



Asamblea General

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Consejo de Derechos Humanos

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Tema 3 de la agenda

**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Nota verbal de fecha 6 de junio de 2019 dirigida a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos por la Misión Permanente de Turquía ante la Oficina de las Naciones Unidas en Ginebra

La Misión Permanente de la República de Turquía ante la Oficina de las Naciones Unidas en Ginebra y otras organizaciones internacionales con sede en Suiza saluda atentamente a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y, en relación con la carta de 28 de marzo de 2019 del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, David Kaye, y la nota verbal de 10 de abril de 2019 de la Misión Permanente de la República de Turquía, tiene el honor de solicitar que la presente nota verbal y las observaciones adjuntas del Gobierno de Turquía acerca de la versión preliminar no editada del informe elaborado por el Relator Especial en seguimiento de las visitas oficiales realizadas por el titular del mandato (A/HRC/41/35/Add.2) (véase el anexo)* se publiquen como documento del 41^{er} período de sesiones del Consejo de Derechos Humanos en relación con el tema 3 de la agenda.

* Se reproduce como se recibió, en el idioma en que se presentó únicamente.



Annex to the note verbale dated 6 June 2019 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Follow-up report of the Special Rapporteur on the promotion and protection of the freedom of opinion and expression: comments of the State

1. The Government of the Republic of Turkey, after studying the advanced unedited version of the follow-up report of the Special Rapporteur on the Promotion and Protection of the Freedom of Opinion and Expression, would like to highlight the following:

2. At the outset, the Government wishes to underline that it has cooperated fully with the Special Rapporteur, both before and during his visit to Turkey, as well as in the preparation of his initial and follow-up report on the visit. The Government invited the Special Rapporteur to conduct a country visit and facilitated various meetings with a number of government agencies as well as a variety of stakeholders in order to enable the Special Rapporteur to engage in constructive dialogue with the authorities. Furthermore, it has responded to all requests of information from the Special Rapporteur throughout this process.

The cooperation of Turkish authorities in this regard was also noted by the Special Rapporteur, both in the initial report he presented to the 35th session of the Human Rights Council, and the advanced unedited version of the follow-up report.

3. The Government regrets that the Special Rapporteur has depicted a very negative picture with regards to Turkey's implementation of the recommendations he had made in the report on his visit in November 2016, referring to "*lack of action*" and "*continuance of the status quo*", despite the fact that Turkey has taken several measures in this regard, in particular, the lifting of the state of emergency and the reinstatement of over 43,000 public officials.

4. In paragraph 17 of the follow-up report, the Special Rapporteur makes a reference to the OHCHR's report on the human rights situation in South-East Turkey, regarding which the Government reiterates its views, as previously stated in the Ministry of Foreign Affairs's press release of 10 March 2017.¹ As such, the Government dismisses the citations made in paragraph 17 to the issues contained in the OHCHR's report, some of which are outside the mandate of the Special Rapporteur.

5. Regarding paragraphs 19 and 21 of the advanced unedited version of the follow-up report, as well as recommendations 6 and 10 contained therein, the Government would like to refer to its replies to questions 6 and 9 of the Special Rapporteur's Concept Note dated 18 January 2019. In this context, the Government stresses once again that, all emergency decrees that were transformed into law after the termination of the state of emergency have gone under parliamentary supervision.

Furthermore, having transformed into law, these emergency decrees are open to Constitutional Court's oversight, through which, their compatibility with international human rights standards is ensured.

Continuous nature of the threat posed by various terrorist organizations against Turkey's security and unity necessitates the implementation of some of the additional counter-terrorism measures introduced during the state of emergency. All such measures

¹ Press Release Regarding the "Report" published by the UN High Commissioner for Human Rights on 10th March 2017 About the Counter Terrorism Operations conducted in Turkey, http://www.mfa.gov.tr/no_-71_-10-march-2017_-press-release-regarding-the-report_-published-by-the-un-high-commissioner-for-human-rights-on-10th-march-2017-about-the-counter-terrorism-operations-conducted-in-turkey.en.mfa.

are under judicial oversight and can be contested by individuals affected thereof before the courts. Moreover, principles of necessity and proportionality are always observed in their implementation. In this regard, Turkey sustains its philosophy to maintain co-existence between protecting fundamental rights and freedoms and providing a secure atmosphere for its citizens to counter terrorism.

6. The Special Rapporteur regrettably claims, in paragraph 20 of the advanced unedited version of the report, “Many individuals held in detention at the time of the Special Rapporteur’s visit would remain in prison based on criticism of the Government or journalistic work.” despite the fact that Turkey has repeatedly stressed, in many of its responses to communications sent by the Special Rapporteur, that no profession can be used as a shield against criminal investigations. Investigations against those persons are due to their links to terrorist organizations or their activities in support thereof. Turkey has also presented credible evidence in this regard in its replies to the Communications.

The Special Rapporteur also gives certain numbers regarding “journalists in prison”, basing these claims on “*civil society monitoring*”. The Government is of the opinion that this vague claim that fails to refer to the exact sources for the numbers contained in paragraph 20, damages the credibility of the report.

The Special Rapporteur further fails to mention in his report that, certain detainees, including journalists and human rights defenders, were released pending trial since his visit.

In this regard, The Government would like to reiterate that its priority is to strike a proper balance between maintaining public order and security and protection of the freedom of expression and media; and that the rights of persons in detention are under protection.

7. In response to paragraphs 23 and 24 of the advanced unedited version of the follow-up report regarding internet freedom, as well as the first recommendation contained therein, the Government reiterates its comments to the initial report and its replies to questions 4 and 5 of the Special Rapporteur’s Concept Note dated 18 January 2019.

As to the criticism made in paragraph 23 of the report regarding article 8A of Law No. 5651, the Government underlines once again that online content can be blocked in accordance with the decision of a judge (during the investigation stage) or a court (during the prosecution stage) and that administrative decisions to remove or block online content can only be rendered in exceptional circumstances prescribed by law. Such decisions are revoked automatically if not approved by a judge within 48 hours.

Special Rapporteur fails to take into consideration in this regard, the urgency of certain measures, especially those taken in response to crimes such as sexual exploitation of children, prostitution, or facilitating access to drugs that are committed online.

8. Regarding recommendation 9 and Paragraph 26 of the report, in which the Special Rapporteur claims that “Remedies to challenge the legality of the measures taken pursuant to emergency decrees, where available, have remained ineffective.” and that “The Inquiry Commission on the State of Emergency Measures ... has failed to result in any significant improvement in the situation”, the Government would first like to state that the Commission on the State of Emergency Measures has rendered 4,750 decisions of reinstatement as of 15 March 2019. This number alone attests that the Commission has provided effective remedy for persons claiming to have been unlawfully dismissed on the basis of emergency decrees. Furthermore, contrary to Special Rapporteur’s claim in the same paragraph, there are legal remedies against the decisions of the Commission, including the right to lodge an individual application before the Constitutional Court.

The shortcomings mentioned by the Special Rapporteur regarding the Commission’s assessment of applications, mainly the lack of possibility for applicants to forward their cases in an oral hearing or a fixed time frame for the processing of their applications, are due to the excessive workload of the Commission, which is tasked with processing of tens of thousands of applications. It therefore should not be presented in the report as a lack of legal remedy.

It is important to note that the Constitutional Court and the European Court of Human Rights recognized the Commission as a legal remedy that must be exhausted before an appeal can be made to the judiciary.

Furthermore, all decisions of dismissal, arrest or detention can be objected before the Courts, whose decisions can be appealed, both on domestic level and before the European Court of Human Rights.

9. The Government of the Republic of Turkey requests that its comments herein are included as an Addendum to the Special Rapporteur's follow-up report.
