

**INITIAL OBSERVATIONS BY TURKEY ON THE MEMORANDUM OF
COMMISSIONER MUIZNIEKS ON COUNTER-TERRORISM OPERATIONS IN
SOUTH-EASTERN TURKEY**

The Commissioner for Human Rights of the Council of Europe, Nils Muiznieks, visited Turkey on 6-14 April 2016. Full cooperation was extended to the Commissioner in organizing and facilitating his visit in line with his mandate. The Commissioner was provided full access to all the places he requested to see and all the persons he requested to meet during his visit in Ankara, İstanbul and Diyarbakır.

The Memorandum was shared by the Commissioner Muiznieks with the Turkish authorities on 10 November 2016. Notwithstanding our disagreement with certain observations and assessments including a series of allegations in the memorandum, due consideration will be given to the issues raised in the said text, in a spirit of constructive dialogue as is the case for every comment and recommendation provided by the Council of Europe.

Without prejudice to further observations that the Turkish Government could provide in due course, it is deemed necessary to draw attention to the following points:

(i) It is welcomed that the Commissioner acknowledges the extent of the severe threat posed to Turkey by terrorism and terrorist organizations, including PKK. He also extends support to the right, duty and obligation of the Turkish State to fight against terrorism in all its forms. It is noteworthy as well that the Commissioner recognizes that terrorist activity itself is a fundamental violation of human rights.

(ii) PKK is a vicious terrorist organization, which is included in the lists of terrorist entities of the EU as well as USA and many other countries. For decades, Turkey has been countering PKK terrorism which has claimed thousands of lives of innocent people and led to the violations of the fundamental rights and freedoms of people; first and foremost, right to life.

While Turkish security authorities have been conducting counter-terrorism efforts in line with legal principles as well as norms and standards enshrined in human rights instruments, Turkey has been targeted by ungrounded allegations, mostly as a result of PKK propaganda.

(iii) Since July 2015, PKK terrorist organization, which abandoned the Process, opted for terrorist violence and heavily intensified its decades old acts of terror. It adopted a new tactic to blend in with the local population and moved its violence to urban centers. The terrorist organization set Improvised Explosive Device (IED) traps in residential areas, built barricades, dug ditches and tried to establish control over the region by putting civilians' lives at risk and even used them as human shields. It has even declared so-called "autonomy" in some districts. It has also carried suicide bombings in city centers as was the case in Ankara and Diyarbakır.

As a sovereign country and as a democratic State based on the rule of law, Turkey has the duty and obligation to take necessary measures to protect its citizens against terrorism and to establish public order in its territory in line with its constitutional order and international norms.

In the course of this terrorist campaign since July 2015 (as of 28 November 2016), 799 security personnel and 323 civilians were murdered; 4,428 security personnel and 2,040 civilians wounded; 231 civilians kidnapped by the PKK. PKK terrorism has prevented people living in the region from accessing health services and enjoying their basic right to education. It has targeted public facilities, including schools, hospitals, ambulances, infrastructure such as dams as well as private business establishments. As from 20 July 2015, PKK attacked 247 public facilities, 6 dams, 231 private business establishments, 19 ambulances and 1,643 vehicles. It has used heavy weaponry. 3,355 grenades, 261 rocket launchers, 4,767 Molotov cocktails and 7,048 IED's have been captured only since that date.

(iv) In spite of the severity of the threat, Turkey had not resorted to the right of derogation under the European Convention on Human Rights and conducted its fight against PKK terrorism without deviating from any of its negative or positive obligations under the Convention, prior to the terrorist coup attempt on 15 July 2016.

In order to protect its people from PKK terrorism, within the limits of rule of law and in full observance of its laws and international obligations, Turkey has effectively carried out counter-terrorism operations. The measures Turkey has taken within the framework of counter-terrorism operations are necessary and proportionate to the legitimate aim of protecting its people from unlawful terrorist violence by PKK terrorism.

(v) During the counter-terrorism operations against PKK, in order to avoid harm to the civilian population, curfews have been imposed in a number of provinces and districts as a temporary measure, declared as necessary only for a limited period of time. Curfews are continuously reviewed and lifted when necessary according to the circumstances. The imposition of this measure has considerably been narrowed down, as the progress in counter-terrorism operations has been advanced.

During curfews, rapid and safe evacuation of the people who wished to leave the region before the operations was ensured by the Turkish authorities. Necessary measures have been taken to meet the basic needs of the people and to provide health services in an uninterrupted way. 155 "Police Emergency Line" is operational to call ambulance or ask for food. Distribution of packages of daily needs as well as electricity and water services have been provided without interruption despite the shooting and shelling of PKK terrorists hiding in the buildings.

(vi) While measures were taken in response to these pressing circumstances, due consideration has been given to the principles of necessity in a democratic society and proportionality. Acting within the limits of its margin of appreciation, Turkish authorities imposed curfews as the most appropriate measure to protect civilians from being targeted as well as being used as human shields by the terrorist organization; separating civilians from terrorists during the course of security operations; and avoiding harm to civilians while clearing booby-trapped trenches and barricades.

In compliance with the principle of proportionality, curfews are imposed not in city centers and districts where the operations were carried out, but only in areas where the city structures of PKK conducted its terrorist activities, built barricades, dug ditches that led to the serious violation of fundamental rights and freedoms of people.

(vii) As to the legal basis of the measure of “curfews”, it is provided under Turkish legal system - in the Articles 11 and 32 of the Provincial Administration Law No 5442. Curfews are imposed on the basis of the authority granted with these provisions to governors and district-governors to take necessary measures to prevent the commission of crimes and to protect public order and security. Therefore, it is considered that the measure of curfews enjoys the required legal basis in Turkish national law and it meets the quality of law requirements, namely, accessibility and foreseeability. As a matter of fact, there is no decision rendered by either a domestic court or the European Court of Human Rights indicating otherwise. The applications requesting interim measure for lifting curfews were rejected by the European Court of Human Rights as well as by the Turkish Constitutional Court.

On the other hand, as to the interim measures indicated by the European Court of Human Rights in a few cases concerning persons in need of medical care, Turkish authorities immediately put them in process.

(viii) With respect to the measures taken within the framework of counter-terrorism operations, including curfews, legal remedies are available under Turkish legal system, including individual application to the Turkish Constitutional Court. The supervision of the European Court of Human Rights continues as usual.

Moreover, persons who have suffered damage due to terrorist acts or counter-terrorism operations are provided with adequate redress by the Turkish State. Persons who are victims of terrorism are compensated for their losses due to terrorist acts conducted by PKK or operations by security forces to remove barricades and close ditches set up by terrorists as per the “Law on Compensation for Losses resulting from Terrorism and the Fight against Terrorism No. 5233”.

Turkey also remains resolved to continue giving priority to the economic development of the region, as recently announced by the Government to mobilize funds for the cities affected by PKK terrorism.

(ix) The Commissioner, as a non-judicial organ of the Council of Europe, reached in his Memorandum such clear-cut conclusions as to the veracity of the allegations of human rights violations and presented them in such a manner like a judicial body in place of the Turkish judiciary and European Court of Human Rights. It is important to avoid statements which might be amounting to interference in the functioning of the independent judiciary and the sanctity of the courts.

(x) It is also unfortunate that the Memorandum referred to such deplorable words as “collective punishment” and “extra-judicial killings”. These allegations are categorically rejected. It was actually clearly explained to the Commissioner during his visit to Turkey that Turkish legal system provides sufficient safeguards against any human rights violations and allegations, including impunity are duly investigated. It is disappointing, however, that the Commissioner has still included these baseless and unacceptable allegations in his memorandum.

(xi) It should also be underlined that PKK is not the only terrorist organization that Turkey is fighting against in the region. Turkey’s law-enforcement authorities are also countering DAESH terrorist organization which claimed the lives of hundreds of people in its attacks against Turkey.

(xii) Turkey, as a founding member of the Council of Europe, maintains close cooperation and dialogue with all bodies of the organization. In the recent period, high level political contacts and technical cooperation between Turkey and the Council of Europe have intensified. Taking into consideration the gravity of the current threats facing European democratic ideal, at such a critical period of time, Turkey, believes in the necessity of a stronger Council of Europe. With this understanding, Turkey preserves its political will to support the activities of the Council and to uphold its cooperation and dialogue with the organization.

It is hoped that the points raised in this initial observations will provide the necessary clarification that the Commissioner might require in his future work.