

**Press Release on the Preliminary Observations of Nils MELZER, the UN Special Rapporteur on Torture
17.12.2016**

**By Republic of Turkey
Ministry of Justice
Ministry of Interior**

1. INTRODUCTION

1. Nils MELZER, the United Nations Special Rapporteur (Rapporteur thereafter) on Torture, visited our country between 27 November and 2 December 2016. On 2 December, following this visit, he shared his preliminary observations with the public opinion. It was deemed necessary to make certain explanations in order to inform the national and international public opinion correctly regarding the statements made herein.

2. The statements of the Rapporteur indicating that he supported all segments of the society after the July 15 coup attempt and that he was thankful for the understanding and cooperation shown during his visit are very welcomed. We would like to take this opportunity to underline once again that Turkey will continue its cooperation with the international institutions and organizations in line with the understanding of a transparent democratic regime based on human rights in the following period as it did in the past.

3. Melzer stated that our national legislation provided sufficient safeguards against torture and ill-treatment and that all the officials in the judicial, legislative and executive branches of the State emphasized their commitment to the zero tolerance policy on torture. He also indicated that the officials did not object to this absolute and definite prohibition or propose for any exceptions or interpretation which would be contrary to the international law.

4. The Republic of Turkey has acted in line with the "zero tolerance policy on torture" since the 21st century and introduced regulations including harsh and heavy sanctions for torture. Within this scope, it has adopted the international principles and standards on this matter, notably the Conventions of the United Nations and the Council of Europe and has considered these rules as part of the national law under Constitutional guarantee. As a sign of this approach, the government completely lifted the time-limit for the crimes of torture and ill-treatment on its own will in 2013. Therefore, impunity was prevented for those who were alleged to commit these crimes, thus torture was removed from the agenda of our country since it put into practice the zero tolerance policy on torture.

5. Despite this fact, it is seen in the preliminary observations that the Rapporteur gives place to some allegations of so-called practical nonalignment between the "zero tolerance policy on torture" and the reality.

6. Therefore, it is deemed beneficial to share certain information anew with respect to the developments during and following the armed coup attempt and to the relevant practices.

2. NATIONAL PREVENTIVE MECHANISMS AGAINST THE ALLEGATIONS OF ILL-TREATMENT UNDER CUSTODY AND DETENTION

7. Under Article 92 of the Code of Criminal Procedure and in line with Article 26 of the Bylaw on Arrest, Custody and Interview, in the course of their judicial duties, the chief public prosecutors or public

prosecutors appointed by them shall inspect the custodial centres where the individuals taken into custody shall be accommodated, including, if any, the rooms where interviews are conducted, the factual situation of the individuals in custody, the grounds for being taken into custody and for the custody periods, as well as all the written material and interactions related to being taken into custody. In accordance with Article 9 of the Bylaw on Arrest, Custody and Interview, the health conditions of the persons taken into custody at the arrest moment and under custody shall be subjected to medical examination in line with the relevant legislation. A forensic report shall be drafted to determine the health conditions of the person under custody before his/her transfer, the extension of the period of custody, his/her release or referral to judicial authorities.

8. In addition, the police stations and lock-ups are subjected to general provincial and district inspections periodically conducted by governors and mayors and civil inspectors. The assessments, evaluations and criticism derived from these inspections are drafted in the inspection reports and the latter are submitted to the relevant law enforcement units, ensuring that that these reports will be followed up and actions will be taken according to them.

9. There are 1,264 police stations in Turkey and 1,197 lock-ups under these stations. 1,193 mentioned lock-ups have available camera and monitoring systems. There are also camera and monitoring systems in 303 lock-ups under 81 provincial public security branch offices. As of 2016, total number of custodial areas in the internal security units of the General Command of the Gendarmerie is 2,012, including 1,086 areas for men and 926 for women. Camera systems are completely installed in 1,946 custodial areas while works are still being carried out in 66 areas (3%). These places where the installation works are still ongoing, are not located in metropolises but in small-scale settlements with low rates of custody.

10. Besides all this, the Law Enforcement Monitoring Committee have been established. Therefore, it aims at ensuring that the complaint system in the law enforcement authorities can function more effectively and quickly, to enhance its transparency and reliability, to record and follow the works and transactions conducted or to be conducted by the administrative authorities due to the offences allegedly committed by the law enforcement authorities or to the actions, attitudes or behaviours necessitating disciplinary penalties in a central system.

In the Circular of the Ministry of Justice dated 20 February 2015 numbered 158 on the Investigations related to Allegations of Human Rights Violations and Torture and Ill-treatment, it is indicated that the investigations relating to the allegations of human rights violation, torture and ill-treatment will not be carried out by the law enforcement authorities but personally by the chief public prosecutors or public prosecutors appointed by them in an effective and adequate manner.

11. The penal execution institutions, one of the most important places where penalties and detention measures are executed and persons are deprived of liberty, may be inspected by several national/international auditing mechanisms, periodically and when deemed necessary, and interviews may be made with the persons in these institutions.

12. Within the scope of administrative auditing, the penal execution institutions are audited by the inspectors of the Ministry of Justice, the controllers of the Directorate General of Prisons and Detention Houses, the chief public prosecutors and public prosecutors in charge of penal execution institutions.

13. Furthermore, provincial and district human rights boards formed by provincial and district non-governmental representatives may visit and audit the penal execution institutions.

14. The Ombudsman Institution and the National Human Rights and Equality Institution (national preventive mechanism under OPCAT) may also conduct on-site examinations without permission in order to evaluate the complaints in the penal execution institutions.

15. Within the scope of parliamentary audit, presidents or members of Human Rights Monitoring Commission or Research Commissions of the National Assembly may visit the penal execution institutions and carry out research and audit activities.

16. Besides, legally authorised civil monitoring boards and judgeships of execution are also among the auditing mechanisms preventing the rights violations.

17. Apart from all these auditing mechanisms, in line with our will to perform a determined attitude towards the complaints against human rights violations, a department has been formed in the Ministry of Justice in order to follow the allegations in the media with respect to ill-treatment and torture in prisons and detention houses in the process following 15 July. The mentioned department follows up any kind of news and comments in the media and receives the complaints of the citizens via the internet. All the allegations are immediately examined by this department and the final decision is announced to the public.

3. INTERNATIONAL AUDITING MECHANISMS

18. All places including the penal execution institutions and lock-ups, where those deprived of liberty are kept, may be audited by the European Committee for the Prevention of Torture, UN Subcommittee on Prevention of Torture (SPT) and international mechanisms, as by Rapporteur Melzer.

19. The Republic of Turkey is signatory to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and is in cooperation with the European Committee for the Prevention of Torture, the auditing body of the Convention. As in the past, it is always possible for the mentioned Committee to visit the prisons in our country. The procedure delaying the visit of the Committee prescribed by the Convention of the ECPT on the grounds of national defence and public security did not apply and the Committee was able to pay visits in the process following 15 July.

20. On the other hand, it should be taken into account that some persons who were detained and are still being kept in prison after the brutal coup attempt of July 15 applied to the European Court of Human Rights (ECtHR) on the allegation that they were subjected to ill-treatment or their right to life was violated and five (5) requests for measure were rejected. Even though the applicants indicated that they had to be released due to their current health conditions, the ECtHR did not take into account the allegations of the applications, on the basis of the information and documents submitted by the Government.

21. Furthermore, the role of our country should be kept in mind, as set out in Istanbul Protocol drafted with the intent of ensuring that states can protect individuals from torture and ill-treatment more effectively and determining the international standards in this line.

4. ALLEGATIONS OF ILL-TREATMENT IN THE PROCESS FOLLOWING THE BRUTAL COUP ATTEMPT OF JULY 15

22. The allegations of ill-treatment of those taken into custody are away from the truth. The Republic of Turkey is a state governed by the rule of law and the arrest and custody proceedings are carried out primarily in conformity with the national and international law on human rights, even under the state of emergency.

23. It should be firstly mentioned that the majority of those taken into custody on the day of the attempt were arrested as a result of the conflicts and a part of them were arrested by the citizens. Those arrested as a result of the conflicts were naturally partly injured and this falls within the scope of legitimate use of force. The injuries in such cases will be registered in the custody reports. In our country, it is obligatory to obtain a forensic report in all custody proceedings in order to prevent the allegations of torture. Similarly, those who are released from custody also obtain such reports. Although the Decree Law does not provide that a forensic report is obligatory when the person is still under custody, the custody reports and those of entry to and exit from lock-ups of those kept under custody for 1 to 3 days are obtained without any reserve.

24. In cases where any finding is discovered in the judicial examination, showing that torture laid down in Article 94 of the Turkish Penal Code No. 5237, consequential severe torture in Article 95 and torment in Article 96 of the same Code have been committed, it is obligatory to notify the public prosecutor immediately in accordance with the relevant legislation and the public prosecutors directly instigate investigations with respect to the relevant law enforcement authorities if any finding of torture and ill-treatment is present. Moreover, the public prosecutors also audit the lock-ups regularly.

25. For several persons who are indicated to have been previously subjected to torture and ill-treatment seriously lack confidence in the independence of the prosecution and the judiciary and they think that revenge will be taken from their family or themselves, it is uncertain to what extent the allegations that they filed no complaint in the aftermath reflect the truth. Turkey fights terrorist organizations such as FETO/PDY, PKK, DAESH and it is known that these organizations act together systematically in order to put the State of the Republic of Turkey in an adverse situation in the international arena in these difficult times that Turkey endures. For these reasons, the allegations which are especially made by the members of these terrorist organizations, which are not known to be based on concrete data and which are not even subject of complaint in the domestic law should be dealt with doubtfully.

26. Furthermore, there is no data stating that the family of any person who alleges that he/she was subjected to torture and ill-treatment was harmed. Again, it is possible to object to the decisions taken by the judicial authorities with respect to these allegations and to apply to the Constitutional Court and the European Court of Human Rights respectively after exhausting all domestic remedies. Despite this, several allegations that were not even the subject of complaint in the domestic law were submitted to the Rapporteur, which shows that these allegations do not reflect the truth. Furthermore, according to the data received from the National Judiciary System (NJS), 231 investigation files were opened after 15 July in accordance with Article 256 of the Turkish Penal Code No. 5237. Similarly, any kind of allegation is meticulously examined by Civil and Police Inspectors of the Ministry of Interior.

4.1 Period of Custody and Legal Assistance under Custody

27. The provisions of the Decree Laws do not introduce amendments to all procedural actions in the Criminal Procedure Code (CPC). For example, no limitation was introduced to the regulation regarding the

requests of the persons under custody for immediate release in accordance with the procedure in the CPC even though a maximum 30-day period is prescribed in the Decree Law No. 667.

28. Taking into account the numerousness of those who joined the coup attempt and the members of the terrorist organization, the period of custody has been extended to maximum 30 days under the Decree Law, as limited to the state of emergency. This aims at ensuring that the statements of many people taken into custody are taken properly, evidence is collected for and against the suspects and therefore, the obligation of effective investigation of the State is fulfilled. Furthermore, this period may apply solely to the State security, Constitutional order, national defence, offences against State secrets, terror offences and collective offences. The period of custody prescribed in the memorandum did not apply in any form and a large majority of those taken into custody were kept under custody for 4 to 5 days.

29. Furthermore, in this period;

- It is possible to object to the decisions of custody.
- Requests for release may be always submitted during the period of custody. In case of request, the decision will be taken by the Criminal Judgeships of Peace.
- Legal assistance is available under custody.
- Health reports are definitely obtained in the entry to and exit from custody.

30. Limitation may be introduced on the right of the suspect to meet his/her lawyer during the state of emergency but the statement of the suspect will not be taken in this period. The purpose of the enactment of the mentioned provision is to prevent the terrorist organizations from oppressing the suspects through their lawyers and to hinder the leakage of information from lawyers to the other members who have not yet been arrested but found guilty according to the evidence collected during the investigation. Besides, the right of the detained suspects to meet their lawyer may be prohibited upon the decision of a judge in the presence of the possibilities that the security of the society and the penal execution institution is jeopardized, that the terrorist organizations or other criminal organizations are directed, that orders and instructions are given to them or that secret, explicit or ciphered messages are sent. However, in this case, the detained suspects may always enjoy the assistance of a lawyer that will be appointed by the bar association.

31. It should be also indicated that there is no provision in any of the Decree Laws issued under the state of emergency or in any legislation which grants exemption or envisages impunity with respect to the offences of ill-treatment or torture for state officials. During the state of emergency, no amendment which recognizes torture and ill-treatment as a crime has been introduced in the legislation.

5. FIGHT AGAINST TERRORISM

32. Our State is targeted not only by FETO but also by PKK and DAESH terrorist organizations and fights several terrorist organizations simultaneously. 527 people lost their lives and 2,690 were wounded in the bombing attacks of PKK and DAESH. These attacks launched by the terrorist organizations threaten our national security and public order. Our State is determined to ensure the safety of life and property of all citizens and the public order across the country. Fight against all terrorist organizations such as FETO, PKK and DAESH which do not recognize any human, moral or religious values will be conducted in a determined manner.

33. While our State takes significant steps in order to enhance the democratic standards, PKK terrorist organization has increased its terrorist acts in the country since 20 July 2015. PKK's urban branch YDG-H terrorist organization which was also reinforced with the forces in rural areas, started to launch terrorist attacks targeting the fundamental rights, notably the right to life, the right of freedom and security, the inviolability of domicile and the right of property in various places of the country. It further intensified its terrorist attacks in order to declare a so-called autonomous region by force of arms especially in some areas, notably in Cizre and Sur districts and to create pressure on the people living in these areas. The terrorist organization tries to oppress the civilians in those areas by digging ditches at the entry and exit of the cities, setting barricades and bomb traps and using firearms in order to disrupt the public order and public security. The separatist terrorist organization burns the schools and mosques and hits the hospitals and ambulances. This terrorist organization has also launched attacks on such personnel as doctors, teachers, engineers and other health care personnel who are in the area where the terrorist organization is influential and perform their duties unarmed in order to provide services like education, health which include the fundamental human rights to the people in the region. It has also sabotaged the roads, dams and bridges and other places where the services which will ease the life of the regional population are offered, through bomb and armed attacks. After 20 July 2015, the number of civilians who lost their lives reached 320 and 2,038 people were wounded in the PKK attacks. 791 security personnel were martyred, 4,417 others were wounded in the mentioned attacks. Lastly, Mardin Derik district governor who only aimed at serving the people living in Derik at his best was martyred in a brutal attack. As to the course of events of the mentioned bomb attacks, the contribution of FETO members are still subject of investigation and FETO's armed militants in disguise of state officials massacred 247 people only on the night of July 15, with its bomb and armed attacks by using the heavy weapons of the state. These incidents reflect the bloody face of the organizations clearly. It should be questioned to what extent the statements that the members of the terrorist organization made with one voice could be trusted given that these persons, who are clearly seen to have been radicalized and extremely terrorized, from their actions and discourses, "agreed on all hands and made systematic allegations" to the Rapporteur they met in the penal execution institutions.

34. DAESH is considered as a threat to Turkey, the region and humanity and a determined fight is conducted against the organization. Prohibition of entry has been introduced so far in Turkey for 52,075 people from almost 145 different countries who are suspected of being foreign fighters. 3,937 people of 98 different origins have been deported. Within the scope of the recent operations of our security forces, 6,814 people including 2,645 foreign people have been taken into custody and 2,255 people including 901 foreign people have been detained due to their relations with DAESH, al-Nusra and al-Qaeda. Turkey should be supported in its fight against PKK just as it is supported by the international public opinion in the fight against DAESH.

35. On the night of July 15, the members of Fetullahist terrorist organization (FETO) which was secretly embedded in the Turkish Armed Forces aimed at overthrowing the government which was elected on the basis of the legitimate and democratic principles of the State, by using the heavy weapons like the aircraft, tanks and armoured vehicles of the Turkish Armed Forces. While the structure in the Turkish Armed Forces made this attempt, the members who were settled and organized by the same organization in all the other public institutions, notably the security and judiciary, supported them. The mentioned organization has an approximately 40-year history and has adopted the principle of "secrecy" at the highest level in this period. It is a large organization which uses code names; has special communication software; is able

to apply the techniques of resistance to intelligence at the highest level; makes reference to religion in its appearance but recognizes no rules or values in order to reach its goal in its functioning; often shows its goal as governing the world instead of our country to its members; do not hesitate to shed blood in masses as witnessed on 15 July when it deemed necessary, by training the children most of whom are in poverty, intelligent and talented as militants through its educational institutions; does not manifest itself or leave any traces as its approach in several of the situations and incidents where it is involved; has the potential to compromise with any kind of illegal structure and any terrorist organization within the scope of common objectives; is able to mobilize the masses that are not their members by using the social media and visual media on the highest level; can pose threat on international level; has a strong budget which it manages through legal or illegal financial means and has one of the most complicated structures that the world has ever witnessed.

Within the framework of these statements, the regulation below is deemed necessary in order to create a pre-selection mechanism appropriate for the nature of the large-scale fight conducted to prevent the elimination of the law enforcement authorities fighting both DAESH and PKK and FETO, each one of which has significant organizations and is fought in our country, by means of denouncements or complaints of the mentioned organizations and their civil branches. Furthermore, if the West supports Turkey in its fight against PKK, FETO, DHKPC terrorist organizations which have not yet posed any problems in the Western world as in the fight against DAESH which is a big problem for the Western countries, this will reflect the sincerity of the Western world in its approach on the fight against terrorism and the terrorist organizations.

The regulation introduced by the Law No. 6722 complies with the law system which takes its sources from the Constitution. The Law No. 6722 introduces no exemption for the security forces in charge of fight against terrorism; and under the amendment of Article 11 of the Provincial Administration Law No. 5442 by the Law dated 23 June 2016 numbered 6722, it has been made obligatory to obtain investigation permission from the competent authorities so that investigations are carried out due to alleged offences committed during the execution of the duty provided that the offences committed by the security forces in charge of fight against terrorism is in relation to the nature of their duties during their execution or to the duty.

It is provided that the no measure of arrest, custody and detention may be taken until an investigation permission is given in the investigations to be carried out on the allegation that the offences laid down in the Law on security forces are committed. This does not have the nature of amnesty and applies only in the period which lasts until the competent authorities grant the permission. After the permission is given, the investigation and prosecution may be conducted with respect to the relevant state officials.

6. SITUATION IN PENAL EXECUTION INSTITUTIONS

36. The Rapporteur indicates that he found the physical conditions of the penal execution institutions in Turkey positive, which shows once again that the ongoing reforms since the 2000s are appropriate. The observation putting forward the problem of overpopulation is not only seen in our country but also common in all the countries in the world. Turkey has put into practice the new legal regulations (the practice of probation) in order to solve this problem. An unforeseen increase has been witnessed in the population of the visited penal execution institutions especially since 15 July but measures have been immediately taken and additional beds have been provided. It is deemed reasonable to focus on the centres where the judicial proceedings will be carried out in order to ensure that the defences of the

detainees in the penal execution institutions can be taken more effectively due to the delicacy of the process and it is considered that the internal balance will be built literally in the institutions in a short term.

6.1 Strip search in penal execution institutions

37. The strip search practice is the search conducted by ensuring that the sense of shame of the person is not violated and no one sees him/her in accordance with the Execution Legislation in cases where reasonable and serious indications of smuggling or possession of prohibited materials by convicts or detainees are present and the highest authority deems it necessary. During this search, the clothes on the upper part of the body are taken off first and those on the lower part of the body are taken off after wearing the clothes on the upper part. Besides, differently from the similar practices in Europe, the person is given single-use clothes and the clothes taken off of convicts and detainees are absolutely searched. The necessary attention is given in order not to touch the body during the strip search. In these searches, drugs and stimulants, weapons and sharp objects have been found several times.

Moreover, in its decision dated 15/12/2015 with respect to the individual application numbered 2013/5545, the Constitutional Court held that "the strip search practice did not violate any rights" and this decision was published in the Official Gazette dated 11/2/2016 numbered 29621. On the other hand, we do not find it sincere that it is recommended from European part that the strip search will be accepted as humiliating treatment in case of increasing resort to this practice in Turkey whereas we know that it is applied on heavier conditions as a standard in European penal execution institutions and the persons are left completely naked, which violates their privacy. Besides, the mentioned practice also complies with Articles 54.1, 54.2, 54.4 and 54.9 of the Section titled "Search and Control" in the Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules. The visitors are not subjected to strip search and they are only frisked and their possessions are searched for security reasons.

6.2 Allegations related to referrals and transfers

38. Convicts and detainees are not subjected to any kind of deterrent, humiliating, degrading or embarrassing acts of harassment including psychological and sexual harassment during their referrals and transfers and the allegations made otherwise are resolutely rejected. We would like to emphasize our sensitivity anew on this matter and ensure that judicial and administrative investigations will be immediately instigated with respect to the relevant personnel in cases where the convicts and detainees who have complaints immediately submit them to the relevant authorities. However, no complaint has been submitted so far to the Directorate General of Prisons and Detention Houses which is in charge of tracking in this regard.

39. In accordance with the Law No. 2803 on the Establishment, Duties and Authorities of the Gendarmerie and the Bylaw on the Establishment, Duties and Authorities of the Gendarmerie, the General Command of the Gendarmerie performs the duties of ensuring the external protection of Penal Execution Institutions and Detention Houses and of referring, transferring and guarding the convicts and detainees. The personnel meticulously respect the human rights during the execution of these duties. The mistakes made and complaints submitted in this sense are definitely examined and the necessary legal and administrative measures are taken. (8) applications have been filed to the Human Rights Violations' Investigation and Evaluation Centre of the Gendarmerie in 2016 on the allegation of human rights violation during the

referrals and transfers from prisons and no element of crime has been found as a result of the examination conducted with respect to the allegations in the applications. Examinations are still being carried out for (1) application.

7. HUMAN RIGHTS AND EQUALITY INSTITUTION OF TURKEY

40. The misunderstanding arising from the allegation that the Human Rights and Equality Institution of Turkey, the national preventive mechanism under the OPCAT, does not perform its inspection duty should be corrected. In accordance with the Law No. 6701, the president and vice-president of the Human Rights and Equality Institution of Turkey are in charge and this institution already maintains its activities with 2 specialists and 15 assistant specialists. In cases where the head of department deems it appropriate, two specialists that he/she will designate may regularly visit the places where the persons are deprived of liberty at the intended time and place. The matter which should be indicated at this point is that only the decision-making body of the institution has not yet been completely formed but this does not pose any obstacle to the auditing proceedings.

41. As a consequence of all these statements, we would like to underline once again that we keep the doors of our country open to the Rapporteur with whom we were pleased to have cooperated during his visit and other international organizations which perform similar duties and that our country will continue to follow this policy “which proves that Turkey has not tolerated torture in the last decade and guarantees this indisputably” as a necessity of its rooted civilization, as the Rapporteur indicates in his observations.

Respectfully announced to the public.