REPUBLIC OF TURKEY
MINISTRY OF JUSTICE

DEPARTMENT OF HUMAN RIGHTS

Tel. : + 90 312 414 80 60
Fax : + 90 312 219 45 28
E-mail :inhak@adalet.gov.tr

OBSERVATIONS OF THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON THE INTERVENTION OF MR DAVID KAYE AS A THIRD PARTY CONCERNING THE APPLICATION
No.72/17
TAŞ v. TURKEY and 9 other applications
BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Date: 4 December 2017

1. By the letter from the European Court of Human Rights ("the Court") dated 24 October 2017, it is notified that any written observations of the Government of the Republic of Turkey ("the Government" or "the Turkish Government") could be filed in reply to the third-party submissions on behalf of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of United Nations (UN Special Rapporteur), Mr David Kaye.

2. In this regard, the Turkish Government would like to submit the below mentioned observations:

I- Mr David Kaye's Intervention

a- Power

3. First of all, the Government points out that the mandate of UN Special Rapporteur does not cover the power to intervene before ECtHR, by doing that, Mr Kaye acts beyond his authority.

4. The mandate of Special Raporteur is based on the Resolution 7/36 of Human Rights Council of United Nations adopted in its 42nd meeting on 28 March 2008. Intervening cases before ECtHR, which is not indicated under articles 3 and 4 of this Resolution is not a part of the mandate of Special Rapporteur.

5. Although an authorization for the positions and views expressed by the Special Rapporteur was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies, Mr. Kaye uses his capacity as Special Rapporteur and refers to mandate accorded by Human Rights Council.

6. Additionally, the Government draws the Court's attention to the fact that there is no indication in Mr. Kaye's submissions that his lawyer is an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them (see *mutatis mutandis* Rule 36 of Rules of Court).

7. Therefore, in the light of the above mentioned explanations, the Government invites the Court to carefully examine the submissions of Mr. Kaye as a third-party intervener.

b- Scope

8. Given the nature of the third-party intervention, the intervener should not comment on the facts or the merits of the case. Nevertheless, Mr Kaye's submissions are far from complying with this requirement.

9. Mr Kaye's submissions are more like the applicants' claims than the work of an "amicus curiae" as he claims to be.

10. The arguments in the intervener's letter are ill-founded, the correlations are weak and the conclusions are speculative. In fact, some old cases are mentioned which are not relevant to the current cases in question (see § 10 of the intervener's submissions) that some non-factual data is combined with these cases(see § 29 of the intervener's submissions) that conclusions are not sound and solid enough to be used in adjudication process (see § 36 of the intervener's submissions). Since, no legal framework has been used in the intervener's submissions; the outcome cannot go beyond a prejudiced political view.

11. Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council is determined by its decision 5/2 on 18 June 2007. According to article 3, special rapporteurs shall exercise their mandate through independent and impartial assessment without being effected by any influence. Furthermore, article 6 stipulates that mandate holders shall "always seek to establish facts, based on objective, reliable information emanating from relevant credible sources that they have duly cross checked to the best extend possible. In these circumstances, Mr Kaye's submissions do not comply with the Code of Conduct.

12. Therefore, in the light of the above mentioned explanations, the Government invites the Court to carefully examine the submissions of Mr. Kaye as a third-party intervener.

Observations as regards the Claims

13. The Government would firstly like to note that it is the independent and impartial judicial authorities' decision to launch investigations and detain the applicants, which is the subject matter of the present applications. The Government is not entitled to intervene in, provide suggestions and indoctrinate in respect of these judicial decisions. Being a state of law also requires this.

14. However, if it is alleged that these judicial decisions do not comply with national and international legal rules and violate the personal rights and freedoms, the domestic and international remedies are available within the Turkish law. Indeed, the

applicants availed themselves of these remedies, and lodged applications with the Turkish Constitutional Court and the European Court.

15. With respect to the above-mentioned applications, the Turkish Government reiterates its observations on the admissibility and merits of the applications which it submitted to the Court within the scope of the questions asked by the Court.

16. The Government made necessary assessments in these observations as regards the processes of launching of investigations in respect of the applicants and their detention on remand, the matters which were stated in the third party observations and which were similar to the questions asked by the Court to the Government. In this regard, the Government would like to state that it does not accept the third party observations on the matters, on which the Court did not ask questions to the Government in the communication document, and that these observations which are not related to the application should not be taken into account.

17. The Republic of Turkey is one of the founding members of the Council of Europe and a democratic state of law, which accepts rule of law and democracy as a main reference. The freedom of media is guaranteed under Article 28 of the Constitution. In accordance with Article 90 of the Constitution, in the case of a conflict between international agreements and domestic legislation concerning fundamental rights and freedoms, the provisions of international agreements shall prevail. The Republic of Turkey which is well aware of its international obligations takes measures provided for by the law and democracy and duly fulfils all of its obligations on the protection of fundamental rights and freedoms. In this regard, the measures taken by our country in the aftermath of the terrorist coup attempt are in compliance with our Constitution and relevant legislation, the principles of state of law and international obligations.

18. Freedom of media is a special form of freedom of expression and requirement of democratic society. In this direction, the free media has a vital role in ensuring persons' freedom of information and to access information in a timely and impartial manner from accurate, reliable sources. It is assumed that the media has a monitoring and watchdog mission, as often emphasized also in ECHR decisions, resulting from its task of providing the public with accurate information.

19. On the other hand, in the case of the conflict between the exercise of freedom of expression, freedom of media and the rights and freedoms concerning personal and private lives, and the protection of family life, courts emphasize the necessity of ensuring a proportionate and a fair balance between individual benefits and public interests.

20. In addition to the above mentioned area of freedom, the media function also involves duties and responsibilities. As emphasized in judicial decisions, media freedom is both a right and a duty. In exercising this freedom, the media must act in accordance with the responsible and conscious journalism rules as well as ethical and normative rules of membership of the media, and it has a content originating from the nature and normative structure of this right.

21. In accordance with Articles 14 and 28 of the Turkish Constitution and Article 10 of the European Convention on Human Rights ("the Convention"), the freedom of media is not unlimited and may be subject to limitations in certain cases. The freedom of media may be limited with a view to protecting national security or public security in a democratic society and ensuring public order. Certain types of hate speeches provoking violence or hatred fall within Article 17 of the Convention (prohibition of abuse of rights) and accordingly, they do not enjoy any protection. Indeed, the purpose of these types of speeches is to eliminate a number of rights and freedoms enshrined in the Convention. Moreover, any publication which incites to committing offences or praises committed offences would, in itself, constitute an offence. Indeed, it is acknowledged in the case-law of the Court that the State has a margin of appreciation in terms of intervention in freedom of media, in cases of racism, hate speech, war propaganda, inciting to and provoking violence, invitation to revolt or legitimizing terrorist acts.

22. In the exercise of this right, just like every other rights and freedoms, freedom of media does not give the right and power to give or publish false, irrelevant news or news contrary to facts regarding persons, events and situations. The duty of the media, concerning the event, person, place and time relevant with the news or publication, is to act in accordance with the related regulations, professional ethics rules, principles and behaviours of the media, and to always inform the public in a correct, timely, complete and reliable manner in a democratic society. Otherwise, broadcasting for the purpose of attacking the honor, dignity and reputation of persons is not covered by the freedom of the media.

23. Furthermore, in democracies, the aim is to establish and maintain a healthy, peaceful, happy, secure, prosperous and well-being society. The main purpose and duty of democratic administrations is to ensure, protect and maintain the general well-being, and security of the individuals and the society, and it is necessary to take all kinds of legal and administrative measures to ensure this. The free media's fulfilment of its function and exercise of its rights and freedom also has a natural and normative limitation which must be assessed

on the basis of this aim. If the publications are made for the purposes of disseminating, legitimizing, spreading and propagating terrorist activities instead of serving the purposes stated above, if they are done directly or indirectly for this purpose, this exercise, certainly cannot take advantage of natural and normative rights content of media freedom and protection, and cannot be evaluated under the scope of media freedom.

24. As a matter of fact, in the first paragraph of Article 5 of the Council of Europe Convention on the Prevention of Terrorism "the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed" is described as a public provocation to commit a terrorist offence.

25. In modern democracies, the media is often regarded as the fourth power coming right after the legislative, executive and judicial power. For, the media freedom is one of the greatest safeguards of global values such as democracy, rule of law and fundamental human rights. 15 July coup attempt can be given as an example of the importance of media freedom. At the night of 15 July, President of the Republic of Turkey talked on his cell phone during a live broadcast of a private television channel and called on the Turkish nation to resist the coup attempt which was launched against the unity and democracy of our country. Therefore, the Turkish nation was informed of the incident on time through all means of free media, furthermore, the Turkish nation united against the coup plotters especially by means of television channels and internet and repelled them. Turkish nation witnessed the great benefits of the media freedom on the date of 15 July.

26. Moreover, the freedom of media is among the most abused freedoms due to its power and political, economic and social impacts on the societies. Nowadays, the media has become one of the most important tools of propaganda and recruitment of members of terrorist organizations. It is known that the terrorist organizations, in particular FETÖ/PDY, DAESH and PKK, made an intensive use of these media tools and recruited large numbers of members. In addition, it is observed that terrorist organizations use the means of media to spread fear to the public, create a chaotic atmosphere and make the State appear powerless. Various researches demonstrate that terrorist organizations make use of the means of social media also in order to contact their militants, to educate or transfer them, as well as for purposes of activities of propaganda and lobbying. It is understood that thousands of terrorists, recruited by terrorist organizations such as DAESH and known as foreign warriors,

make contact with the organizations for the first time via social media. Thus, many countries make comprehensive regulations to prevent such terrorist activities in virtual platform. A draft of EU Directive dated 13 January 2016 which is still being prepared on this issue and which is on the agenda contains important regulations in this area.

27. In addition to the use of media outlets directly by the terrorist organizations, terrorism is also indirectly supported by way of acting contrary to the understanding of responsible of broadcasting and the rules of media ethics. The 8th and 10th paragraphs of the Recommendation (Rec 1706 (2005)) on Media and Terrorism adopted by Parliamentary Assembly of the Council of Europe are considered of high importance for the prevention of the situations stated above. The Parliament invited the media professionals to co-operate between themselves, for instance through their professional organisations, in order to avoid a race for sensationalist news and images which plays into the hands of terrorists; to avoid acting in the interests of terrorists by adding to the feeling of public fear which terrorist acts can create or by offering terrorists a platform for publicity; to refrain from publishing shocking pictures or disseminating images of terrorist acts which violate the privacy and human dignity of victims or contribute to increase the terrorising effect of such acts on the public as well as on the victims and their families; to avoid aggravating, through their news and comments, the societal tensions underlying terrorism, and in particular to refrain from disseminating any kind of hate speech.

28. No country in the world considers terrorist propaganda or praising terrorist activities within the scope of freedom of expression. In the case of Leroy v. France, where a drawing (four skyscrapers demolishing in dust cloud after the collision of two airplanes) was submitted to the editorial team of a magazine the following caption representing the attack on the twin towers of the World Trade Centre USA on 11 September 2001, parodying advertising slogan of a famous brand "WE HAVE ALL DREAMT OF IT... HAMAS DID IT", ECtHR did not consider the caption above within the context of freedom of expression. Most of the actions regarded as terrorist propaganda in Turkey contain remarks which are much more serious than this, even some of them go far beyond serious remarks and include some operational planning.

29. Within this scope, it must be mentioned at the outset that no person has been placed into custody or detention in Turkey on account of merely his/her journalistic activities. The journalists who are still in the penal institutions as detainees or convicts are held within the scope of criminal investigations carried out by the public prosecutors or the proceedings

on account of the acts imputed on them which constitute offences within the criminal law (homicide, forgery, membership of terrorist organizations such as FETÖ/PDY, PKK, DAESH, DHKP-C, attempting to overthrow the constitutional order etc.).

30. The Government would like to underline that the subject matter of the investigation is not the allegation that the applicants *"performed journalism activities"* as journalists. Within the scope of the information and documents within the file, the Government notes that investigations were launched in respect of the applicants on the grounds that the newspapers where they worked and/or their articles and social media posts demonstrated that they acted in line with the aims of the FETÖ/PDY and/or the PKK/KCK armed terrorist organizations.

31. Over the years, the FETÖ/PDY has established its own media network on the one hand and placed its own followers in the other media organs and used them for its own purposes on the other hand. Furthermore, by means of influencing some media members, who are not members of the organization and known to the public, it ensured that they play an important role in the legitimization of the organization's aims and activities in the public eye.

32. The Government would like to note that it is a known fact that terrorist organizations form many structures appearing to be legal by using of many opportunities in democratic countries in order to achieve their objectives. In order for these structures to influence a large number of people, persons working in various institutions and organizations have been included in these structures. In such cases, **the subject-matter of an investigation does not concern professional activities of these persons, but the activities they carry out on behalf of terrorist organizations**. The investigation against the applicants also falls within this context; however, it does not concern their journalism activities.

33. Admittedly, the role of the media in democratic societies is unquestionable and the members of the media have the freedom to state the truth by using a shocking and exaggerating language. However, in a democratic society, any freedom cannot be used in order to eliminate another right or freedom or outside of the necessities of the democratic society. Using the media as a tool to eliminate others' rights and freedoms cannot be allowed.

34. The Government would like to draw attention to the regulations within the domestic law, as regards the importance attached to freedom of media in Turkey.

35. Freedom of press is enshrined in the Constitution and the cases where this freedom will be restricted are regulated in detail in the Constitution as well. Article 13 of the Constitution provides that fundamental rights and freedoms may be restricted only by law and

in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the essence and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principle of proportionality. Article 26 of the Constitution titled 'freedom of expression and dissemination of thought' prescribes that everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. However, the exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the inseparable integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. Article 28 of the Constitution regulating the rules with respect to the freedom of media states that the press is free, and shall not be censored. The State shall take the necessary measures to ensure freedom of the press and information. In the limitation of freedom of the press, Articles 26 and 27 of the Constitution shall apply.

36. Criminal sanctions are envisaged in the Turkish Criminal Code No. 5237 with respect to the acts concerning illegal prevention of the publication and broadcast of any kind of media organs. Furthermore, it is clearly provided in Article 218 of the Code No. 5237 that expressing of opinions which do not exceed the limits of providing information and which are made for the purpose of criticism does not constitute an offence; also Article 301 of the same Code stipulates that expressing of opinions for the purpose of criticism do not constitute an offence.

37. Under the Law No. 5187 regulating the freedom of press and the exercise of this freedom, it is provided that the press is free, the exercise of freedom of press can only be limited in compliance with the requirements of a democratic society and for the purpose of protecting the reputation and rights of others, public health and decency, national security, public order, public security and territorial integrity; preventing the disclosure of State secrets or the commission of a crime; ensuring authority and impartiality of the judiciary; the owner of periodicals, the director in charge and the author cannot be forced to disclose any kind of news sources including information and documents and to testify on this matter.

38. The permission which was required to investigate and prosecute the offence of "degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the

State" under Article 301 of the Turkish Penal Code No. 5237 which entered into force on 1 June 2005 was lifted. However, in view of the increasing number of cases filed on the basis of the mentioned provision of the Law, Article 1 of the Law no. 5759 on the Amendment of the Turkish Criminal Code, which entered into force on 8 May 2008, and Article 301 of the Turkish Criminal Code no. 5237 were amended, and the investigation into the offences within the scope of the mentioned article has been subject to the permission of the Minister of Justice. Therefore, it is observed that the number of permissions for investigation granted by the Minister of Justice with respect to Article 301 decreased considerably.

39. In addition, a part of the amendments introduced by the Law No. 6459 on the "Amendment of Certain Laws within the context of Human Rights and Freedom of Expression" which entered into force upon its publication in the Official Gazette dated 30 April 2013 is as follows:

-The elements of the offence of "printing and publishing leaflets and declarations of terrorist organizations" set out in the second paragraph of Article 6 of Anti-Terrorism Law no. 3713 have been re-regulated. Printing and publishing the leaflets and declarations which legitimize the methods including force, violence and threat or praise or incite to use of these methods instead of every leaflet and declaration have been accepted as an offence. With this regulation, the elements of the offence have been further concretized and it has been aimed at harmonizing with the Court's standards in the field of freedom of expression.

-The elements of the offence of "disseminating propaganda in favour of a terrorist organization" laid down in the second paragraph of Article 7 of the Law No. 3713 have been re-regulated. Disseminating propaganda in favour of terrorist organizations which legitimize their methods including force, violence and threat or praise or incite to use of these methods have been accepted as an offence. Also, it has been provided that those who commit certain offences without being a member of it (publishing leaflets and declarations, disseminating propaganda, participating in illegal meetings and demonstrations) on behalf of the organization, are not punished under Article 220 § 6 of the Turkish Criminal Code.

-With the amendment to Article 215 of the Code No. 5237, it is provided that for the constitution of the offence of "praising the crime and criminal" an explicit and imminent danger to public order should occur.

- The elements of the offence of "disseminating propaganda in favour of the organization" have been re-regulated. With the amendment to the 8th paragraph of Article 220

of the Code No. 5237, the elements of the mentioned offence have been re-determined in parallel with the regulation in Article 7 of the Anti-Terror Law, and the actions which will constitute the offense of propaganda have been further concretized and harmonized with the Court's standards. Furthermore, it has been provided that this paragraph will only apply to armed organizations, by the clause added to the sixth paragraph of the same article.

40. These legislative provisions are still applicable in the period of state of emergency, and the standards on this matter are still being implemented.

41. Apart from all these explanations the Government would like to note that Mr. Kaye asked political questions and made assessments in the third party observations, which do not have legal character. It is also observed that he mentioned about the issues which are not related to the subject matter of the application and which do not concern the applicants' allegations. In this regard, it should be noted that E. D. does not have any relation with the said applications (see § 10 of the intervener's submissions) and this person is an absconder for the offence of establishing a terrorist organization. It is also noted that the relevant media institutions were closed as they belonged to the terrorist organization with a view to prevention of financing of terrorism and terrorist propaganda. Indeed, this issue is not the subject matter of the present application. In this regard, the Government also recalls that in a democratic regime, which is the guarantee of the rule of law and human rights, financing of terrorism and terrorist propaganda cannot be allowed.

42. In Mr. Kaye's submissions, it is seen that a particular importance has been given to the lawfulness of the alleged interferences under the scope of Article 10 of the Convention.

43. First of all, regarding this subject, the Government reiterates its submissions under its observations on the admissibility and merits of the above-mentioned cases. Furthermore, although Mr Kaye's comments on the facts or the merits of the case go beyond the scope of a third-party intervener's submissions, it is deemed appropriate to put forward some general explanations as regards Article 10. It should be also noted that each case has its own particular conditions therefore; this reply cannot cover all of the arguments as regards the compatibility of the alleged interventions with the Convention.

44. According to the Court, the expression "prescribed by law" requires firstly that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with

sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.

45. However, experience shows that it is impossible to attain absolute precision in the framing of laws, particularly in fields in which the situation changes according to the evolving views of society. A law which confers a discretion is not in itself inconsistent with this requirement, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference (see *Müller and Others v. Switzerland*, judgment of 24 May 1988, Series A no. 133, p. 20, § 29; *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202, pp. 21-22, § 45; and *Margareta and Roger Andersson v. Sweden*, judgment of 25 February 1992, Series A no. 226-A, p. 25, § 75). The Court also accepts that the level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the status of those to whom it is addressed. It is, moreover, primarily for the national authorities to interpret and apply domestic law (see *Vogt v. Germany*, 26 September 1995, Series A no. 323, p. 24, § 48).

46. In the subject cases, Articles 155, 216§1, 220§§ 6-7 and 8, 309§1, 311§1, 312§1 314§§1-2 of Turkish Criminal Code and Article 7 §2 of the Anti-Terror Law provided the legal basis for the investigation conducted against the applicants.

47. The Government is of the opinion that the terms in the relevant articles satisfy the requirements of clarity and foreseeability.

48. In this respect the Government underlines various amendments in Turkish law made to expand rights and freedoms in line with European Convention on Human Rights: The elements of the offence of "disseminating propaganda in favour of a terrorist organization" laid down in the second paragraph of Article 7 of the Anti Terror Law No. 3713 have been reformulated. Actually, it has a narrower definition of terrorist propaganda, and criminalizes propagation of the declarations of an illegal organization only if the content legitimizes or encourages acts of violence, threats or force.

49. As regards the application of the relevant articles, the Government would like to underline that all of them are interpreted by domestic courts in line with the ECtHR standards.

50. In a number of admissibility decisions concerning applicants who were convicted under Article 168 of the former Penal Code for membership of an armed organisation, the ECtHR observed that the applicants had not been convicted for having expressed their opinions or for having participated in a meeting, but for membership of an armed organisation and concluded that there was no interference with the right of the applicants to freedom of expression[1].

51. Therefore, the Government would like to underline that it is unfounded and also premature to say that there is an interference with the freedom of expression of the applicants. Additionally, the interferences –if there are any- have a sufficient legal basis in domestic law and were "prescribed by law", having the quality required of "law" in a democratic society.

Observations as regards the necessity of the derogation

52. According to the Court, it falls to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation should be left to the national authorities. Nonetheless, Contracting Parties do not enjoy an unlimited discretion. It is for the Court to rule whether, inter alia, the States have gone beyond the "extent strictly required by the exigencies" of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. In exercising this supervision, the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation and the circumstances leading to, and the duration of, the emergency situation (see Ireland v. the United Kingdom, no:5310/71 , § 207; Brannigan and McBride v. the United Kingdom, 26 May 1993, § 43, Series A no. 258-B).

---

[1] Sirin v. Turkey (admissibility decision), Application No. 47328/99; Kılıç v. Turkey (admissibility decision), Application No. 40498/98; Siz v. Turkey (admissibility decision), Application No. 895/02; Turan v. Turkey (admissibility decision), Application No. 879/02; Arslan v. Turkey (admissibility decision), Application No. 31320/02; Kızılöz v. Turkey (admissibility decision), Application No. 32962/96.

53. In Lawless ((no. 3), no. 332/57, § 28) case, the Court held that in the context of Article 15 the natural and customary meaning of the words "other public emergency threatening the life of the nation" was sufficiently clear and that they referred to "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed". In the Greek case (Denmark, Norway, Sweden and the Netherlands v. Greece, nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook 12, p. 70, § 113), the Commission held that, in order to justify a derogation, the emergency should be actual or imminent; that it should affect the whole nation to the extent that the continuance of the organised life of the community was threatened; and that the crisis or danger should be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, health and order, were plainly inadequate.

54. The Court's case-law has never, to date, explicitly incorporated the requirement that the emergency be temporary, although the question of the proportionality of the response may be linked to the duration of the emergency. Indeed, the cases relating to the security situation in Northern Ireland, demonstrate that it is possible for a "public emergency" within the meaning of Article 15 to continue for many years.

55. As previously stated, the national authorities enjoy a wide margin of appreciation under Article 15 in assessing whether the life of their nation is threatened by a public emergency. In A. and others v. The United Kingdom judgment, the Court accepted that it was for each Government, as the guardian of their own people's safety, to make their own assessment on the basis of the facts known to them. Weight must, therefore, attach to the judgment of the Republic of Turkey's executive and Parliament on this question. In addition, significant weight must be accorded to the views of the national courts, which were better placed to assess the evidence relating to the existence of an emergency.

56. On the night of 15 July, upon the instruction of the founder and leader of the FETÖ/PDY, Fetullah Gülen, and in line with the plan approved by him, a group of terrorists in uniforms within the Turkish Armed Forces attempted an armed coup against the Turkish democracy for the purpose of overthrowing the elected president, Parliament and Government together with the Constitutional order. Taking the existing condition into account and in order to fight effectively against the FETÖ/PDY in line with the recommendation of the NSC, by the decision of the Council of Ministers, a nationwide State of Emergency has been declared

as from 21 July 2016 for three months, pursuant to Article 120 of the Constitution and Article 3/1-b of the Law No. 2935 on State of Emergency.

57. With a view to ensuring continuity of the effective implementation of measures for the protection of Turkish democracy, the principle of the rule of law, as well as the rights and freedoms of the citizens, the Council of Ministers decided to extend the State of Emergency for a period of three months, starting from Wednesday, 19 July 2017.

58. In this context, Turkey resorted to the right of derogation from the obligations in the European Convention on Human Rights (ECHR). Notifications of derogation from Convention obligations were submitted to the Council of Europe in accordance with Article 15 of the ECHR, concerning the right permitted by the Convention. This includes Article 10 of the ECHR, concerning freedom of expression, which is not listed among the non-derogable articles. In this process, Turkey is fully aware of its obligations under international conventions and acts in full respect for democracy, human rights, the principle of rule of law. Due respect is shown to fundamental rights and freedoms and the of rule of law is strictly observed. The principles of "necessity", "proportionality" and "legality" have been sensitively complied.

59. FETÖ/PDY is an atypical armed terrorist organization which is scarcely encountered in the world, unlike PKK or DAESH. In this perspective, the required measures are taken with a view to averting the organization's strength within the state. In the meantime, the scope of the measures taken in this respect has been limited to the terrorist organizations in order not to interfere with the rights and freedoms of others.

60. The Government wishes to underline that it was due to increasing threats against the survival of the state and the nation that made inevitable to take measures under State of Emergency since 21 July 2016. In this process, Turkey maintains a close dialogue with the Council of Europe organs and mechanisms.

61. In this respect, the Government reiterates its observations previously submitted to the Court as regards the relevant applications. The Government also notes that Mr. David Kaye's assessments apart from the questions asked by the Court to the Government should not be taken into account.

62. Accordingly, the Government, in the first place, draws attention to its explanations in the Government's observations on the present applications and respectfully invites the Court to find the applications inadmissible.

63. If the Court considers otherwise, the Government respectfully invites the Court to hold that there has been no violation of the relevant Convention provisions in the present cases.

4..December 2017

Aysun AKCEVİZ
Ministry of Justice
Acting Head of Department of Human Rights