conditions foreseen with the aforementioned article. In fact, if there are concrete evidence that tend to show the existence of a strong suspicion of crime and ground for arrest, an arrest warrant against the suspect or accused may be rendered. The law requires that there shall be no arrest warrant rendered if arrest is not proportionate to the importance of the case, expected punishment or security measure.

The Turkish criminal law considers that detention decision should be taken in exceptional situations and therefore stipulates strict conditions and procedures in order to apply it. Besides, Turkish judicial system has set mechanisms to control the lawfulness of detention decisions such as the review of the detention by the relevant judge no more than every thirty days, the possibility to object to a detention decision and the right to lodge an individual application before the Constitutional Court, recognized by the ECtHR as an effective domestic remedy.

The strict conditions for issuing a detention decision together with the possibility to review this decision at several levels are precluding risks of arbitrary deprivation of liberty. Turkish legislation provides sufficient legal safeguards enabling detainees to challenge decisions depriving them of liberty. They could apply for release at any stage of the investigation or the trial and an objection can be lodged against any decisions rejecting such applications. The question of a suspect's detention is automatically reviewed at regular intervals not exceeding thirty days.

According to the ECtHR, in the Turkish legal system, anyone in pretrial detention may apply for release at any stage of the proceedings, may lodge an objection if the application is rejected and a suspect's detention is automatically reviewed at regular intervals not exceeding thirty days. Also bearing in mind the Constitutional Court's caseload following the declaration of a SoE, the ECtHR notes that this exceptional situation does not lead to a breach of Article 5 § 4 of the ECHR related to the right to liberty and security (application no. 13237/17, 20 March 2018).

Turkish judicial system has a strong set of mechanisms against arbitrary detention, protecting the right to liberty and security. Even during the State of Emergency, Turkey adhered to these laws and principles as stipulated by the aforementioned ECtHR judgment.

The Government also wishes to underscore that the communication does not provide any identity information regarding so-called victims of allegations of arbitrary detention. It is therefore impossible to investigate accurately those cases without any concrete data. The Government urges the Special Rapporteurs to refrain from conveying communications without specific identity information.