



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3668/2019\*, \*\*

<i>Communication submitted by:</i>	E.A. (represented by counsel, Elçin Meriç)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Türkiye
<i>Date of communication:</i>	22 October 2019 (initial submission)
<i>Document reference:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 November 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	7 November 2024
<i>Subject matter:</i>	Arrest, detention, trial and conviction for alleged affiliation with Fetullah Terrorist Organization (Hizmet/Gülen movement)
<i>Procedural issues:</i>	Same matter – another procedure of international investigation or settlement; substantiation of claims
<i>Substantive issues:</i>	Arbitrary/unlawful detention; criminal charges; criminal conviction; criminal offence; criminal procedure; cruel, inhuman or degrading treatment or punishment; defence – adequate time and facilities; discrimination; fair trial; freedom of assembly; freedom of association; freedom of expression; freedom of religion; minorities – right to enjoy own culture; national security; <i>ne bis in idem</i> ; right to life; security of person
<i>Articles of the Covenant:</i>	6, 7, 9, 10, 14, 15, 18, 19, 21, 22, 25, 26 and 27
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (a)

1. The author of the communication is E.A., a national of Türkiye born in 1972. She asserts that the State party has violated her rights under articles 6, 7, 9, 10, 14, 15, 18, 19, 21,

\* Adopted by the Committee at its 142nd session (14 October–7 November 2024).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



22, 25, 26 and 27 of the Covenant. The Optional Protocol entered into force for the State party on 24 February 2007. She is represented by counsel.

### **Factual background**

2.1 Following a failed coup d'état attempt on 15 July 2016, the Government of Türkiye designated the Hizmet/Gülen movement as a terrorist organization (Fethullah Terrorist Organization) and accused its members of having organized and attempted the coup d'état. On 16 July 2016, the Government began arresting and detaining judges, prosecutors, lawyers, journalists, businesspersons, academics, human rights defenders, civil servants and teachers. It accused them of being members of the Fethullah Terrorist Organization, but none of them had connections to the organization. On 20 July 2016, the Government declared a state of emergency, derogated from the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Covenant and adopted a series of decrees with the force of law. It interfered extensively with the human rights of individuals suspected to be associated with the plotters of the coup attempt or the Fethullah Terrorist Organization. There is a growing consensus that the rule of law in Türkiye has been suspended under the state of emergency and that the courts are controlled by the President, who abuses the criminal justice system to persecute perceived political opponents. Since the introduction of the state of emergency, more than 150,000 individuals have been taken into custody and over 130,000 civil servants have been dismissed from employment under decree laws.

2.2 The author is a housewife. She has type 1 diabetes and her blood glucose level is elevated and unstable. On 17 May 2017, she was taken into custody and was detained in a custodial prison for eight days. During that period, she fell into a diabetic coma and was taken to the hospital, where she stayed for two days. Thereafter, she was taken back to a custodial prison.

2.3 On 24 May 2017, the author was charged with depositing money in Bank Asya and of downloading the application ByLock. She was formally arrested and was taken to Manisa E-type Closed Prison. Since her arrest, the author has often fallen ill and has been taken to the hospital several times. Over the course of her detention, she has lost 10 kg and has been detained in an unsanitary and overcrowded ward, resulting in the deterioration of her health.

2.4 On 26 April 2018, the Manisa Heavy Penal Court sentenced the author to imprisonment of seven years and six months. On an unspecified date, she filed an appeal to the Court of Cassation. As at 22 October 2019, the appeal remained pending.

2.5 On 17 December 2018, the author filed a complaint to the Constitutional Court. As at 22 October 2019, it remained pending.

2.6 In April 2019, the author's lawyers submitted three petitions to Penal Department No. 16 of the Supreme Court, the General Directorate of Prisons and Detention Houses, and Manisa E-type Closed Prison, respectively. In the petitions, they requested that the author be taken to a medical centre to be examined.

2.7 On 19 July 2019, the author's lawyers submitted two additional petitions to the General Directorate of Prisons and Detention Houses and to Manisa E-type Closed Prison, reiterating the above request.

2.8 On 1 August 2019, the author's lawyers filed a petition to Penal Department No. 16 of the Supreme Court, requesting her release from prison owing to her serious health problems.

2.9 The author did not receive a response to any of the petitions.

2.10 The author states that, as at 23 August 2019, she is in the detention ward at Yesilyurt State Hospital in Izmir, while otherwise being subject to imprisonment at Manisa E-type Closed Prison.<sup>1</sup> While the Manisa State Hospital Medical Board stated in a report of

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<sup>1</sup> The author provided a translation of a medical document indicating that she had been in the hospital for two days on unspecified dates and had been treated for type 1 diabetes. She also provided a translation of a report of the Medical Board of Manisa State Hospital, dated 15 August 2019, in which

15 August 2019 that the author could remain in prison, only two doctors had examined her, while nine doctors signed the report. That demonstrates the sloppy nature of the examination and report.

2.11 The author's ability to exhaust domestic remedies has been hampered by significant restrictions on her access to justice. There is no effective domestic remedy for similar cases in Türkiye. The European Court of Human Rights and various other international bodies have found that domestic remedies in Türkiye are ineffective and that the courts lack independence.<sup>2</sup> In addition to being ineffective, the proceedings before the Constitutional Court concerning the author are likely to be unreasonably prolonged. More than 100,000 cases are currently pending before the Constitutional Court, while it examines a maximum of 20,000 cases per year. Moreover, the domestic courts are ineffective because of gross and systematic violations of human rights in Türkiye. Almost one third of judges and prosecutors have been dismissed on the basis of presumed links to the Fethullah Terrorist Organization and 2,386 judges and prosecutors have been detained on the same grounds.

### Complaint

3.1 The author submits that the State party has violated her rights under articles 6, 7, 9, 10, 14, 15, 18, 19, 21, 22, 25, 26 and 27 of the Covenant. She was not involved in the attempted coup d'état. She is in ill health and requests to be released from prison.

3.2 In violation of her rights under articles 6, 7 and 10 of the Covenant, the author has been detained and imprisoned although she suffers from type 1 diabetes, has lost 10 kg, has frequently fallen ill and been taken to the hospital and has been detained in an unsanitary and overcrowded ward in prison with no access to medical care. She is currently in a hospital in Izmir. Her inability to have access to healthcare and her continued detention causes her unbearable pain. Her condition is deteriorating each day. She has not been given her usual medication and has no access to appropriate or sufficient food. She also has no access to hot water when needed. The poor conditions and malnutrition adversely affect the author's blood glucose level. The author also faced inhuman and degrading treatment when she was subjected to medical examinations in a detention ward that was not hygienic and in the presence of prison and police officers. The State party is callously toying with the lives of prisoners by denying them adequate medical care and placing them at grave risk of death, permanent disability or other irreparable harm to their health. In many cases, that practice is intended to extract forced confessions or statements of repentance. In 2018, another alleged affiliate of the Fethullah Terrorist Organization was arrested and died in prison eight days later after reportedly being deprived of required medication for systemic lupus erythematosus. In 2018, another alleged affiliate of the Fethullah Terrorist Organization died in pretrial detention, reportedly because she was deprived of required medication to treat pneumonitis. The conditions of detention in Manisa E-type Closed Prison are very poor. The number of inmates exceeds the capacity of the prison.

3.3 In violation of article 9 of the Covenant, the author was held in custody without charge for the unreasonably prolonged period of eight days and was brought before a judge only on the eighth day. At that time, no solid evidence was presented against her. The warrant for her arrest and detention did not contain any specific justification. All of the evidence referred to by the authorities was circumstantial and factually incorrect. She was not brought promptly before a judge. She reportedly had to sign a document in which she indicated that she had been given enough time and a proper environment to meet with her lawyer and had provided her testimony of her own free will. She had not, however, been given enough time to read the charging document. She has been imprisoned without any legal basis. Arrests in Türkiye are often based on the mere existence of the ByLock application on an individual's mobile phone. The evidence presented against those charged is often ambiguous. Tens of thousands

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it was stated that she had type 1 diabetes, had partially recovered from depression with treatment, could remain in prison in her then state, there was no danger to her life and her sentence did not have to be postponed.

<sup>2</sup> See, for example, European Court of Human Rights, *Demirtaş v. Türkiye* (No. 2), Application No. 14305/17, Judgment, 22 December 2020.

of civil servants have been dismissed from employment for using that application, in violation of the principle of legality.

3.4 In violation of article 14 of the Covenant, the author did not benefit from a fair trial, since she was not given the time and opportunity to prepare her defence or call and examine witnesses and she did not have access to her case file. She was not adequately informed of and could not effectively challenge the charges against her. She was also forced to confess guilt. In addition, the trial court did not provide sufficient and relevant reasons for convicting her.

3.5 In violation of article 15 of the Covenant, the author was charged with using and downloading the ByLock application and having a bank account with Bank Asya, neither of which was defined as a crime or prohibited by domestic law. Thus, the principle of legality was breached.

3.6 In violation of articles 18 and 19 of the Covenant, the author was charged with downloading an application, which was a protected activity. Moreover, she had not downloaded or used the application.

3.7 In violation of articles 21, 22, 25, 26 and 27 of the Covenant, the author was accused of having a bank account at Bank Asya, a lawful organization. That activity was protected and lawful.

3.8 In addition to release from prison, the author requests the State party to effectively and independently investigate her allegations of torture and ill-treatment, implement sufficient safeguards to prevent recurrence of the violations, implement broader legislative or institutional changes or training for government officials, provide adequate compensation to the author and her family and issue a public apology.

3.9 The author states that she has not submitted the same matter for examination to another body.

#### **State party's observations on admissibility and the merits**

4.1 In its observations of 20 July 2020, the State party provides background information on the attempted coup d'état, the ensuing state of emergency, which ended on 19 July 2018, and the decree laws that the State party adopted to address the emergency.<sup>3</sup>

4.2 The State party considers that the author's claims under articles 9, 10 and 14 of the Covenant are inadmissible because they fall within the scope of the derogation made by the State party on 21 July 2016, under article 4 of the Covenant. In its derogation, the State party declared that, as a consequence of the state of emergency, measures taken could involve derogations from obligations under articles 2 (3), 9 and 10, 12–14, 17, 19, 21, 22 and 25–27 of the Covenant, as permissible under article 4 of the Covenant. In accordance with article 4 of the Covenant, the decree laws issued and measures taken after the declaration of the state of emergency were taken only to the extent that they were strictly required by the exigencies of the situation and proportionate to the temporary crisis faced by the authorities.

4.3 The communication is also inadmissible because the author did not exhaust domestic remedies. At the time of submission, she had pending claims before the Court of Cassation and the Constitutional Court. She admits that she did not exhaust domestic remedies. Contrary to her argument, domestic remedies, including the Constitutional Court, are not ineffective. The Constitutional Court decided on 35,375 individual applications in 2018 and 39,469 in 2019, demonstrating that it is able to decide swiftly on a large number of individual applications. Mere doubts about the effectiveness of domestic remedies do not absolve the author from exhausting them.

4.4 The author could have requested but did not request interim measures from the Constitutional Court in relation to her claims that she faces a risk to life and was denied treatment and required medication. In her applications to the Constitutional Court, dated

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<sup>3</sup> See *Özçelik et al. v. Türkiye* (CCPR/C/125/D/2980/2017), paras. 4.2 and 4.3.

17 December 2018 and 4 December 2019, the author did not advance any of those allegations under articles 6, 7 or 10 of the Covenant and did not request interim measures.

4.5 In addition, the author could have filed but did not file an action for compensation under article 141 of the Code of Criminal Procedure in relation to her claims of arbitrary arrest and detention.

4.6 The communication is also inadmissible under articles 2 and 3 of the Optional Protocol and is without merit because it constitutes an abuse of the right of submission and is insufficiently substantiated.

4.7 Regarding her health, the author received proper examinations and required treatment on numerous occasions and without any impediments. The conditions of her detention and the health services provided have been compatible with her state of health. On 26 May 2017, when she was admitted to a penitentiary institution, the author stated that she had been suffering from diabetes for 13 years and from thyroid issues for four years before her transfer to the prison, and that information was recorded in her medical report upon her admission. Between 26 July 2017 and 4 December 2019, the author was referred to the infirmary of the prison and was examined 98 times in relation to an iron deficiency, high blood pressure, diabetes, cystitis, gastritis, vitamin deficiency, tinea and allergies. The medications prescribed by her doctor were delivered to her.

4.8 Between 16 June 2017 and 4 December 2019, the author was referred a total of 28 times to the Manisa Merkez Efendi State Hospital, where she received outpatient services from the departments of emergency medicine, internal medicine, nephrology, endocrinology, urology and gynaecology. She was examined and treated for diabetes, urinary tract infection, dermatitis and ovarian cysts. The medication prescribed by her doctor was delivered to her in person.

4.9 Between 11 December 2017 and 7 August 2018, the author was referred eight times to the endocrinology outpatient clinic of Manisa Celal Bayar University Hafsa Sultan Hospital for examinations and controls regarding her diabetes. She was examined and treated and the medication prescribed by her doctor was delivered to her.

4.10 On different dates, the author was also examined at the infirmary of the institution and at Manisa Merkez Efendi State Hospital. Owing to a lack of detention wards in Manisa City Hospital and Manisa Merkez Efendi State Hospital, on 3 July 2019, the author was referred to an internal disease clinic at a different hospital to receive treatment for diabetes. On 18 July 2019, she was again referred to same hospital for an examination and tests. She was then hospitalized and returned to the penitentiary institution on 5 August 2019.

4.11 Contrary to the author's allegations, she did not fall into a diabetic coma during her stay at the penitentiary institution and faced no risks to her life. Her chronic illnesses, medical concerns and health status are being followed regularly.<sup>4</sup> Under domestic law, if the execution of a prison sentence presents an absolute danger to the life of a convicted individual, the execution shall be postponed until the individual is cured. On 24 July 2019, the author requested such postponement and the related proceedings were terminated on 15 August 2019, when Manisa Merkez Efendi State Hospital reported that, according to the results of examinations carried out, the execution of the prison sentence would not pose a danger to the author's life that would require postponement of its execution. The author's allegations of Covenant violations in relation to her health are therefore baseless.

4.12 Temporary overcrowding following the attempted coup d'état was quickly resolved through various measures taken by the authorities. The ward in which the author is held currently holds 23 individuals. The author benefits from all rights in the penitentiary institution, including food, bed, bath, phone calls, health services and basic supplies from the canteen. The rooms in the institution comply with the relevant standards.

4.13 The author was informed of her legal rights, the arrest warrant and the reasons for her arrest at the time of her arrest. Following her arrest, a relative of her choice was informed and she was granted access to a lawyer. When her statement was taken, she was informed of

<sup>4</sup> The State party provides a copy of the author's medical records and prescribed medications.

the charges and was questioned in the presence of a lawyer. Her continued detention was reviewed ex officio by a magistrate each month. Each objection filed against her detention was thoroughly reviewed. The Ankara Fourth Magistrate Judgeship ordered her detention on the grounds that it was proportionate to the importance of the charge and the potential sentence to be imposed and that there was a strong risk that the author would abscond, a risk that could not be addressed by judicial control provisions. The author was represented by several lawyers throughout the proceedings, from the time of her arrest. She was able to challenge her detention, have access to and examine the indictment and present evidence in her own favour. She was also able to appeal her conviction to higher courts.

4.14 Before her statement was taken, the author, represented by a lawyer, was informed of the offences with which she was being charged and was notified of the grounds for the suspicion that she had committed those offences. A restriction on her access to the contents of her file was removed when the indictment was approved by the court. That restriction had been implemented in compliance with the Code of Criminal Procedure. The independence and impartiality of the judiciary are main principles of the State party's judicial system. The author was charged with a criminal offence that was clearly specified in the law and the organization in question had been identified as a terrorist organization by the relevant authorities. The ByLock application had been developed for intra-organizational confidential communication among members of the Fethullah Terrorist Organization and access to the application was not allowed to the public as from a certain date. It was established that the author had connected to the application 42 times through her cellular phone number. Her correspondence through the application was included in the evidence against her. It was also established that she had deposited a certain amount of currency to Bank Asya on 12 September 2014 and had purchased foreign currency on that date, following the instruction of the leader of the terrorist organization. In its reasoned judgment of 24 April 2017, the Sixteenth Criminal Chamber of the Court of Cassation concluded that there existed concrete evidence proving that the ByLock application was a network programmed for the use of the members of the Fethullah Terrorist Organization and was used exclusively by the members of that organization.<sup>5</sup>

#### **Author's comments on the State party's observations on admissibility and the merits**

5.1 In her comments of 31 August 2023, the author asserts that the state of emergency declared in 2016 following the attempted coup d'état was not necessary and that the State party abused its authority under the state of emergency to violate the rights of large numbers of individuals for political purposes.

5.2 In 2019, after the author submitted the communication, the Court of Cassation upheld her conviction. In addition, on 20 November 2020, the Constitutional Court declared her first application of 17 December 2018 inadmissible.

5.3 The author did not file a request for compensation under article 141 of the Code of Criminal Procedure because her primary objective was not to obtain financial compensation but rather to be released from detention and to ensure the cessation of the violation of her rights. She remained in prison for a long time. She was exposed to many violations in prison and during the trial. She is not a lawyer and cannot be expected to know domestic legislation in detail.

5.4 With regard to the author's health, the information provided by the State party may be correct but it does not affect the validity of the author's claims. The fact that she was frequently hospitalized demonstrates that her life was in danger and that she should have been released. The State party did not respond to the claims in her communication regarding the failure of the authorities to respond to her petitions.

5.5 The State party's claim that the author's detention was reviewed each month is incorrect. Neither the author nor her lawyer could attend the hearings in which the reviews of her detention were held. They could not present her defence effectively and could not set forth evidence. The courts denied her objections to her arrest and detention without examining her arguments and on the basis of insufficient and irrelevant findings. The author

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<sup>5</sup> The State party provides detailed information about that finding.

reiterates that she did not benefit from an equality of arms during the criminal proceedings, that the courts were biased, that she is not a member of an armed terrorist organization and did not download or use the ByLock application and that having an account with Bank Asya was lawful.

5.6 With respect to articles 2, 26 and 27 of the Covenant, the State party declared war on the Hizmet/Gülen movement in 2013 and has initiated unlawful, discriminatory practices that amount to genocide against members of the movement and other opponents. The number of victims of the practices is estimated to be between 600,000 and several million. The author faced discrimination because the State party treated her as a member of the Hizmet/Gülen movement.

### **State party's additional observations**

6. In its additional observations of 4 December 2023, the State party considers that certain of the author's claims are inadmissible under article 2 of the Optional Protocol because they are *actio popularis* in nature. The State party provides additional information about the state of emergency declared in 2016, the Court of Cassation and the Constitutional Court and the independence and impartiality of judicial bodies. The author's claims regarding a lack of access to her file are not sufficiently specific. She does not explain which violation she allegedly suffered following a restriction on access to her file. The author's statements regarding her membership in the Fethullah Terrorist Organization are incorrect and are aimed at misleading the Committee. The domestic courts are undoubtedly in a better position than the human rights mechanisms to assess evidence relating to criminal acts. The author's allegations under articles 2, 26 and 27 of the Covenant are also *actio popularis* in nature and her claim that the State party has discriminated and committed genocide against members of the Fethullah Terrorist Organization is absurd, misplaced and blatantly implausible.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 Under article 5 (2) (a) of the Optional Protocol and the State party's reservation to that provision, the Committee is precluded from examining a matter that is being examined or has been examined under another procedure of international investigation or settlement. The Committee recalls that "the same matter" under article 5 (2) (a) of the Optional Protocol refers to the same claim concerning the same individual, as submitted by that individual, or by some other person empowered to act on behalf of the individual, to the other international body.<sup>6</sup>

7.3 The Committee notes that, after submitting the present communication, the author lodged an application, dated 23 December 2020, to the European Court of Human Rights in which she alleged violations of articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life), and 14 (prohibition of discrimination) of the European Convention on Human Rights. The Committee also notes that the application remains pending before the Court. In her application, the author referred to the same basic set of facts and allegations that are at issue in the present communication. She alleged that she had been arbitrarily and unlawfully placed in detention on 17 May 2017 for using the ByLock application and for depositing funds in Bank Asya. The author also contested her continued detention, alleging that she had fallen into a diabetic coma and been hospitalized. She raised allegations of arbitrariness and unlawfulness in relation to her arrest and the conduct of the trial against her and claimed, inter alia, violations of her rights to a presumption of innocence, equality of arms, adequate time and facilities to prepare her defence, access to her file, judicial independence and

<sup>6</sup> See, for example, *S.N.K. v. Türkiye* (CCPR/C/141/D/4275/2022), para. 6.2; and *Fanali v. Italy*, communication No. 75/1980, para. 7.2.

impartiality, the principle of *ne bis in idem*, the right of appeal, adequate reasoning in the decision to convict her, privacy during the search of her home without a justified warrant, privacy in detention in relation to intrusive questioning of the author, access to counsel and family visits in detention, the ability to leave the country, privacy in relation to strip searches in detention, adequate conditions of detention in relation to overcrowding, prompt access to medical treatment in detention and non-discrimination in relation to detainees accused of belonging to other terrorist organizations. Because the European Court is currently examining the application, the Committee considers that it is precluded by article 5 (2) (a) of the Optional Protocol and the State party's relevant reservation from examining the author's claims under articles 6, 7, 9, 10, 14, 15 and 26 of the Covenant. Thus, those claims are inadmissible.

7.4 The Committee considers that the author has not adequately described the basis of her claims under articles 18, 19, 21, 22, 25 or 27 of the Covenant and therefore declares those claims inadmissible, owing to insufficient substantiation, under article 2 of the Optional Protocol.

7.5 In the light of its findings, the Committee does not deem it necessary to examine other grounds of inadmissibility.

8. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 5 (2) (a) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.

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