



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Concluding observations on the fourth periodic  
report of Turkey**

Addendum

**Information received from Turkey on follow-up to  
the concluding observations\***

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\* The present document is being issued without formal editing.

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## **Initial comments by Turkey on some of the Concluding Observations of the Committee against Torture**

### **I. In respect of the Concluding Observations of the Committee against Torture the State party takes note of the positive aspects as well as the concerns and recommendations provided therein within the context of consideration of the periodic report of Turkey**

1. Turkey will sustain its full cooperation with the Committee and take its comments and recommendations into consideration with a genuine commitment to combating all forms of torture and other cruel, inhuman or degrading treatment or punishment.
2. In that regard, Turkey will continue to duly prepare its periodic reports, taking into account the points raised in the concluding observations (CAT/C/TUR/CO/4) and respond in more detail to the concerns and recommendations in line with the schedule foreseen for in the adoption of the concluding observations.
3. Taking this opportunity, the State party would like to provide preliminary information on the follow up of the concluding observations, including the recent legislation on the establishment of the Law Enforcement Monitoring Commission.
4. On the other hand, notwithstanding detailed information provided by the national delegation during the interactive dialogue with the Committee, the State party regrets that some of the comments and recommendations draw from unfounded allegations.
5. In this regard, the State party considers it necessary to reiterate the overall framework that necessitated counter-terrorism operations to take place in the South Eastern Anatolia Region as well as the measures taken due to intensive terrorist attacks of the PKK terrorist organization.
6. On a different note, following the terrorist coup attempt of 15 July 2016, the State party would like to inform the Committee of the severe threats posed against the existence of the nation as well as of the ensuing measures taken thereafter to protect the constitutional order which guarantees the principle of the rule of law and the fundamental rights and freedoms of the citizens.
7. Finally, the State party has also the honour to present updated information on a number of cases asked by the Committee members during and after the interactive dialogue.

### **II. Legal and institutional framework**

8. With reference to article 10 (e) of the concluding observations whereby the Committee urges the State party to “*establish an independent authority tasked with investigating complaints against law enforcement officers that is independent of the police hierarchy*”, the State party is pleased to inform that **the Law on the Establishment of the Law Enforcement Monitoring Commission has been published in the Official Gazette on 20 May 2016**. The Law has thereby entered into force, with the exception of its Article 7 on the establishment of a central registry system that will enter into force one year later, following the adoption of regulatory framework by the Council of Ministers.
9. The Law aims at rendering the functioning of law enforcement complaint system more effective and swift, as well as enhancing its transparency and credibility. With the

Law Enforcement Monitoring Commission, allegations of crimes that have been committed by law enforcement officers (from the Turkish National Police, the Gendarmerie, and the Turkish Coast Guard Command), or any act, attitude or behaviour which call for administrative disciplinary measure with respect to those officers shall be documented into a central registry system and be duly followed up (Article 1). Violations that are linked to the military duties of the Gendarmerie, and the Turkish Coast Guard Command personnel are beyond the scope of the Law (Article 1/3).

10. The Commission shall function as a permanent Board within the Ministry of Interior. The Law stipulates necessary funding to be allocated annually to the budget of the Ministry for the functioning of and requirements by the Commission (Article 5/2).

11. In addition to the mandates linked to disciplinary investigations, the Law specifies additional mandates for the Commission, including preparation of annual reports that would be submitted to the Human Rights Inquiry Commission of the Turkish Grand National Assembly as well as the Prime Ministry; monitoring the implementation of law enforcement ethical guidelines; making public surveys in order to assess public confidence in the law enforcement monitoring system, making recommendations for the training Programmes of the law enforcement units. Moreover, the Commission is tasked with devising statistics from data available in the central registry system, establishing a data-base in that regard, analysing the available data and making recommendations on the implementation and with a view to determining strategies.

12. The Commission will start functioning pursuant to adoption of necessary By-Laws. Preparatory work on the secondary regulative framework is in progress.

13. In light of the foregoing, the State party believes that the recommendation of the Committee has been duly fulfilled.

14. On the other hand, it shall be recalled that the Law on the Turkish National Human Rights Institution entered into force in June 2012 and the process of establishing the Turkish Human Rights Institution, in compliance with the UN Paris Principles, was initiated. By this Law, the Institution has been vested with a broad mandate as carrying out activities to protect and promote human rights; reviewing and investigating petitions and applications on allegations of human rights violations, and following-up their outcomes; carrying out research activities, in order to monitor and evaluate the developments taking place in the area of human rights; submitting opinions and recommendations; conducting activities for awareness-raising and training.

15. The Institution has also been designated as the “National Preventive Mechanism” on 28 January 2014, in order to perform tasks under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

16. Within the framework of ongoing work on increasing the efficiency of a number of institutions, including the Human Rights Institution of Turkey, as well as enhancing compliance with the international protection mechanisms for fundamental rights and freedoms in legislation and practice, the founding law of the Institution has been revised so that it includes the duties of anti-discrimination and equality. As a result, in addition to the existing mandates of “National Human Rights Institution” and “National Preventive Mechanism”, “Anti-discrimination” duties have been assigned to the Human Rights Institution of Turkey. Thereby, the Law on the Human Rights and Equality Institution of Turkey has been enacted by the Parliament and entered into force on 20 April 2016.

17. Accordingly, the Institution will continue to function as the National Preventive Mechanism under OPCAT and take effective action against torture, and other cruel, inhuman or degrading treatment or punishment, while at the same time fulfil duties with

respect to protecting and promoting human rights and ensuring equal treatment and non-discrimination.

### **III. Terrorist attacks by the PKK terrorist organization and counter terrorism operations**

18. With reference to the statements of the national delegation during the interactive dialogue the State party reiterates that while dealing with terrorism, utmost attention is paid for the protection of fundamental rights and freedoms, whereas impartial and effective investigations are undertaken into all allegations raised in connection with the counter-terrorism operations.

19. On the other hand, the State party believes that for a better assessment of the context of the fight against terrorism as well as the enforcement of counter-terrorism legislation, the actions of the PKK and the ensuing terrorist attacks carried out in Turkey from July 2015 onwards must be given due consideration and particularly taken into account by the Committee.

20. To begin with, PKK is a terrorist organization, listed as such by numerous countries and international organizations, including the EU and NATO. Since its inception in 1984, more than 40 thousand people lost their lives because of PKK terrorism. In that respect, the State party deeply regrets the absence of any indication that PKK is a terrorist organization in the concluding observations document (CAT/C/TUR/CO/4, paras. 11, 13).

21. In that respect, the State party rejects and deplores in the strongest terms the wording devised at the concluding observations document which wrongfully tries to depict the ongoing legitimate counter-terrorism operations against a notorious terrorist organization as “*resurgence of violence between the Turkish security forces and the Kurdistan Workers’ Party*” (para. 11). The State party further deplores wordings such as “*clashes between security forces and members of armed groups*” (para. 13) which raises serious concern that the Committee has surpassed its mandate in trying to draw false analogies concerning the ongoing counter-terrorism operations that in no way fit the situation on the ground in Turkey.

22. As from 20 July 2015, the number of the terrorist attacks has significantly increased in Turkey. On 13 August 2015, PKK declared so-called “autonomous administrations” in a number of cities and towns (Silopi, Cizre, Nusaybin and Şırnak). By declaring so-called “autonomous administrations” in certain settlements located in Turkey’s southeast, PKK tried to intimidate and coerce the local population and to disrupt the maintenance of public security in the residential centers. PKK’s senior figures called the citizens of Kurdish origin and particularly the youngsters in Turkey to start uprisings forcefully and violently.

23. In this context, illegal actions and violent attacks of the terrorist organization were intensified in the district centers such as Silopi, Cizre, Sur and Yüksekova in which they stockpiled explosives. Prior to the operations of the security forces, hundreds of ditches had been dug, barricades had been constructed, explosives had been trapped in the mentioned district centers by the terrorist organization which wanted to cut off citizens’ access to public services and limited their fundamental rights and freedoms.

24. PKK has killed many teachers, damaged buildings of schools, clinics and hospitals in order to hinder education and health services.

25. Heinous terrorist attacks perpetrated by the terrorist organization PKK in an intensive manner have claimed the lives of many civilians throughout Turkey.

26. The terrorist organization also tried to involve the civilians in its illegal activities by distributing arms to certain people through intimidation and force, supposedly assigning various responsibilities to specified persons including duties of vigils. This tactic of involving the civilians in the illegal acts is used by many terrorist organizations around the world, including DAESH.

27. In addition, PKK terrorist organization has been using civilians (especially children) as human shields against law enforcement units and has seized residents' houses by force of arms.

28. The circumstances fomented by PKK affected the living conditions of the citizens in the mentioned settlements negatively. Thus the governors' offices in the region requested help for protecting the lives and security of citizens and for maintaining the public order in line with the Prime Minister Office Directive and Article 11/D of the Code on Provincial Administration (Law No. 5442).

29. Under these conditions, restoration of the public order, removal of the barriers, closing of the ditches, defusing of the explosives that were planted in the barriers, ditches, roads and buildings and fully ensuring the safety of life and the property of the public have been compelling requirements.

30. Accordingly, intervention by the security forces by way of comprehensive operations has become compulsory. Thus the security forces have carried out counter terrorist operations, in order to stop all these terror acts as well as to restore public order and to protect civilians whose fundamental rights have been severely infringed by the terrorist acts.

31. Within the context of counter terrorism operations:

- Utmost attention has been paid for the protection of human rights;
- Great sensitivity has been shown to differentiate terrorists from civilians;
- Multi-dimensional and comprehensive measures have been taken by high-tech equipped security forces in order to prevent any civilian casualties;
- All possible precautions have been taken to prevent civilian losses due to explosives planted by PKK terrorist organization.

32. Throughout the operations all emergency needs of the citizens are met. Rapid and safe evacuation of those who wished to leave the region has been ensured by the civil authorities from the beginning of the counter-terrorism operations.

**Concerning curfews it should be underlined that:**

- The decisions on curfews are taken by the local administrative authorities in accordance with the necessities of the exigencies;
- Such decisions are taken in accordance with the national legislation and in observance of the international obligations;
- Curfews are thus declared for a limited period of time, when necessary and to protect civilians;
- During curfews, individuals have access to all essential public services. 155 "Police Emergency Line" is operational to call ambulances or ask for food;
- Certain number of bakeries, markets and pharmacies in the district centers are kept open in order to supply the needs of the citizens who continue to reside in the region;
- Packages of daily needs containing food, milk and diapers are distributed;

- Provision of electricity and water services to the citizens continue without disruption as before the operations.

33. Detailed information on specific measures to ensure continuous access to health-care services (CAT/C/TUR/CO/4, para. 14-c) is presented in Annex-I. With further reference to para. (14-c) of the concluding observations, it should further be underlined that as is the case for any allegation on human rights violations, judicial remedies exist at the national level for those claims with respect to counter-terrorism operations. In addition to the right to individual application to the Constitutional Court (ECtHR), Turkey also recognizes right to individual application to the European Court of Human Rights after exhausting domestic remedies.

34. Curfew orders are regularly reviewed by the relevant administrative authorities. Furthermore, judicial review by administrative courts, regional administrative courts, the Constitutional Court and the European Court of Human Rights (ECtHR) further substantiates the legal grounds of these orders. In this context, a number of persons and institutions have filed objections with regional administrative courts against curfew orders by the relevant administrative authorities. These objections were examined in detail by the courts and were rejected. Moreover, individual applications were also made to the Constitutional Court with a request of interim measure. Following judicial examination, the Constitutional Court found that the curfew orders were lawful and thus rejected these interim measure requests.

35. For instance, in one of the applications which had been made to the Constitutional Court allegations were raised that the curfew imposed in Yüksekova violated the applicant's right to life, prohibition of torture and ill-treatment, right to liberty and security of the person and right to travel, as the applicant, residing in Şemdinli, had no access to healthcare services. In a landmark decision (dated 5 April 2016), the Constitutional Court rejected the interim measure request, noting the following: "*The Constitutional Court shall, under Article 73 of the Rules of Procedure, examine injunction requests in case the alleged interference could pose a real and serious risk 'to the life or physical or mental integrity' of the applicant. As it has been understood from the information and documents contained in the case-file that the applicant was both able to access healthcare services and that this opportunity would be offered to him by the authorities once he requested so, the request for an injunction, the conditions for which have not emerged, should be dismissed.*"

36. In that regard, the State Party would also like to inform the Committee that the Constitutional Court of Turkey refused individual applications made for the lifting of curfews. The Constitutional Court ordered that curfews are in compliance with the national law.

37. A number of applications were also lodged with the ECtHR requesting interim measures in order to; (i) lift curfews imposed in certain cities in Turkey in the Southeast Anatolia Region, and (ii) take necessary measures to protect lives and physical integrity of applicants or their relatives. Following its deliberations, ECtHR rejected the requests for curfews to be lifted. In applications which included allegations of physical injury or danger to life, the ECtHR asked the Turkish Government to take necessary measures. The Government immediately put them in process and the Court eventually decided to lift the interim measures. As of 4 November 2016 there is no pending interim measure ordered by the Court against Turkey.

38. By all means, the Turkish judicial system takes guidance from the articles of the relevant international agreements, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but also the European Convention on Human Rights, as well as the case law of the European Court of Human Rights, compulsory jurisdiction of which was recognized by Turkey in 1990.

39. In light of the above, Turkey clearly conducts its struggle against terrorism in accordance with national legislation, international conventions to which Turkey is a party and ECtHR case law.

40. On the other hand, it should be mentioned that the allegation that the families of the deceased are denied to retrieve the bodies of their relatives is baseless (CAT/C/TUR/CO/4, para. 13). On the contrary, necessary precautions have been taken by the relevant authorities so that the relatives of the deceased can retrieve the bodies (CAT/C/TUR/CO/4, para. 14-b). However, in a number of cases, it has been observed that the terrorist organization PKK, using the local population as “live shields”, prevented such access. Moreover, cases of deliberate negligence by the local municipalities that are in charge of burial procedures have been witnessed, which have later been used as part of PKK propaganda.

41. Finally, the Committee should be informed that there exists a domestic remedy mechanism for victims of terrorism to obtain compensation from the state. In order to remedy the losses of citizens who suffer as a result of terrorism and counter terrorism activities in a speedy, efficient and fair manner, “the Law on Compensating Losses Due to Terrorism and Counter-Terrorism” became effective in 2004. Within the framework of this law, losses from death, injury and disability, damaged real estate and assets, adversely affected agricultural and animal breeding activities, as well as losses suffered by our citizens who had to migrate because of terror and therefore cannot access their assets shall be compensated. In this respect, exploratory work is in progress in order to determine the overall damage caused by PKK that have exploded several buildings and facilities, as well as those damages that occurred during the defusing/removal of the explosives which were planted by PKK in the barriers, ditches, roads and buildings. Throughout 2016, approximately 57 million USD has already been paid in order to compensate the losses of the people affected by terrorism. Between 2004 and October 2016, compensations were paid for 203,269 applications, with a total amount of 3,6 billion TL (approximately 1,16 billion USD).

#### **IV. Information on the specific cases brought before the Committee**

42. The State party reiterates that all claims of violation have been duly investigated by the relevant administrative authorities and the judiciary, in accordance with the articles 94, 95 and 96 of the Turkish Criminal Code as well as the relevant articles of the Disciplinary Regulations for the National Security personnel. Legal remedies are available within the judicial system, including the right to individual application to the Constitutional Court.

43. Moreover, as mentioned earlier, allegations of crimes that have been committed by law enforcement officers will also be followed up via the newly established Law Enforcement Monitoring Commission.

44. It should also be noted that specific cases brought before the Committee and which have been communicated to the State party during or after the interactive dialogue, have also been duly investigated by the relevant authorities.

45. In that respect, the State party strongly rejects unsubstantiated allegations on “extrajudicial killings.”

46. On the allegations concerning Maşallah Edin and Zeynep Taşkın (CAT/C/TUR/CO/4, Para. 14-a), Ministry of the Interior affirmed that no administrative proceedings were initiated by the relatives of the aforementioned.

47. Meanwhile, judicial investigations have been launched by Chief Public Prosecutor's Office of Cizre with a view to determining the perpetrator(s) of the acts of killing of Maşallah Edin and Zeynep Taşkın. The investigations continue meticulously.

48. In addition, the State party would like to note that Chief Public Prosecutor's Office of Cizre have launched six more investigation cases upon allegations of torture, ill-treatment and abuse by the security officials. The work on these cases continues as well.

49. On the other hand, with reference to allegations concerning army conscripts, (CAT/C/TUR/CO/4, paras 47 & 48) the State party would like to note that military prosecution offices and courts are independent and impartial judicial authorities which have been established by the Constitution of the Republic of Turkey, where military prosecutors and judges having tenure guarantees take office. In addition to regular legal remedies (objection and appeal), applications can be filed with the Constitutional Court and subsequently with the ECtHR against the decisions rendered by military courts and prosecutors. Investigations by military prosecutor's offices into the death of military persons are carried out in an independent, impartial and effective manner. The effective participation of the relatives of the deceased and the relevant parties to the investigation is ensured. The decisions taken as a result of the investigations are communicated to the persons who suffered damages as a result of the incident/crime. Since 3 February 2015, thanks to an article appended to the Internal Service Law of the Turkish Armed Forces, in the event of a military person's death in a military field, office or institution, in the performance of duties or while in the place of duty, the fees of the attorney who would be chosen by the legal inheritors of the deceased military person to represent them during the investigation and prosecution, shall be covered by the State. It is obligatory for the attorney to be present during the prosecution duties of crime scene investigation, examination of the dead body, autopsy and hearing of the witnesses and experts. On 3 February 2015, an instruction letter was sent by the Ministry of Defence to all military prosecutor's offices. Moreover, with a view to preventing the shortcomings that may arise in implementation, the Supreme Council of Judges and Prosecutors, Union of Turkish Bar Associations, and the Ministry of Justice have been informed in writing. On 8 April 2016, a regulation was put in force concerning payments to be made to lawyers who will be assigned as legal representatives.

50. Upon the examination of all pending investigations as well as the files of soldiers who died from 2012 to 2015, no concrete evidence has been found to sustain the claim that there exists "*204 cases in which soldiers allegedly died in barracks as the result of abuse by fellow conscripts.*" It is seen that these allegations consist of broad, abstract, unfair and biased statements and that they lack the necessary details that would lead the authorities to further investigation.

51. Once provided with further concrete information, the State party stands ready to further investigate any act, action or attitude that might have resulted in violation of the Convention on a case by case basis, with a view to preventing, prohibiting and eradicating all practices of this nature, given that concrete information on such acts are provided.

52. As for the allegations concerning journalists and human rights defenders, the State party reiterates that freedom of expression and media constitutes an important pillar of human rights policies for Turkey. It is a fundamental freedom guaranteed under the Constitution (Article 26) and relevant legislation. Turkey has an active, vibrant and a pluralistic media community enjoying all rights and privileges enshrined in the national legislation as well as the international conventions to which Turkey is a party. In the same token, in line with its strong commitment to further promote and strengthen human rights and democracy, the Government regards human rights defenders as an essential element of a vibrant civil society and spares no effort to create favourable conditions for their effective functioning. To this effect steps taken within the framework of the comprehensive reform

process being conducted in Turkey approximately for the last 15 years -detailed information on which was provided by the national delegation during the consideration of the periodic report- have been also conducive for the work of the human rights defenders.

53. On the other hand, the State party rejects the allegations that journalists and human rights defenders were being detained or prosecuted as a means of intimidation. In line with the principle of the rule of law, which is one of the fundamental constitutional tenets of the Republic, judicial proceedings are initiated for those acts committed in violation of the national legislation and proceedings continue in accordance with the principles of independence of the judiciary, supremacy of the law, as well as the international obligations.

54. That being the case, it is seen that allegations on “imprisoned journalists” have been occasionally brought up by some NGOs. In this respect, the State party would like to underline that cases which involve journalists as/among the suspects of an ongoing judicial investigation, are being initiated in accordance with the articles of the Penal Code and other relevant legislation. Thus, judicial investigations against journalists are not due to their journalistic work but due to their acts/offenses that are criminalized under the Penal Code, which often include very serious crimes such as membership or support to armed terrorist organizations.

## **V. The terrorist coup attempt of 15 July 2016 and measures taken thereafter**

55. The Government takes note of the comments and opinions stated in the letter of the Chairperson of the Committee against Torture dated 31 August 2016 and has the honour to transmit its comments herewith concerning issues raised therein, as well as those in relation to the Concluding Observations as announced on 2 June 2016 (CAT/C/TUR/CO/4).

56. On the other hand the State party would have expected that the Committee expressed its firmest condemnation of the coup attempt — in the first place — and acknowledged the need to act swiftly and decisively against the crimes committed by the coup plotters, which amount to massive human right violations.

57. The Committee makes reference to certain allegations raised in the aftermath of the terrorist coup attempt of 15 July 2016 and requests information on the implementation of certain measures taken in this respect. The State party believes that in order to better assess the scope and the necessity of measures taken in Turkey pursuant to 15th of July, that the severity of the threat posed by the terrorist coup attempt must be given due consideration and particularly taken into account by the Committee.

### **The terrorist coup attempt of 15th July 2016**

(a) On the night of 15 July the Republic of Turkey faced an armed terrorist coup attempt.

58. On the night of 15 July, upon the instruction of the founder and leader of the Fetullahist Terrorist Organization/the Parallel State Structure (“FETÖ/PDY”), Fetullah Gülen, and in line with the plan approved by him, “terrorists in uniforms” within the Turkish Armed Forces attempted an armed coup against the democracy for the purpose of overthrowing the democratically elected government together with the President and the constitutional order in Turkey.

59. The Presidential Compound, the hotel where the President of the Republic was staying at, the Turkish Grand National Assembly (“TGNA”), the Police Special Operations Centre and the security units, the premises of the National Intelligence Organization and

various military units were attacked with bombs and arms. The President of the Republic survived the assassination attempt by leaving the lieu by 15 minutes before the raid on that hotel. The coup plotters also opened fire on the convoy of the Prime Minister.

(b) The Turkish Grand National Assembly building, representing the core democratic values, was bombed for the first time in the history of the Republic of Turkey.

60. The bomb attack by jet fighter aircraft (F-16) was made in the course of the extraordinary meeting of the Plenary Session against the coup attempt. During the attack, Parliament officials, some civilians and many police officers were injured, and extensive damage was caused to the Parliament building.

(c) Terrorist coup plotters massacred the civilians who bravely took to the streets and stood against them.

61. On the night of 15 July, tanks ran over the civilians and some of them died and were injured as a result of being trapped under the tanks. Fighter aircrafts made low altitude flights over the cities by breaking through the sound barrier and in a manner which would lead to fear and panic in the public. The TGNA and people were shot randomly by the coup plotters, snipers directly targeted people from strategic points, the crowd was bombed and shot from aircrafts and the civilians, who defended the democratic regime at the cost of their lives, were murdered. In the course of the coup attempt, 246 persons were killed and more than 2000 were injured.

(d) Press/media establishments were raided.

62. The terrorists seized the state-run television ("TRT") and forced a newsreader to read a faux declaration stating that the democratic regime was taken over. Raids were also made to private media and press organizations, and the free media was tried to be silenced. The coup plotters also attacked satellite control centers in order to cut off TV broadcasting all around the country, except for the state-run TV channel.

(e) The democratic resolve of Turkish people together with the state has saved the democratic regime against this terrorist campaign.

63. The Turkish people from all walks of life and regardless of their political affiliations united on the streets on the night of 15th July. Putting all the political and ideological differences aside, they peacefully gathered and jointly defended common democratic values and bravely stood against tanks, helicopters and aircrafts with only national flags in their hands.

(f) The coup attempt has been uniformly condemned by all.

64. The unity and solidarity among the nation on the night of 15 July continued among the political parties as well. All political parties represented at the Parliament signed a joint statement against the coup attempt. Representatives of the media, academia, business circles and all other segments of Turkish society uniformly condemned the coup attempt.

(g) This democratic spirit continues even after the coup attempt was foiled.

65. Even after 15th July, Turkish citizens continued to gather regularly at the main squares in each and every city in Turkey to show their unity and support for the Turkish democracy, for approximately one month.

66. This spirit was crowned with the historic meeting in İstanbul on the 7th of August where 5 million people came together. They were joined by the President, the Prime Minister and the leaders of opposition parties.

## Measures taken pursuant to the terrorist coup attempt

### State of Emergency

67. The terrorist coup plotters attempted to overthrow the constitutional order and thus threatened rights and fundamental freedoms of our people. In order to completely eliminate this severe threat and danger posed against the survival of our nation and state Turkish state has assumed its right and the duty to take all the necessary measures.

68. In order to fight effectively against the FETÖ/PDY terrorist organization, horrors of which are clearly manifested on 15th July, the Council of Ministers of Turkey decided on 20 July 2016 that a nationwide state of emergency to be declared as from July 21st for a period of ninety days, pursuant to Article 120 of the Constitution and Article 3 § 1 (b) of the Law on the State of Emergency (Law no. 2935).

69. The Council of Ministers took this decision in its meeting under the chairmanship of the President of the Republic and in view of the recommendation dated 20 July 2016 of the National Security Council. The decision was endorsed by the Parliament on 21 July 2016.

70. The purpose of the State of Emergency is to take required measures in the most speedy and effective manner in the fight against FETÖ/PDY terrorist organization.

71. Subsequently, the Council of Ministers decided to extend the State of Emergency for a period of three (3) months as from 19 October, with a view to ensuring continuity of the effective implementation of measures for the protection of Turkish democracy, the principle of the rule of law, as well as the rights and freedoms of the citizens.

### The right of derogation from the obligations in ECHR and the ICCPR

72. Concurrently, Turkey resorted to the right of derogation from the obligations in the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). In this respect, the notifications of derogation from Convention obligations were submitted to the Council of Europe in accordance with Article 15 of the ECHR and to the Secretariat of the United Nations in accordance with Article 4 of the ICCPR, concerning the rights permitted by the Conventions.

73. In its letter, the Committee *notes with concern the declaration of (Turkish) Government expressing its intention to take measures which may involve derogation of its obligations under a number of articles ICCPR including article 10 of the Covenant (not subject to derogation)*.

74. Reiterating that notifications of derogation from ICCPR has been made in accordance with Article 4 of the Convention, the State party takes note of the specific comments of the Committee on article 10 of the ICCPR and further underlines that the Republic of Turkey is fully aware of its obligations under international conventions and acts in full respect for democracy, human rights, the principle of rule of law in this process and as always, due respect is shown to fundamental rights and freedoms and the principle of rule of law is strictly observed.

75. Indeed, similar to Article 15 of the Convention and to Article 4 of the ICCPR, Article 15 of the Turkish Constitution clearly regulates how the administration must act in such situations. Pursuant to the regulations in question, the principles of “necessity” and “proportionality” have been sensitively complied with as regards the measures taken under the state of emergency in the aftermath of the coup attempt. Moreover, the right to life and the prohibition of torture and ill-treatment, are among the non-derogable articles within the scope of the ECHR and the ICCPR.

76. The State Party would also like to underline that while taking the measures under Article 15 of the ECHR, the States parties naturally continue to be subject to the supervision of the European Court of Human Rights: *“Even under such circumstances, the Court subjects the rights other than the non-derogatory rights to a special guarantee regime.”*

77. Against such backdrop, the State party stresses that the measures that may be resorted by Turkey in necessary circumstances, will certainly be in line with the principle of proportionality laid down in the ECtHR case-law and compatible with its adherence to the rule of law.

#### **Decree Laws Issued During the State of Emergency**

78. A Decree with Force of Law (Decree Law) is a legal measure permissible in the context of State of Emergency in Turkey. So far, a number of Decrees have been published in the Official Gazette on 23 July, 27 July, 31 July, 16 August, 1 September, and 29 October 2016 respectively (No. 667, 668, 669, 670, 671, 672, 673, 674, 675, and 676).

79. By the Decree Laws issued within the scope of the state of emergency, measures have been taken in proportion to the present situation that the administrative authorities are faced with and to the extent absolutely necessitated by the situation.

80. Turkey has been fighting against the FETÖ/PDY, which is an atypical armed terrorist organisation and which is scarcely encountered in the world, unlike PKK or DAESH.

81. All measures are required to be taken with a view to averting the organisation’s strength within the state. Therefore, the scope of the Decree Laws issued in this respect has been limited to the terrorist organisations in order not to interfere with the rights and freedoms of others.

#### **Suspension/Dismissals of Public Servants**

82. In a democratic society, public officials are liable to display loyalty to the constitutional principles that are foundation of a State. In this respect, for public institutions, states seek for the criterion of displaying high loyalty to the constitutional principles during the process of being accepted for the office and throughout the duty. In cases where it is in any way established that public officials do not fulfil this criterion, the State has discretionary power to terminate the public service rendered by such persons.

83. FETÖ/PDY is a terrorist network that has infiltrated into state organs for years for the purpose of taking over the legitimate democratic regime and the constitutional order, as revealed by the terrorist coup attempt of 15th July. It is known for some time that FETÖ/PDY members have insidiously infiltrated into all public institutions and formed a parallel structure. The FETÖ/PDY members undertook significant duties within the public bureaucracy and acted together through the cell-type groups they established among themselves and conducted public acts and actions in line with the aims of the terrorist organization. These officials conveyed confidential information to the FETÖ/PDY and breached their duty of loyalty to the State. For these reasons, the FETÖ/PDY members within the public institutions pose a great threat for the preservation of the rule of law, democracy, human rights as well as national security and public order.

84. Within this framework, following the coup attempt of 15th July, the Decrees allow that public officials who are established/found to be members of or affiliated to or in connection with the terrorist organizations be dismissed from public service.

85. Accordingly, those considered to be a member of or have affiliation or connection with the FETÖ/PDY and other terrorist organizations were suspended from office, and

investigations were initiated in respect of such persons. At the end of the investigations, public officials who were proven to have connection with the terrorist organizations were dismissed from their offices by virtue of the Decree Laws.

86. In the process of dismissals within the scope of Decree Laws, the cases are being individually examined and decisions on dismissals are being individually rendered for each officer as a result of comprehensive researches and evaluations.

87. On the other hand, contrary to some allegations, review mechanisms exist for the decisions of suspension/dismissal and reinstatements have also begun.

88. Boards have been established at the office of Prime Minister and the Offices of Governors across Turkey for the people “who believe they have been wrongfully suspected” in the anti-FETÖ probes. The relevant units continue reviewing individual complaints. Reinstatements have also begun very recently in certain cases.

89. For those dismissed directly via Decrees, same method is upheld for reinstatement. With the latest Decree Law dated 29 October, 35 civil servants and 39 soldiers who had been previously dismissed have been reinstated to their duties.

90. Thus, be it through Board decisions or through Decrees, decisions of dismissals can be revoked.

#### **Dismissal of Members of the Judiciary**

91. In its letter dated 31 August 2016, the Committee “*expresses concern at the Emergency Decree No. 667 which reportedly allows permanent discharges of judges as well as prosecutors and civil servants without possibility of legally challenging it.*”

92. The High Council of Judges and Prosecutors (“HCJP”) is a constitutional body, mandate of which covers the independence of courts and tenure of judges and prosecutors.

93. According to the Decree-Law no. 667, HCJP shall determine as to whether the judges and prosecutors considered to be members of or affiliated to or in connection with the terrorist organizations would continue performing their profession or not and decide on their dismissals.

94. Within the scope of investigation initiated *ex officio* by Ankara Chief Public Prosecutor’s Office under Article 161/6 of the Code of Criminal Procedure and also the decisions of custody, the judges and prosecutors who were determined (upon the investigation being conducted for a long time) to be members of the FETÖ/PDY, and the relevant judges and prosecutors were suspended (pursuant to Article 77 of the Law no. 2802 on Judges and Public Prosecutors) in order not to harm the reputation, reliability and persuasiveness of the judiciary.

95. Following the entry into force of the Decree Law no. 667, the judges and prosecutors whose membership of, affiliation to or connection with the FETÖ/PDY had been determined, were dismissed from the profession by the Plenary Assembly of the HCJP.

96. In its decisions, which have been publicly shared on 24 August, 31 August and 4 October 2016, HCJP gave comprehensive explanations on

- The aims and goals of the FETÖ/PDY;
- The attempt to establish a “parallel state structure” within public institutions;
- The way FETÖ/PDY is organized; illegal and hierarchical structure of the terrorist organization and its information network;
- Ways of communication between FETÖ members;

- Ways of exerting pressure on people who are not members of the organization;
- Indoctrination methods;
- Financial structure;
- Illegal acts of the judiciary branch of FETÖ/PDY (including illegal wiretappings rendered in respect of politicians, eminent persons, high level bureaucrats and artists; fabricating false evidence in the investigations for the Ergenekon and Sledgehammer cases, as well as other publicly renown cases initiated thereafter, and so on).

97. In the reasoning of its decisions, HCJP pointed that FETÖ/PDY has infiltrated into almost all public institutions; that the coup attempt of 15th July turned the “potential threat” stemming from the existence of such a structure in public institutions into a real one and thus necessitated extraordinary measures to be taken for the sake of preserving the constitutional order.

98. HCJP also underlined that decisions for dismissals of the members of the judiciary were taken with a view to ensuring the credibility of the judiciary and protecting the existing judicial investigations from any possible influence of FETÖ members.

99. On the other hand, the members of judiciary who were dismissed from the profession will be able to request reassessment before the General Assembly of the High Council of Judges and Prosecutors. Upon individual complaints, cases will be reconsidered by the HCJP. Reinstatements have also begun with respect to judges and prosecutors.

100. Against such backdrop and contrary to what has been alleged by some NGOs, it is clear that decisions for dismissals of some members of the judiciary actually aims at ensuring the independence of the judiciary.

101. Finally, it should also be noted that both judicial and administrative investigations against the public officials who are members of the FETÖ/PDY is not a novelty introduced with the Decree Laws but has been ongoing for a long time. Within the scope of the criminal actions brought in the context of the investigations initiated throughout the country prior to the terrorist coup attempt of 15 July, proceedings are still pending against both Gülen, the leader of the FETÖ/PDY, and the organization members for various offences, notably establishing and leading an armed terrorist organization. Moreover, there are currently criminal proceedings filed against the members of the FETÖ/PDY in Istanbul, Bursa and Ankara.

102. The judicial process is in progress and proceedings are being carried out in accordance with the national legislation and in observance of the international obligations.

103. It should also be underlined that the rule of law, democracy and human rights are the fundamental principles of the Republic of Turkey and all the measures, including those under the State of Emergency, are taken accordingly. None of the measures taken within the framework of the State of Emergency decriminalizes torture and ill-treatment nor do they provide impunity for possible perpetrators. As required by the “zero tolerance policy against torture”, the judicial and administrative authorities continue to duly examine each and every allegation of torture and ill-treatment and take the necessary actions in respect of those responsible.

#### **With respect to some allegations raised by the NGOs**

104. On the other hand, with reference to some NGO reports that have also been pointed to by the Committee in its letter dated 31 August 2016, the State party would like to inform the Committee that such allegations have been replied through press releases by the relevant authorities on different occasions. *Inter alia*,

- Joint Press Release of the Ministry of Justice and the Ministry of Interior dated 31 October 2016;
- Press Release of the Ministry of Justice dated 27 July 2016 which include comprehensive information on national preventive mechanisms, conditions of detention and custody as well as details on some alleged cases are presented at Annex II to III respectively.

105. In this regard, the relevant Turkish authorities underline that they give due consideration to relevant NGO reports regarding torture and other cruel, inhuman or degrading treatment claims while continuing to work at the national level by various mechanisms for the effective monitoring of allegations on all forms of torture or ill treatment. These mechanisms include but not limited to, the chief public prosecutors or public prosecutors that are assigned to inspect the detention places where the persons taken into custody; civil inspectors who monitor police stations and detention places; the monitoring boards of penitentiary institutions and prisons; the Ombudsman Institution; the Human Rights and Equality Institution of Turkey; the Human Rights Inquiry Committee of the TNGA; and the newly established Law-Enforcement Monitoring Commission that will ensure further efficiency and transparency for the law enforcement complaint system with a central recording system.

106. Furthermore, the State party continues to install video surveillance in all areas of custody facilities where detainees may be present (CAT/C/TUR/CO/4, para. 20). Currently, detention places in the 1.203 Police Stations countrywide (out of 1.268) as well as a total of 303 detention places linked to the Public Security Branch Offices at the 81 provinces have surveillance camera and imaging systems. Moreover, instalment of surveillance camera systems has been completed in 1.946 out of 2.012 detention places within the jurisdiction of Gendarmerie General Command.

107. In addition to all the existing monitoring mechanisms, a new unit has been established within the Ministry of Justice to specifically follow up the allegations raised in the media with regard to torture and ill-treatment in detention houses and prisons pursuant to the terrorist coup attempt of 15th July. The said unit shall meticulously follow up all kinds of news and comments raised in the media, refer them to the competent authorities to ensure them to be swiftly examined and share the results of the examinations with the public.

108. Moreover, constructive cooperation with relevant international mechanisms besides the Committee Against Torture has continued. In this respect, the State party would like to inform the Committee that pursuant to the terrorist coup attempt of 15th July, Turkish authorities hosted a delegation of the European Committee for Prevention of Torture (CPT) from 29 August through 6 September 2016. Also, the UN Special Rapporteur on Torture Nils Melzer's visit is expected to take place before the end of the year 2016.

109. Concerning allegations of violation, the Committee should be informed that the Ministry of Interior have commissioned one (1) Chief Inspector and one (1) Police Inspector to investigate allegations of ill-treatment for some soldiers taken under custody on the night of 17 July 2016 at the Çengelköy (Istanbul) Police Station. The investigation is in progress.

110. On the other hand, it is also of relevance to note that three (3) applications with requests for interim measures lodged with the European Court of Human Rights have been communicated to the Government. The applicants, who were detained on remand following 15th July terrorist coup attempt and who are still in prisons, requested interim measures to be taken with the allegations that they have been subjected to ill-treatment and their right to life is under risk. Relying on information and documents submitted by the Government, the Court rejected all three requests for interim measure.

111. Proudly being party to 15 of the 18 UN Human Rights Conventions and Protocols and being among the 159 parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since August 1988 and being among 82 parties to OPCAT since September 2011, the Government stresses its adherence to UN system of Human Rights and reiterates its determination to take effective legislative, administrative, judicial and other measures to prevent acts of torture and other forms of treatment, as defined in the Conventions.

112. It should be recalled that “zero tolerance policy against torture” of the Turkish Government has been continuously and decisively implemented well over a decade, preventing all forms of torture and other cruel, inhuman or degrading treatment or punishment.

113. Furthermore, regarding the fact that the statute of limitations has been fully abolished in Turkey with regard to the offence of torture, the State party emphasizes that effective judicial investigations will continue to address any cases or allegations that involve acts in breach of the Convention.

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