United Nations

CEDAW/C/91/D/159/2020

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
17 July 2025

Original: English

Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 159/2020*,**

Communication submitted by:	S.T. (represented by counsel, International Association for Human Rights Advocacy)
Alleged victim:	The author
State party:	Türkiye
Date of communication:	15 May 2020
References:	Transmitted to the State Party on 27 July 2020 (not issued in document form)
Date of adoption of decision:	2 July 2025
Subject matter:	Gender-based discrimination against a female judge, who is the mother of a minor child, and has been detained, prosecuted and sentenced on the basis of allegations of terrorism
Procedural issues:	Exhaustion of domestic remedies, abuse of the right of submission, consideration of the same matter by another international jurisdiction, insufficiently substantiated complaints
Substantive issues:	Discrimination on the grounds of gender
Articles of the Convention:	1, 2 (c), (d) and (e) and 3
Articles of the Optional Protocol:	4 (1) and (2) (b), (c) and (d)

* Adopted by the Committee at its ninety-first session (16 June–4 July 2025).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Hamida Al-Shukairi, Violet Eudine Barriteau, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Nada Moustafa Fathi Draz, Esther Eghobamien-Mshelia, Yamila González Ferrer, Daphna Hacker, Madina Jarbussynova, Marianne Mikko, Mu Hong, Ana Peláez Narváez, Jelena Pia-Comella, Bandana Rana, Elgun Safarov, Erika Schläppi and Patsilí Toledo Vásquez.

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1.1 The communication is submitted by S.T., a Turkish national, born in 1990. The author claims to be a victim of violations by Türkiye of her rights under article 2 (c), (d) and (e), in conjunction with article 1, and article 3 of the Convention.[1] The Optional Protocol entered into force for Türkiye on 29 January 2003. The author is represented by counsel.

1.2 On 27 July 2020, the Committee, acting under article 5 (1) of the Optional Protocol, through its Working Group on Communications under the Optional Protocol, requested the State Party to release the author from prison due to the impact of the coronavirus disease (COVID-19) pandemic with respect to her medical condition.

Facts as submitted by the author

2.1 In 2013, the author was appointed as a judge for the Kocaali District Court in the Sakarya Province of Türkiye. In 2016, members of the Turkish Armed Forces organized a coup resulting in the dismissal of 2,745 judges and prosecutors due to their alleged membership in a terrorist organization. The Ankara Chief Public Prosecutor's Office ordered prosecutorial offices to investigate judges and prosecutors that had been dismissed from their positions. The author was arrested on 16 July 2016 for allegations of terrorism and suspended from her official duties by the Second Chamber of the Council of Judges and Prosecutors. She was released from detention on 20 July 2016.

2.2 The author was detained again on 17 January 2017 by the Counter-Terrorism Unit of the Istanbul Police Department and transferred to the Tokat Chief Public Prosecutor's Office in Tokat Province, which had ordered her detention. She was detained for 11 days. During her detention, she was not given an adequate amount of food and was held in a cold cell without heating. She was not allowed to contact an attorney and was threatened by the police and coerced to confess to the charges against her. She was also coerced into providing information regarding other judges and prosecutors.

2.3 On 27 January 2017, the magistrate judge decided that the author should remain in pretrial detention. On 4 May 2017, the author filed a complaint to the Constitutional Court of Türkiye regarding her arbitrary detention. On 5 October 2017, the author was placed under house arrest. She alleges that she was traumatized after being separated from her daughter for nine months. She was diagnosed with depression and began taking alprazolam (a drug to treat anxiety and panic disorders) to manage her condition.[2]

2.4 On 6 June 2018, the author was sentenced by the High Criminal Court of Istanbul to eight years and nine months of prison. On 11 December 2018, the author's appeal to the Istanbul Regional Court of Appeals was rejected.[3] On 4 January 2019, she filed an appeal to the Court of Cassation, which was pending at the time of the initial communication.

2.5 The Constitutional Court decided on 22 February 2019 that the author's complaint, filed on 4 May 2017, regarding the arbitrariness of her pretrial detention, was inadmissible as it was manifestly ill-founded.

[1] In her initial submission, the author refers only to violations of article 2, in conjunction with article 1, and article 3.

[2] Specific dates are not provided in the complaint, and the related annexes have not been translated from Turkish.

[3] The grounds on which the author appealed her criminal conviction are not stated in the complaint.

2.6 The author states that, as a result of her incarceration, her daughter suffered psychological trauma and was treated at the children's mental health clinic in Erzurum. She was diagnosed with night terrors by a psychiatrist and prescribed hydroxyzine. As a result, both her physical and psychological development slowed down.

2.7 On an unspecified date, the author filed a new complaint and a request for interim measures with the Constitutional Court regarding the undue delays in the trial. On 17 July 2019, the Constitutional Court held that there was no violation of the author's rights. On 8 August 2019, the Constitutional Court notified the author that her request for interim measures had been denied.

2.8 On 17 March 2020, the author filed a petition with the Court of Cassation for her release on the grounds of the threat caused by COVID-19 in relation to her poor health. The medication that she takes has a negative impact on her immune system. On 10 April 2020, the author filed a new complaint with the Constitutional Court and requested interim measures on the grounds that her rights under the Convention had been violated. On 17 April 2020, the Court dismissed her complaint.

2.9 Act No. 7242 was enacted by the Grand National Assembly of Türkiye and came into force on 15 April 2020.[4] Under the Act, the release of thousands of prisoners was authorized in the light of the spread of COVID-19 within penal institutions. However, the Act excluded individuals with terrorism-related charges; the author was therefore not eligible for release.

Complaint

3.1 The author claims that the State Party violated her rights under article 2 (c), (d) and (e), read in conjunction with article 1, and under article 3 of the Convention by using her gender, marital status, family status and health condition against her to incarcerate her for 33 months on the grounds of fabricated allegations of terrorism. According to the author, her arrest was part of a systematic practice of fabricating evidence against more than 100 women judges.[5] In addition, those judges were either pregnant or had young children.[6]

3.2 The author also claims that the State Party has violated her rights under the Convention, as she was a victim of politically motivated criminal proceedings and investigations. She further submits that the prosecutor's offices violated Turkish criminal procedure by rearresting her without new evidence and by placing her under the jurisdiction of the Tokat Chief Public Prosecutor's Office. The author had never lived or worked in Tokat Province, nor was there evidence that her alleged crimes had been committed there. She submits that she should have been prosecuted in Sakarya Province.

3.3 The author submits that she was targeted on account of her gender and because she was a mother.[7] The authorities used the fact that she was a mother against her to force her to plead guilty. She submits that she was also deprived of her right to counsel during that period.

3.4 The author submits that her detention conditions violate article 3 of the Convention by failing to address the specific needs of women.[8] The Committee has

[4] Under the Act, the duration of certain prison and probation sentences was reduced.

[5] No further information provided.

[6] The author stated at a hearing on 5 October 2017 that 29 female judges with young children had been detained on 29 October 2016. As in the case of the author, they had been pressured to provide the names of other individuals and to accept the charges against them.

[7] No further information provided.

[8] The author cites the Committee's views on *Abramova v. Belarus* (CEDAW/C/49/D/23/2009).

emphasized that women experience discrimination in criminal matters due to the lack of gender-sensitive, non-custodial alternatives to detention. The State Party should have provided sound reasoning in separating the author from her then 3-year-old daughter.

3.5 The author submits that the State Party violated her rights by exposing her to inhumane treatment and torture. Her rights to liberty and security were violated because she was given a disproportionate sentence of eight years and nine months of incarceration.

3.6 The author submits that the application of Act No. 7242 violates article 2 of the Convention, as she is excluded from the scope of the Act due to her alleged membership in a terrorist organization.

3.7 The author asks the Committee to investigate her prison and health conditions pursuant to article 5 (1) of the Optional Protocol; to take precautions to prevent her ill-treatment in the light of her individual complaint made to the Committee; to initiate a general inquiry into the systematic violations of the Convention committed by the Tokat Chief Public Prosecutor's Office against women judges; to send observers to witness the discrimination experienced by the women judges who were dismissed, arrested and detained arbitrarily; to monitor the discrimination against women based on accusations of membership in the Fethullah Gülen terrorist organization; to establish that thousands of women, including the author, have been subjected to discrimination based on allegations of membership in that organization; to request the State Party to remedy the harm caused to her; to request the State Party's compliance with its obligations under the Convention; and to request that the State Party repeal its laws having a discriminatory impact on women relating to allegations of membership in the Fethullah Gülen terrorist organization.

State Party's observations on admissibility

4.1 On 11 November 2020, the State Party submitted that the author's communication should be declared inadmissible under article 4 (1) and (2) (b), (c) and (d) of the Optional Protocol, on the grounds that the author had failed to exhaust domestic remedies, that her allegations were manifestly ill-founded and that the communication constituted an abuse of the right to submit a communication.

4.2 The State Party provided factual explanations that the author was taken into custody on 16 July 2016 and was subsequently dismissed from her profession on 24 August 2016 on the grounds of her alleged affiliation with the Fethullah Gülen terrorist organization. She was given the opportunity to request a re-examination of the dismissal decision and later filed an action for annulment with the Council of State, which remained pending at the time of the submission of the State Party's observations on 11 November 2020. In parallel, criminal proceedings were initiated against the author, leading to her conviction on 6 June 2018 for membership in a terrorist organization and a sentence of eight years and nine months in prison. The State Party notes that the author appealed against her conviction, and that, to date, her case has remained under review by the Court of Cassation.

4.3 In addition, the State Party submits that the author lodged four individual applications with the Constitutional Court, on 26 December 2016, 2 May 2017, 19 July 2018 and 10 April 2020. As at 11 November 2020, the fourth application remained pending. The State Party contends that the communication should therefore be found inadmissible for non-exhaustion of domestic remedies. With respect to the effectiveness of applications to the Constitutional Court, the State Party asserts that the European Court of Human Rights has recognized such applications as effective remedies that

must be exhausted. It argues that mere doubts as to the likelihood of success of a particular remedy do not relieve an individual of the obligation to pursue it.

4.4 Furthermore, the State Party notes that the author had a pending application before the European Court of Human Rights, in which the author claimed that the prohibition of torture and ill-treatment, her right to personal liberty and security of person and her right to a fair trial had been violated as a result of the criminal investigation and prosecution proceedings against her.

4.5 The State Party contends that the communication amounts to an abuse of the right to submit a communication, as it contains misleading information. It argues that the author omitted relevant parts of a conversation with the presiding judge from the hearing records she submitted to the Committee.

4.6 Regarding her allegations of gender-based discrimination, the State Party notes that, although the author referred to articles 2 and 15 of the Convention in her fourth application before the Constitutional Court and in a request to the Court of Cassation, she did not state that she had been subjected to gender-based discrimination, but merely requested that those provisions be taken into account in deciding on interim measures.

4.7 As to the claim concerning the author's daughter, the State Party notes that social services institutions are available to ensure children's access to education and care, and that the author's daughter was in fact attending school, to which she was taken by her father.

4.8 The State Party asserts that the author's physical and mental integrity is being safeguarded, as her basic needs are being met, and that she has regular access to medical care. It submits that the author has received medical attention on multiple occasions and that she has been provided with psychiatric treatment, medication and other necessary healthcare services.

4.9 Regarding the impact of the COVID-19 pandemic, the State Party submits that adequate measures were implemented in penal institutions. It clarifies that no changes were introduced regarding incarceration periods for certain crimes, including terrorism-related offences.

4.10 In its additional observations dated 21 August 2024, the State Party noted that, on 24 November 2020, the Sixteenth Criminal Chamber of the Court of Cassation overturned the decision rendered by the Third Criminal Chamber of the Istanbul Regional Court of Appeal, which had upheld the author's conviction on 11 December 2018. The State Party notes that the Court of Cassation reasoned that the sentence had been determined without sufficient justification and without adhering to the lower limit set by law. Following the ruling, the Assize Court re-examined the case and, at a hearing on 6 April 2021, reissued a conviction for membership in an armed terrorist organization, on that occasion sentencing the author to seven years and six months of imprisonment. The Assize Court also ordered her release under judicial supervision, imposing a travel ban. The State Party highlights that, following a further appeal by the author, the Third Criminal Chamber of the Court of Cassation upheld the conviction on 20 September 2022, rendering the author's conviction final. However, the State Party clarifies that the execution of the author's sentence has not yet started, as she has become a fugitive.

4.11 The State Party notes that, on 2 June 2022, the European Court of Human Rights dismissed the author's application, as she failed to pursue it.

4.12 The State Party reiterates that the author failed to exhaust domestic remedies by not properly pursuing her fourth individual application before the Constitutional Court with respect to all her complaints. In that regard, the State Party notes that the

Court dismissed the author's claims on 27 April 2021, holding that she had failed to present sufficient evidence or explanations to substantiate a violation of the principle of equality. Regarding the author's right to a fair trial, the Court found no violation when considering the proceedings as a whole. As for the author's claim regarding the right to life, the Court ruled it inadmissible as it was manifestly ill-founded and determined that there was no violation within the scope of the State's obligations. The State Party argues that the Court's ruling confirms that the author failed to properly pursue her individual application with respect to all the claims she has raised before the Committee.

4.13 Furthermore, the State Party submits that the author failed to substantiate her claim that she had been subjected to gender-based discrimination. It notes that, with respect to her claim of exclusion from the scope of Act No. 7242, on the execution of penalties and security measures, the Act was not in force at the time of her submission to the Committee. It asserts that the author failed to substantiate any claim of discrimination under the principle of equality and did not present her objections in a manner that would have enabled appellate review.

4.14 The State Party argues that the author failed to seek compensation for her alleged unlawful pretrial detention under article 141 of the Code of Criminal Procedure, which constitutes an effective remedy capable of providing redress. The State Party submits that this omission further supports its position that the author failed to exhaust available legal remedies.

Author's comments on the State Party's observations on admissibility

5.1 On 31 March 2021, the author argued that the State Party's observations on admissibility contained erroneous information. The author submits that she requested a re-examination of the decision of the Council of Judges and Prosecutors, but that this request was rejected by a decision of the Council on 29 November 2016; the case is therefore no longer pending. Even though the upper courts have not finalized the criminal sentences, similar administrative cases regarding the dismissal of judges and prosecutors have been rejected by the Council of State. In addition, the European Court of Human Rights has so far determined that 2 of the more than 4,500 judges who have been dismissed and arrested were unjustly detained. The situation of the author is similar, and she is subjected to the same charges as applicants in those cases. When the author was taken into custody on 17 January 2017 on the grounds of alleged new evidence, the Tokat Chief Public Prosecutor's Office clearly contravened the law, as there was nothing new in the investigation file. Moreover, the Tokat Chief Public Prosecutor's Office had no jurisdiction, since the author had never lived or worked in Tokat. As for the author's conviction on 6 June 2018, she submits that she faced a disproportionately heavy punishment due to the prejudiced, non-independent and biased approach of the Court.

5.2 The author submits that she has not applied for any other international procedure regarding her gender-based violence and gender-based discrimination claims. The case before the European Court of Human Rights and the case before the Committee are fundamentally different in terms of merits and cover different human rights abuses.

5.3 As to the question of exhaustion of domestic remedies, the author notes that, in her petition of 17 March 2020 to the Court of Cassation, she referred specifically to the provisions of the Convention. On 10 April 2020, the author lodged an individual complaint with the Constitutional Court, in which she claimed that her rights under the Convention had been violated and that she had been discriminated against on the basis of gender, and requested an end to the discrimination that she had encountered as a woman. Thus, the author has raised her claims of discrimination on the grounds

of gender before both the Constitutional Court and the Court of Cassation. In addition, she brought to the attention of the judicial authorities that, in accordance with the Constitution, the Convention is part of domestic law. However, the judicial authorities disregarded all her allegations.

5.4 The author notes that the Constitutional Court dismissed one of her applications because she had not applied to the Inquiry Commission on State of Emergency Measures in advance. However, as a judge dismissed from her post, that remedy was legally not available to her. She therefore lodged an application with the Council of State on 8 December 2016, which has not yet issued a decision thereon, which is why the author's right to a fair trial within a reasonable period has been violated. In addition, in one of her applications to the Constitutional Court, she argued that only female inmates accused of baseless terror-related acts remained out of the scope of the legal amendment under which prisoners could continue their sentences at their residence, with the conditions stated by the law, and therefore the principle of equality before the law had been violated.

5.5 As for her petition to the Court of Cassation, the author argues that she requested the Court to stop the discrimination and violation of her rights guaranteed under articles 17 and 56 of the Constitution and reminded the Court that the Convention was part of domestic law, and her rights guaranteed under the Convention had been violated.

5.6 The author adds that she has exhausted all available domestic remedies and that they are ineffective. Furthermore, the author recalls that the Constitutional Court has been declared as ineffective by the Human Rights Committee. The Working Group on Arbitrary Detention has issued more than 20 opinions regarding persons under investigation in relation to membership in the Fethullah Gülen terrorist organization and rejected the State Party's claims that domestic remedies had not been exhausted. After the state of emergency, the Constitutional Court found violations in only 5.5 per cent of the finalized applications, and the number of successful applications submitted by judges and prosecutors appeared to be almost zero. In that light, despite exhausting all available domestic remedies, it is not possible to state that there is an effective and available domestic law remedy in Türkiye.

5.7 Regarding the State Party's arguments on the abuse of the right to submit a communication, the author argues that she did not submit misleading information to the Committee. All documents submitted are official records. As for the ill-treatment during her custody, the author notes that, even if she had complained, her complaint would have been examined and decided upon by the same judge who had detained her on groundless charges, which means that domestic remedies were not sufficient; and that she was afraid of being subjected to a higher degree of ill-treatment if she complained to the officials. In addition, there are more than 600,000 people who have faced the same charges as the author and have been arbitrarily prosecuted. It is the State Party's practice not to consider complaints brought to prosecutors and courts by victims who are thought to be related to the Fethullah Gülen terrorist organization. The Working Group on Arbitrary Detention considers that this practice may amount to a crime against humanity.

5.8 Furthermore, the author argues that she raised claims concerning violence against women and ill-treatment at all stages of the domestic proceedings and stresses that at the time of her detention she was the mother of a 3-year-old daughter. She argues that the judgment against her also affected her daughter. In addition, the author argues that she does not receive proper treatment for her health problems, as she does not receive psychological therapy. As for the State Party's argument that she did not apply for suspension of her sentence due to health issues, the author notes that judicial

bodies arbitrarily reject the demands concerning the suspension of sentences on the grounds of "societal security".

5.9 The author also formulates requests for remedies to the Committee, such as to initiate a confidential inquiry for grave and systematic violations of the Convention regarding human rights violations, in accordance with article 8 of the Optional Protocol; to send an observer to the State Party to witness the discrimination against dismissed, arrested and detained women judges; to take all appropriate steps to ensure that individuals are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee, in accordance with article 11 of the Optional Protocol; to request the State Party to immediately end the arbitrary proceedings against the author; and to urge the State Party to repeal legal regulations that have discriminatory effects on women in relation to their alleged membership in the Fethullah Gülen terrorist organization.

5.10 On 24 December 2024, the author submitted further comments on the State Party's observations on admissibility, including updated information. The author maintains that she made extensive efforts to exhaust all available domestic remedies, including appealing her conviction to the Court of Cassation and filing a petition with the Constitutional Court. Despite those efforts, the author stresses that her claims were dismissed by the Constitutional Court for allegedly lacking sufficient grounds, without an adequate examination of the systemic discrimination and violations to which she had been subjected.

5.11 The author refers to her application to the Constitutional Court, which was dismissed for lack of sufficient foundation, emphasizing that the Constitutional Court's rejection failed to address the systemic discrimination and procedural injustices she had faced, including prolonged detention and exclusion from the legal safeguards provided to other detainees.

5.12 With regard to her application to the European Court of Human Rights, the author contends that the application was dismissed on procedural grounds. Furthermore, the Court fails to acknowledge the substantive gender-based and rights-related violations underlying the author's claims, which remain unresolved and within the Committee's mandate.

State Party's observations on the merits

6.1 On 21 August 2024, the State Party provided details on the conditions of detention of the author at two penitentiary institutions. At the T-type closed penitentiary institution in Tokat, the author was detained from 27 January to 5 October 2017, in a room shared with 25 people. The room had basic facilities, but the author did not engage in any sporting, social or cultural activities, and made no complaints about the conditions. She did not request to be accommodated with her child. In the E-type closed penitentiary institution in Erzurum, where the author was detained from 6 June 2018 to 6 April 2021, the author's living conditions varied, with sufficient space, access to books and, owing to the COVID-19 pandemic, limited participation in activities. The author had regular visits from her family and lawyers and received medical care for psychiatric conditions.

6.2 Regarding the author's daughter, the State Party points out that children under 6 can stay with their mothers in penitentiary institutions if requested. The author's daughter stayed with her for a total of five periods, at regular intervals, but did not attend day-care or preschool, as the author did not request it. The State Party also notes that the institution provided materials for the child's activities.

6.3 In addition, the State Party notes that the author had access to healthcare services, with regular medical examinations and psychiatric treatment, including

medication for depression. She had no chronic illnesses or health complaints related to COVID-19. The State Party describes the measures taken to prevent the spread of COVID-19 in penitentiary institutions as including hygiene measures, polymerase chain reaction testing and quarantine protocols. The vaccination programme was implemented; prisoners over 60 years of age or with chronic illnesses were vaccinated.

6.4 The State Party emphasizes that it adheres to the principle of equality before the law, ensuring that no discrimination based on gender or other factors takes place in penitentiary institutions. The State Party notes that allegations of ill-treatment are promptly investigated and that penitentiary institutions are subject to both national and international oversight. The State Party affirms its zero-tolerance policy with respect to discrimination, ill-treatment and torture. The specific needs of women in detention are given special attention, and their conditions are monitored to ensure their rights and safety.

6.5 The State Party states that the investigation and prosecution of the author were conducted in accordance with due process. The investigation was initially carried out by the Tokat Chief Public Prosecutor's Office before being transferred to the Istanbul Chief Public Prosecutor's Office, which rendered the final decisions. The State Party submits that the Tokat Chief Public Prosecutor's Office conducted the investigation process lawfully, promptly and urgently.

6.6 The State Party maintains that the Fethullah Gülen terrorist organization includes both men and women, and that the investigation in question concerned a specific structure within the organization, that is, the female judge structure. The State Party argues that characterizing the investigation, which was conducted based on legal grounds, as discrimination against women is an attempt to undermine the legitimacy of the evidence gathered.

6.7 The State Party further submits that, during her questioning before the magistrate judge, in the presence of her lawyer, the author denied allegations that she had been deprived of food and water, that she had suffered from inadequate heating and that she had been coerced to become a confessor. The State Party contends that those allegations should therefore be disregarded.

6.8 The State Party notes that, while detained, the author had the right to have her daughter stay with her and that the author occasionally availed herself of that right. The State Party asserts that the penitentiary administration provided food, clothing, accommodation and social support for the child.

6.9 With regard to the author's claim of discrimination under Act No. 7242, the State Party maintains that certain offences, among which are terrorist-related offences, were excluded from the scope of the law on the grounds of legislative discretion and public security considerations rather than gender-based discrimination. The State Party argues that the law introduces amendments that are beneficial to women, including provisions concerning judicial supervision and expanded opportunities for serving sentences at home.

6.10 The State Party reiterates that the author was not eligible to benefit from the amendments under Act No. 7242 because, as at the date of her claim, her conviction was not yet final. The State Party asserts that multiple categories of offences were excluded from the Act, not only those related to terrorism.

6.11 The State Party emphasizes that the domestic courts took the author's status as a mother into account when deciding on her release during the first hearing of the criminal proceedings against her. The State Party maintains that the author was not subjected to health risks during detention and that both her and her daughter's needs

were adequately met. Lastly, the State Party notes that the number of people the author was accommodated with during detention was determined in accordance with the applicable legal standards regarding personal space.

6.12 The State Party requests the Committee to declare the communication inadmissible for being out of the scope of the Convention, for being groundless and for not being duly raised during the domestic proceedings.

Author's comments on the State Party's observations on the merits

7.1 On 24 December 2024, the author rejected the observations of the State Party that her allegations did not fall within the jurisdiction of the Committee, asserting that the Tokat Chief Public Prosecutor's Office detained her in poor conditions and without the proper jurisdiction. The author alleges that, during her detention, she was subjected to humiliating treatment and asserts that her case is not an isolated incident, but rather part of a broader, systematic pattern of targeting female judges in the State Party. The author thus considers that the Committee's jurisdiction extends to those complaints, as the Committee explicitly covers all forms of discrimination that impair the human rights and freedoms of women on a basis of equality with men.

7.2 Regarding the level of factual substantiation, the author stresses that she has presented a comprehensive and well-documented submission, detailed all relevant events and supported her submission with appropriate documentation. Furthermore, the author rejects the State Party's observation on the Gülen movement being included in a list of terrorist organizations. The author asserts that no such list has been provided or cited by the State Party in its observations, nor has any verifiable evidence of its existence been submitted to the Committee. The author also notes that the State Party does not have a publicly available list of terrorist organizations.

7.3 The author emphasizes that the State Party lacked both procedural and substantive legitimacy in its actions. The custody order was primarily supported by uncorroborated witness statements documented by the Chief Public Prosecutor's Offices.

7.4 Furthermore, the author emphasizes the presence of systemic issues within the process of questioning. The author highlights that the recorded statement, which is said to reflect her words, is a template text inserted by the judge without consultation or confirmation. The report submitted by the State Party as evidence includes template language claiming that the content was read to the suspect and signed, but the author's signature is absent.

7.5 As for the procedural violations, which appear to reflect a pattern of targeting female judges, the author claims that the Tokat Chief Public Prosecutor's Office deliberately employed measures to exert undue pressure on her and other female judges. The prosecutor had the clear intention of forcing confessions through coercive questioning. The author considers that such an approach, characterized by jurisdictional irregularities and investigative practices designed to apply psychological pressure, violates the principle of fair investigation.

7.6 The author explains that, under article 141 of the Criminal Procedure Code, compensation can be claimed by individuals who have been detained or arrested and subsequently acquitted, or in instances where charges have not been pursued. Owing to her conviction, the author is ineligible to seek compensation under that provision. The author contends that her primary objective was not the pursuit of monetary redress, but rather the cessation of ongoing violations of her rights and her release, both of which are beyond the scope of article 141.

7.7 With regard to the cessation of sporting, social and cultural activities for individuals detained in connection with terrorism, the author claims that all such activities for those detainees were suspended by decree-law, which made it impossible for the author to take advantage of those opportunities, regardless of any request she might have made.

7.8 The author further submits that the State Party’s reliance on numerous legal provisions fails to address the crux of her complaints, which are focused not on the absence of a legal framework, but on the practical injustices and systematic violations she has experienced.

7.9 The author submits that the State Party’s “zero-tolerance” policy with respect to torture in places of detention is contradicted by numerous credible reports from national and international bodies. Despite the State Party’s claims of regular inspections by national and international bodies, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and United Nations mechanisms, those reports demonstrate that such monitoring has failed to curb systematic violations, and highlight significant obstacles to justice, including the lack of impartial investigations and the misuse of emergency powers and counter-terrorism legislation to arbitrarily target individuals.

Additional submissions

From the State Party

8.1 On 18 October 2024, the State Party submitted additional information, drawing attention to the findings of the European Court of Human Rights in *Yasak v. Türkiye*. The State Party emphasizes that similar allegations to those of the present communication – regarding violations of the right to a fair trial under article 14 of the International Covenant on Civil and Political Rights and the principle of legality under article 15 thereof – have been raised in other cases before United Nations committees. In that sense, it underscores the conclusions of the European Court of Human Rights, which found that the conviction of the applicant in *Yasak v. Türkiye* for membership of an armed terrorist organization under article 314 (2) of the Criminal Code of Türkiye was foreseeable and in line with the principle of legality.

8.2 The State Party notes the assertion by the European Court of Human Rights that the absence of a final judgment classifying the Gülen movement as an armed terrorist organization at the time of the alleged acts was not sufficient to render the applicant’s conviction incompatible with article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

8.3 The State Party also highlights the determination by the European Court of Human Rights that the applicant was aware of the existence of the aims and methods of the Fethullah Gülen terrorist organization and that the assessment by the domestic courts of the element of intent in the applicant’s case was neither an overly broad nor unforeseeable interpretation of the relevant legal provisions. The State Party recalls that the Court analysed the constituent elements of the offence, concluding that the applicant’s membership in the secret structure of the Fethullah Gülen terrorist organization and the continuity, diversity and intensity of the secret activities he had carried out within that framework had been established during the proceedings, in line with the European Convention on Human Rights.

8.4 Regarding the principle of legality, the State Party refers to the ruling of the European Court of Human Rights that the offence of which the applicant had been convicted had a basis at the time it had been committed under the relevant national law; and that the offence was defined with sufficient clarity to satisfy the requirement of foreseeability, which would enable the applicant to regulate his conduct within the

meaning of article 7 of the European Convention on Human Rights. The State Party emphasizes the Court's finding that the interpretation of article 314 (2) of the Criminal Code adopted by the domestic courts was not extensive and that it led to a result that was consistent with the substance of the offence and could be regarded as reasonably foreseeable.

8.5 Concerning allegations of ill-treatment under article 3 of the European Convention on Human Rights, the State Party points out that the European Court of Human Rights found no violation. The State Party also notes that the applicant had not exhausted domestic remedies concerning his detention conditions by failing to claim for compensation and that the facilities of the penitentiary institution in which the applicant was accommodated were adequate and in accordance with the standards laid down in the European Convention on Human Rights.

8.6 The State Party urges the Committee to find the present communication inadmissible. Alternatively, it requests the Committee to conclude that there has been no violation, in the light of the findings of the European Court of Human Rights in *Yasak v. Türkiye*, that the national courts had conducted a fair trial in respect of the applicant and had respected the applicant's right to defence, that it was for the domestic courts to interpret criminal law and that, therefore, it was for the domestic courts to decide on the applicant's individual criminal responsibility.

From the author

9.1 On 24 December 2024, the author submitted that the European Court of Human Rights judgment in the case mentioned by the State Party (*Yasak v. Türkiye*) had been referred to the Grand Chamber for re-examination following the request for referral lodged by the applicant in that case. Accordingly, the author maintains that the judgment in question is legally void and holds no authoritative validity.

9.2 The author points out that there are serious concerns regarding the foreseeability of the *Yasak v. Türkiye* case applicant's conviction under article 7 of the European Convention on Human Rights, in particular in the absence of a formal and consistent classification of the Gülen movement as a terrorist organization during the relevant period. The author mentions that, at the time of the *Yasak v. Türkiye* case, the movement was widely recognized for its lawful activities, including charity and education, and was neither classified as a terrorist organization under Turkish law nor subject to criteria that could reasonably establish criminal liability for lawful engagement. Notably, the author claims that the Second Chamber's reliance on ambiguous and retroactive standards, coupled with procedural deficiencies at the domestic level in the applicant's case, undermines the foreseeability required by article 7 of the European Convention on Human Rights. The author argues that the Second Chamber failed to align with the Grand Chamber's established jurisprudence in the *Yüksel Yalçınkaya v. Türkiye* case.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it is to do so before considering the merits of the communication.

10.2 The Committee notes that, under article 4 (2) (a) of the Optional Protocol, a communication is declared inadmissible if the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement. The Committee recalls that "same matter" within the meaning of article 4 (2) (a) means one and the same complaint concerning

the same individual, the same facts and the same substantive issues.[9] The Committee notes that, on 7 September 2018, the author lodged an application with the European Court of Human Rights relating to the same facts and on her own behalf. It observes that the parties disagree as to whether the claims raised before that Court were the same as those brought before the Committee. In any event, the Committee notes that, by decision of 2 June 2022, the Court decided to strike the application from its list of cases because the Court's letter could not be delivered to the author's lawyer, as he had apparently changed his address and had not notified the Court thereof. The Committee recalls its jurisprudence according to which, when the European Court of Human Rights has based a declaration of inadmissibility not solely on procedural grounds but on reasons that include a certain consideration of the merits of the case, however limited, then the same matter has been "examined" within the meaning of article 4 (2) (a) of the Optional Protocol.[10] Given that, in the present case, the Court's rejection of the author's application was based on purely formal grounds, the Committee considers that it is not precluded under article 4 (2) (a) of the Optional Protocol from examining the present communication.[11]

10.3 The Committee takes note of the State Party's submission that the communication should be considered an abuse of the right of submission under article 4 (2) (d) of the Optional Protocol, since the author's communication contains misleading information. However, the Committee finds that the material before it does not show that the author presented her communication in bad faith, or that she failed to provide all the information and documents at her disposal. In the circumstances of the present communication, the Committee does not find that the author abused her right of submission under article 4 (2) (d).

10.4 In accordance with article 4 (1) of the Optional Protocol, the Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

10.5 The Committee notes the State Party's submission that the communication should be considered inadmissible on the grounds of non-exhaustion of domestic remedies, as the author's most recent application to the Constitutional Court was pending when she submitted her communication to the Committee. It also notes the State Party's submission that the European Court of Human Rights has held, in cases concerning deprivation of liberty, that an individual application before the Constitutional Court constitutes an effective remedy.[12]

10.6 The Committee notes the author's argument that she has raised her claims of discrimination on the grounds of gender before both the Constitutional Court and the Court of Cassation, even though those remedies are ineffective in her view. It also notes the author's assertion that, after the state of emergency, the Constitutional Court found violations in only 5.5 per cent of the overall number of applications, and that the number of successful applications submitted by judges and prosecutors appeared to be almost zero. The Committee takes note that the author filed four complaints to the Constitutional Court on the same issue, which were all dismissed.

10.7 The Committee further notes the State Party's submission that the author has failed to exhaust domestic remedies by not filing a compensation claim under article 141 of the Code of Criminal Procedure. The Committee notes, however, the author's

[9] See *Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.3; and Human Rights Committee, *Petersen v. Germany* (CCPR/C/80/D/1115/2002), para. 6.3.

[10] See *M.D.C.P. v. Spain* (CEDAW/C/84/D/154/2020), para. 7.2.

[11] See *K.S. v. Poland* (CEDAW/C/76/D/128/2018), para. 8.2.

[12] European Court of Human Rights, *Uzun v. Turkey*, *Mercan v. Turkey*, *Zihni v. Turkey* and *Çatal v. Turkey*.

contention that she is ineligible to seek compensation under that provision, and that her primary objective is not the pursuit of monetary redress, but rather the cessation of ongoing violations of her rights and her release. The Committee observes that a remedy provided under that provision would not end the author's detention or address her gender-based discrimination claims, and could therefore not be an effective remedy under article 4 (1) of the Optional Protocol.[13]

10.8 The Committee recalls its jurisprudence, which establishes that authors must have raised the claims that they wish to bring before the Committee in substance at the domestic level[14] in order to give the domestic authorities and courts an opportunity to take a decision thereon.[15] The Committee is satisfied that the author did raise her gender-based discrimination claims at the domestic level in various applications to the Constitutional Court and the Court of Cassation.

10.9 The Committee therefore finds that article 4 (1) of the Optional Protocol does not constitute an obstacle to the admissibility of the gender-based part of the communication.

10.10 The Committee notes the author's contention that she was subjected to gender-based discrimination in violation of her rights under article 2, read in conjunction with article 1, and under article 3 of the Convention, since her gender, marital status, family status, health condition and motherhood were used against her to force her to plead guilty and to incarcerate her based on fabricated allegations of terrorism.

10.11 The Committee also notes the author's various claims concerning the arbitrariness of her dismissal as a judge and of her subsequent detention; the violation of her judicial immunity; the politically motivated criminal investigation and judicial proceedings against her; the undue pressure to obtain a confession of guilt; the allegations of ill-treatment; the disproportionately high sentence imposed on her (which was subsequently reduced); and the application of Act No. 7242, which excluded her from the scope of the Act due to her alleged membership in a terrorist organization. The Committee acknowledges that the author raises serious allegations concerning violations of her civil and political rights. The Committee observes, however, that the author has failed to sufficiently raise the gender-specific dimension of the alleged violations. In that regard, while the author provides extensive information on the politically motivated nature of her detention, her dismissal and the proceedings against her, she has not provided sufficient information as to how her condition as a woman or as a mother would have played a role in the alleged violations. Similarly, the Committee notes that the author refers in only general terms to a systematic practice of fabrication of evidence against female judges. According to the State Party, the investigation was indeed focused on a female judge structure within the alleged terrorist organization. However, the author has failed to provide any concrete information that would demonstrate the specific targeting of women or a disproportionate impact of that alleged persecution on female judges. Concerning the allegedly discriminatory nature of the Act in excluding detainees with terrorism-related charges, the Committee notes that the author has failed to provide any information that would demonstrate that the Act excluded women specifically or that its application affected women disproportionately.[16]

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[13] See *G.H. v. Hungary* (CEDAW/C/76/D/114/2017), para. 7.2; and *María Elena Carbajal Cepeda et al. v. Peru* (CEDAW/C/89/D/170/2021), para. 7.4.

[14] See *Kayhan v. Turkey*, para. 7.7; *M.A. v. Switzerland* (CEDAW/C/80/D/145/2019), para. 6.7; and *S.T.H. v. Switzerland* (CEDAW/C/87/D/165/2021), para. 7.5.

[15] See *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3; *M.A. v. Switzerland*, para. 6.7; and *S.T.H. v. Switzerland*, para. 7.5.

[16] See *V.P. v. Belarus* (CEDAW/C/79/D/131/2018), para. 7.13.

10.12 Lastly, the Committee takes note of the author's claim that the detention conditions that she experienced failed to address the specific needs of women; and that the lack of gender-sensitive, non-custodial alternatives to detention led to a prolonged separation from her daughter. The Committee notes the State Party's argument that the domestic courts took the author's status as a mother into account when deciding on her release during the first hearing of the criminal proceedings against her. The Committee notes that women prisoners, in particular women prisoners with young children, have specific needs and requirements.[17] However, the Committee considers that the author has again failed to identify which of her specific needs as a female detainee were not met and how the application of the law in the execution of her sentence discriminated against her, directly or indirectly, on the basis of her gender.

10.13 In the light of all the above, the Committee considers that the author has failed to sufficiently substantiate, for the purposes of admissibility, her allegations of gender-based discrimination. Accordingly, it declares the communication inadmissible under article 4 (2) (c) of the Optional Protocol.

11. The Committee therefore decides:

(a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) That this decision shall be communicated to the State Party and to the author.

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[17] See the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), rules 48 to 52.