



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 3592/2019*, **

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| <i>Communication submitted by:</i> | G.B. (represented by counsel, D) |
| <i>Alleged victim:</i> | The author |
| <i>State party:</i> | Türkiye |
| <i>Date of communication:</i> | 22 January 2019 (initial submission) |
| <i>Document references:</i> | Decisions taken pursuant to rules 92 and 94 of the Committee's rules of procedure, transmitted to the State party on 17 April 2019 and 18 August 2022, respectively (not issued in document form) |
| <i>Date of adoption of decision:</i> | 7 November 2024 |
| <i>Subject matter:</i> | Measures taken against affiliate of the Fetullah Terrorist Organization–Hizmet/Gülen movement, including dismissal from civil service employment |
| <i>Procedural issues:</i> | Exhaustion of domestic remedies; inderogable rights; <i>ratione materiae</i> ; same matter – another procedure of international investigation or settlement; substantiation |
| <i>Substantive issues:</i> | Arbitrary detention/arrest; arbitrary/unlawful interference; criminal charges; cruel, inhuman or degrading treatment or punishment; effective remedy; fair trial; freedom of association; freedom of expression; freedom of movement; national security; privacy; torture; unlawful attacks on honour or reputation |
| <i>Articles of the Covenant:</i> | 2, 7, 12 (1) and (2), 14 (1), 17 (1), 19 (2) and 22 (1) |
| <i>Articles of the Optional Protocol:</i> | 2, 3 and 5 (2) (a) and (b) |

* Adopted by the Committee at its 142nd session (14 October–7 November 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.



1.1 The author of the communication is G.B., a national of Türkiye born in 1983. He asserts that the State party has violated his rights under articles 2, 7, 12 (1) and (2), 14 (1), 17 (1), 19 (2) and 22 (1) of the Covenant. The author is represented by counsel. The Optional Protocol entered into force for the State party on 24 February 2007.

1.2 On 2 August 2016, the State party gave notice to the Secretary-General of a derogation under article 4 of the Covenant regarding articles 2 (3), 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27. On 9 August 2018, the State party notified the Secretary-General that the state of emergency had ended as at 19 July 2018 and that the derogation had been terminated accordingly.

1.3 On 17 April 2019, pursuant to rule 94 of its rules of procedure, the Committee, acting through its Special Rapporteurs on new communications and interim measures, denied the author's request for interim measures to suspend the arrest warrant concerning him.

1.4 On 7 January 2020, the Committee, acting through the Special Rapporteurs, denied the State party's request to separately consider the admissibility and merits of the communication.

1.5 On 18 July 2022, the author was arrested. On 19 August 2022, the Committee, acting through the Special Rapporteurs, granted the author's request for interim measures to request the State party to terminate his incommunicado detention, ensure his immediate access to a lawyer of his choice and to a doctor, provide him with any medical care that he required and consider alternative measures to imprisonment, such as home arrest.

1.6 On 18 September 2023, the Committee, acting through the Special Rapporteurs, denied the State party's request to lift interim measures and reiterated its request for the State party to ensure the author's physical integrity and health and to consider alternative measures to imprisonment, such as home arrest. The Committee also denied the author's request for an oral hearing.

1.7 Out of two requests received from third parties to submit interventions, the Committee granted one request and denied the other.¹

Facts as presented by the author

2.1 For seven years, the author worked as an engineer for a State-owned company affiliated with the Ministry of Energy and Natural Resources in Türkiye. On 15 July 2016, a failed coup d'état attempt took place in Türkiye. Soon thereafter, the President declared a state of emergency to combat the Fethullah Terrorist Organization, also known as the Hizmet/Gülen movement. Under a series of decrees with the force of law, the Government ordered the establishment of various commissions that proceeded to dismiss large numbers of judges and prosecutors based on vague grounds of association with terrorism.² Under Decree Law No. 668, a public prosecutor may deny a detainee the right to meet with a lawyer for up to five days. Decree Law No. 667 permits the dismissal of any public official alleged to be in contact with members of terrorist organizations and exempts administrative authorities acting within its framework from legal, administrative, financial and criminal responsibility. Following the imposition of the state of emergency, various organizations expressed concern about mass arrests and allegations of torture and ill-treatment of detainees.³

2.2 In September 2016, the author was dismissed from his position on the grounds that he was associated with the Fethullah Terrorist Organization and the failed coup d'état, although he had not been involved in the coup d'état. After losing his job, the author was named as a

¹ A request from the Bar Human Rights Committee of England and Wales was granted; a request from Freedom Now and the Turkey Human Rights Litigation Support Project was denied.

² See European Parliament, Report on the 2018 Commission Report on Türkiye (A8-0091/2019), 26 February 2019.

³ International Commission of Jurists, "Türkiye: the judicial system in peril," Briefing Paper, 2 June 2016, pp. 3 and 17, available at <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf>; and [A/HRC/37/50/Add.1](#), para. 62.

terrorist in the annexes to Decree Law No. 672. Under that Decree Law, individuals who have been dismissed from public service cannot be re-employed in public service. After his dismissal, the author submitted many job applications but they were all rejected because he had been named a terrorist. He also faced financial difficulties.

2.3 In early 2017, a criminal investigation regarding the author was launched. On 15 May 2017, a prosecutor in Ankara issued a warrant for the author's arrest. In 2018, another arrest warrant was issued for him after additional evidence came to light. The authorities accused the author of belonging to the Fethullah Terrorist Organization, providing financial support to the organization through payments made through Bank Asya and using ByLock, a digital application believed to have been used by members of the Fethullah Terrorist Organization. The author went into hiding to avoid arrest.

2.4 Beginning in 2016, the author contested his dismissal from public service before the domestic authorities, which rejected his claims (see paras. 4.2 and 4.3 below). The author states that he has not exhausted all domestic remedies because they would be ineffective. The courts are not impartial or independent and the arrest warrant prevented him from having access to them. Following a visit to Türkiye in November and December 2016, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression expressed concern about structural changes, including changes made before the failed coup d'état, that had undermined the independence of the judiciary.⁴ Following the dismissal of many judges in the wake of the failed coup d'état, biased methods of selection were used to appoint new judges. Pursuant to constitutional amendments approved on 16 April 2017, the members of the Council of Judges and Prosecutors are appointed by the President and the Grand National Assembly. Those appointments are thus vulnerable to political influence.

2.5 The author's passport was cancelled because of his dismissal. His application for a new passport was rejected on the grounds that he had been dismissed from his position under Decree Law No. 672.

2.6 The author cannot be seen in public and is thus forced to stay in an apartment for which his wife signed a lease. He lives in isolation and has no contact with his family members. They struggle to pay their rent and the author's 7-year-old daughter does not attend school. The author cannot go to medical appointments because he fears being arrested.⁵

2.7 On 28 February 2017, the author lodged an application before the European Court of Human Rights regarding an unspecified matter. On 29 June 2017, the European Court, sitting in a single-judge formation, declared the application to be inadmissible. It considered that the author had not exhausted all domestic remedies because he had not used the remedies set forth in Decree Law No. 685, which established the Inquiry Commission on the State of Emergency Measures.

Complaint

3.1 The author submits that the State party has violated his rights under articles 2, 7, 12 (1) and (2), 14 (1), 17 (1), 19 (2) and 22 (1) of the Covenant. Regarding article 17 of the Covenant, the State party violated the author's right to privacy by intercepting his personal information through surveillance of his cellular phone communications. The State party also unlawfully attacked the author's honour and reputation by stating in the *Official Gazette* that he was a terrorist.

3.2 In violation of article 12 (1) of the Covenant, the arrest warrant issued against the author rendered him unable to freely move within Türkiye. Contrary to article 12 (2) of the Covenant, the author's passport was cancelled after his dismissal. The State party has not convincingly explained why the cancellation was necessary to protect national security and public order. The arbitrary dismissal of the author on the basis of his connection to the Fethullah Terrorist Organization also violated article 2 of the Covenant.

⁴ A/HRC/35/22/Add.3, para. 68.

⁵ The author provided this information in a further submission of 31 July 2019. ⁶ See *Özçelik et al. v. Türkiye* (CCPR/C/125/D/2980/2017).

3.3 With respect to article 7 of the Covenant, the author is facing torture and ill-treatment because of his situation. He cannot work because he is hiding from the authorities. He has no contact with his friends. He cannot receive medical care for his health issues because he fears being arrested.

3.4 In violation of article 19 (2) of the Covenant, the author is subject to arrest for having used the ByLock application. The mere use of encrypted communication cannot be considered criminal behaviour. The author faces criminal charges for holding an opinion and freely expressing himself.

3.5 By accusing the author of belonging to a terrorist organization, the State party violated his right to freedom of association under article 22 (1) of the Covenant.

3.6 In violation of article 14 (1) of the Covenant, the arrest warrant issued against the author forced him to live in isolation and prevented him from having access to the courts in order to defend himself. In addition, in relation to his alleged association with the Fethullah Terrorist Organization and the failed coup d'état, no investigation or trial was carried out during the two years following his dismissal. No specific evidence of his guilt has ever been put forward by the State party.

3.7 As remedies, the author requests compensation of 250,000 euros or restitution of his position in public service.

State party's observations on admissibility

4.1 In its observations of 28 June 2019, the State party refers to information that it previously provided in a separate case concerning the attempted coup d'état, the state of emergency and the scope and necessity of the measures taken in that context.⁶ The State party observes that the author was dismissed from public service under article 2 (1) (a) of Decree Law No. 672.

4.2 On 16 September 2016, the author filed an action of annulment before the Council of State to contest his dismissal from public office.⁷ On 8 March 2017, the Council of State decided that the matter did not fall within its jurisdiction under Council of State Act No. 2575. On 6 June 2017, the Ankara Thirteenth Administrative Court referred the case to the Inquiry Commission on the State of Emergency Measures, pursuant to provisional article 1 (3) of Decree Law No. 685. The Inquiry Commission reviews applications concerning administrative acts under the decree laws introduced in the context of the state of emergency. On 14 April 2018, the Inquiry Commission rejected the author's application for reinstatement to public service. During its examination, the Commission requested information from the Ankara Office of the Public Prosecutor, the Ministry of the Interior, the Ministry of the Treasury and Finance and the Savings Deposit Insurance Fund. The Commission then duly assessed the application and made the following findings. The author was a user of the Bylock application, which was used by members of the Fethullah Terrorist Organization for intra-organizational communication. Under the orders of the leader of the Fethullah Terrorist Organization, the author had deposited funds into an account at Bank Asya, a financial establishment affiliated with the organization. He had transferred money to financially support a media company affiliated with Fethullah Terrorist Organization. He was also a member of a union of the organization. The Commission notified the author that the decision could be challenged before the Ankara administrative courts within 60 days of its notification, which took place on 24 May 2018. The author did not challenge the decision.

4.3 On 28 September 2016, in separate, concurrent proceedings, the author filed an application to the Constitutional Court in which he alleged that his dismissal had violated his rights to a fair trial, respect for family and private life, non-discrimination, property and freedom of association. On 24 June 2017, the Constitutional Court declared the application inadmissible because the author had not exhausted all domestic remedies. In its decision, the Constitutional Court emphasized that the Inquiry Commission was authorized to address administrative actions taken under the decree laws issued during the state of emergency

⁶ See *Özçelik et al. v. Türkiye* (CCPR/C/125/D/2980/2017).

⁷ The Council of State is the highest administrative court in Türkiye.

imposed after 15 July 2016. The Inquiry Commission began functioning on 22 May 2017 to assess applications concerning dismissal from public service, the cancellation of scholarships, the annulment of the ranks of retired personnel and the closure of institutions and organizations.⁸ The decisions of the Inquiry Commission are open to judicial review. The Constitutional Court stated that the Inquiry Commission was, in principle, accessible and capable of offering a reasonable prospect of redress for complaints concerning dismissals from public service under decree laws. The Constitutional Court emphasized that, under the principle of subsidiarity, the Inquiry Commission had to be exhausted as a remedy.

4.4 The communication is inadmissible because the author did not exhaust all effective domestic remedies. He did not challenge the decision of the Inquiry Commission of 24 May 2018 before the Ankara administrative courts. Under article 11 of Decree Law No. 685, the decisions of the Inquiry Commission may be challenged before the administrative courts of Ankara within 60 days of the date of notification. Had the author been unsuccessful before those courts, he could have filed a subsequent appeal to the regional administrative courts, and then a subsequent complaint to the Constitutional Court. The Constitutional Court may examine individual applications concerning fundamental rights and freedoms enshrined in the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and its Protocols after the exhaustion of all administrative and judicial remedies.⁹ While the author did file an application to the Constitutional Court in 2016, it was declared inadmissible because he had not exhausted any domestic remedies. The author consistently admits in his communication that he has not exhausted domestic remedies. His concerns regarding the effectiveness of domestic remedies are groundless and do not exempt him from the obligation to exhaust them.

4.5 The author has not submitted specific evidence to support his assertion that the courts lack independence and impartiality. As at 21 May 2019, the Inquiry Commission had received 126,120 applications and had issued 73,100 decisions. Of those, 5,470 decisions reflected an acceptance of the complainants' claims.¹⁰

4.6 In its judgment in *Köksal v. Türkiye*, which involved similar circumstances, the European Court of Human Rights concluded that, although the Inquiry Commission was a non-judicial organ, its decisions remained subject to judicial review and could be challenged before the administrative courts, whose decisions could, in turn, be challenged before the Constitutional Court.¹¹ The European Court regarded the Constitutional Court, even during a state of emergency, as a domestic remedy that had to be exhausted. Indeed, it has repeatedly held that the Constitutional Court is a remedy that must be exhausted¹² and the Human Rights Council has made the same finding.¹³

4.7 The State party also provides information on a similar complaint from another individual, S.G., who successfully appealed against a decision of the Inquiry Commission to the Ankara Twentieth Administrative Court. In that case, the Court annulled the decision of the Commission and ordered financial restitution, including interest.¹⁴ That outcome indicates that the author's allegation about the ineffectiveness of other domestic remedies is unsubstantiated.

4.8 While the author alleges that the passports of certain individuals were cancelled, according to the records of the Ministry of the Interior, no passport has been issued in the author's name. When an application for a passport is received, the competent authorities examine it in accordance with the law.¹⁵ An unsuccessful applicant may contest the decision

⁸ The State party reports that the mandate of the Inquiry Commission was initially for a two-year period and was subsequently extended in 2019.

⁹ Article 45 of Law No. 6216.

¹⁰ The State party also refers to the 2018 activity report of the Inquiry Commission.

¹¹ European Court of Human Rights, *Köksal v. Türkiye*, Application No. 70478/16, Judgment, 6 June 2017.

¹² See, for example, European Court of Human Rights, *Mercan v. Türkiye*, Application No. 56511/16, Judgment, 8 November 2016.

¹³ Human Rights Council resolution 5/1, annex, para. 87.

¹⁴ The State party provided a copy of the decision (No. 2018/1253) of 28 November 2018.

¹⁵ Law No. 5682 (Passport Law).

of rejection before the administrative courts, pursuant to the Code of Administrative Procedure.¹⁶ For example, in a case involving another individual, the Diyarbakır Second Administrative Court found, on 24 January 2019, that a decision not to issue a passport had been unlawful.¹⁷

4.9 The author did not present his claims under articles 2, 7, 12, 14 (1), 17 (1), 19 (2) or 22 (1) of the Covenant to the domestic authorities. His failure to do so cannot be justified by his fear of being arrested pursuant to the warrant.

4.10 The communication is also an abuse of the right of submission under article 3 of the Optional Protocol, as the author failed to act with due diligence in pursuing domestic remedies.

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

5.1 In his comments of 8 March 2020, the author reiterates his arguments and maintains that no effective remedy was available to him when he was dismissed from his position, since he was dismissed under a presidential decree law that could not be challenged.

5.2 The Inquiry Commission was not available when the author's rights were violated. It does not offer a reasonable chance of success and is therefore ineffective. Thus far, only 7.43 per cent of applications to the Inquiry Commission have succeeded.

5.3 The Constitutional Court would also be an ineffective and unreasonably prolonged, extraordinary remedy. Over 100,000 cases are pending before the Constitutional Court, whereas it used to consider no more than 20,000 cases per year.¹⁸ The Constitutional Court would need at least 10 years to review every case currently pending before it.

5.4 The administrative courts are not an effective remedy because they are not judicial. Administrative measures need not be exhausted unless judicial remedies are unavailable. Because the State party expressly acknowledges the existence of both judicial and administrative domestic remedies, the author is required to exhaust only judicial remedies.

5.5 Moreover, the review of decisions of the administrative courts is limited to the decision of the Commission; they cannot review the lawfulness of the Emergency Decree. An action to annul a decision of the Inquiry Commission before the administrative courts constitutes an extraordinary remedy, as the State party expressly claimed. The pursuit of administrative remedies would also be unreasonably prolonged, since the number of cases pending before the administrative courts greatly exceeds the number of decisions issued by them.¹⁹ Considering the gravity of the alleged violations, the author should be exempt from the requirement to exhaust administrative remedies. Where serious human rights violations are at stake, administrative remedies are deemed to be inadequate and ineffective. The decision of the European Court of Human Rights in *Köksal v. Türkiye* was flawed.

5.6 The author submitted to the domestic authorities his claims under articles 14, 17 and 22 (1) of the Covenant when he filed a complaint with the Constitutional Court on 28 September 2016.

5.7 With regard to article 12 (1) of the Covenant, the author is unable to move freely and to choose his residence owing to the arrest warrant against him and the wide powers given to the State party. The State party has not provided a required justification for the restrictions on the author's movement.

5.8 With respect to article 12 (2) of the Covenant, the author requested a passport from the competent authorities on 8 September 2016. His request was rejected on the grounds that Law No. 7145 extended the lawfulness of the cancellation of passports and the mass dismissals of civil servants allegedly connected to terrorist organizations and posing a threat to national security. The right to leave a country of residence must include the right to obtain the necessary travel documents.

¹⁶ Law No. 2577, articles 2 (1) and 3 (1).

¹⁷ The State party provided a copy of the decision (No. 2019/125).

¹⁸ *Özçelik et al. v. Türkiye*, para. 5.5.

¹⁹ Annual report of the administrative courts (2018), p. 126.

5.9 Regarding article 19 (2) of the Covenant, because the use of the ByLock application is unjustly treated as a crime by the State party, the author cannot be expected to invoke article 19 (2) of the Covenant before the domestic authorities. Even if he had submitted a domestic complaint on that issue, the chance of success would be very low.

5.10 With respect to article 22 (1) of the Covenant, although the mere fact of association with the Fethullah Terrorist Organization should not be criminalized, the author raised that claim before the Constitutional Court.

5.11 The author's rights under article 14 (1) of the Covenant were violated in two respects. First, the Inquiry Commission took a decision on the author's case without respecting his right to a fair trial by an independent and impartial tribunal. The Commission is not independent, since five of its seven members are appointed by the President, the Minister of Justice and the Minister of the Interior. The other two members are appointed by the Council of Judges and Prosecutors, an entity that is widely regarded as being under the influence of the executive branch of power. One of the core guarantees of a fair trial is the right to a defence and to hear witnesses. The Commission, however, is tasked primarily with assessing the membership of applicants in terrorist organizations. It does not give them an opportunity to testify or to present witnesses. It is not obligated to support its decisions with evidence or reasons, nor to publish its decisions. Because of the arrest warrant, the author could not have effective contact with lawyers. His lack of adequate legal assistance, in turn, prevented him from exhausting domestic remedies before the courts. Second, the author's dismissal violated article 14 (1) of the Covenant because he did not have the right to view the investigative file on him and to defend himself, as set forth under article 129 of Law No. 657 (Civil Servants Law).

5.12 The category of peremptory norms extends beyond the list of non-derogable provisions set forth in article 4 (2) of the Covenant. States parties may not invoke article 4 of the Covenant as a justification for the violation of humanitarian law or peremptory norms of international law, for instance by deviating from the fundamental principles of a fair trial, including the presumption of innocence.

5.13 No effective remedies were available when the author's rights were violated. Nonetheless, he acted with due diligence and took the steps necessary to challenge Decree Law No. 672 before the Thirteenth Administrative Court, the Council of State and the Constitutional Court. The communication is not frivolous or vexatious and does not constitute an abuse of the right of submission.

State party's observations on the merits

6.1 In its observations of 28 November and 30 December 2019, the State party reiterates, with emphasis, that the author has failed to exhaust domestic remedies and provides additional details on the independence of the judiciary and the implementation of various judgments of the Constitutional Court in favour of other applicants.

6.2 The State party also considers that the communication is without merit. Regarding article 17 (1) of the Covenant, following the attempted coup d'état and declaration of a state of emergency, the State party submitted notifications of derogation from various provisions of the Covenant. Those notifications were revoked as at 19 July 2018, when the state of emergency ended. Decree Law No. 672, under which the author was dismissed, was implemented during the state of emergency and was necessary for the healthy functioning of public life, considering the danger and severity of the threat faced by the State party on 15 July 2016 and the widespread infiltration of public institutions by members of the Fethullah Terrorist Organization. Their dismissal was strictly required by the exigencies of the situation and was lawful under article 3 of Decree Law No. 672. The aim was not to harm their reputation and honour. The inclusion of the author's name on the annex to Decree Law No. 672 cannot be considered as an unlawful attack. It was the consequence of his conduct, which was incompatible with his duty of loyalty as a public servant.

6.3 Regarding articles 2 and 12 of the Covenant, the author's allegations are baseless. Article 1 of Law No. 7145 concerns curfew conditions and is unrelated to the author's situation. His claim regarding the arrest warrant is manifestly ill-founded and he has acted in bad faith by absconding from judicial proceedings. There are no legal obstacles for persons

dismissed from public service under the decree laws to file an appeal against a decision to cancel their passport. Also, they may apply for a new passport at any time. New applications are assessed under article 22 of Law No. 5682 (Passport Law). The cancellation of passports was an interim measure that was necessary to protect public order and safety during the state of emergency and in accordance with the notified derogations. The right of derogation has a very important function under the Covenant. The purposes of a particular derogation and the conditions under which it was declared must be considered.

6.4 Regarding articles 7 and 14 of the Covenant, the author is a fugitive and wrongly alleges in bad faith that his situation amounts to ill-treatment or torture and a violation of his access to the courts. Since 2003, the State party has had a zero-tolerance policy with respect to torture.

6.5 With respect to article 19 of the Covenant, the installation and use of the ByLock application is crucial evidence for proving membership in the Fethullah Terrorist Organization. It was developed for intra-organizational, confidential communication among members of the organization and access to the application was not allowed to the public as at a certain date. The State party describes judicial decisions in which domestic courts expressly mentioned the exclusive use of Bylock by members of the Fethullah Terrorist Organization.

6.6 Regarding article 22 of the Covenant, the author was a founding member of the Executive Board and, as of 2014, the Vice-President of a public union that was shut down on the basis of its affiliation with the Fethullah Terrorist Organization. The closure of civil society organizations affiliated with the organization did not violate article 22 of the Covenant. According to the findings of investigations, those organizations had aimed to seize constitutional institutions of the State party, which was the main objective of the Fethullah Terrorist Organization.

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

7.1 In his comments of 8 March 2020, the author emphasizes that the Constitutional Court is not an effective remedy and that the judiciary is not independent. Since 15 July 2016, 3,926 judges have been dismissed. Regarding article 17 (1) of the Covenant, the author's dismissal, which occurred in the context of the mass dismissal of public sector employees, was not carried out in accordance with domestic law. Upon their dismissal, those employees were not provided with evidence or specific allegations against them. Decree Law No. 672 expressly permitted the dismissal of public service employees without a need for any other legal basis. The State party cannot reasonably expect the author to have foreseen that involvement in the Hizmet/Gülen movement would damage his honour and reputation or threaten his rights. The State party did not declare the movement to be a terrorist organization when it began its activities in the 1990s. The publication of the author's name was also arbitrary and unreasonable²⁰ and interfered with his privacy, home, family and correspondence and his honour and reputation.

7.2 With respect to articles 12 (2), 19 and 22 (1) of the Covenant, the restrictions imposed on the author were not prescribed by law, were not necessary in a democratic society and were not proportionate to a legitimate aim.

Additional observations by the parties

8.1 In additional observations of 11 May 2020, the State party reiterates that the author has not exhausted all domestic remedies and provides detailed additional arguments as to why the Constitutional Court is effective. For example, in cases filed by individuals who had been elected as members of Parliament while they were in detention, the Constitutional Court found that the periods of detention had been excessive and that the arguments put forth by the lower courts on that issue were insufficient. Those decisions of the Constitutional Court had resulted in immediate effective results, as the individuals concerned were released the next day. Similarly, in Application No. 2015/18567, the Constitutional Court, referring to the jurisprudence of the European Court of Human Rights, ruled that the lower court had failed

²⁰ *Sayadi and Vinck v. Belgium* (CCPR/C/94/D/1472/2006), paras. 10.12 and 10.13.

to justify a detention order and that the applicants' rights to liberty and security had been violated. They were released on the same day that the decision was transmitted to the lower court. In addition, the Inquiry Commission has thus far ruled in favour of the applicants in over 11,000 decisions. The European Court of Human Rights considers the Inquiry Commission to be an effective remedy; its decisions are in no way influenced by the Government. Applicants may present written submissions and evidence in their own favour. Thousands of decisions have been issued by the lower courts, the Constitutional Court and the Inquiry Commission to provide remedies to individuals whose rights were allegedly violated after the failed coup d'état. The dismissals of judges and prosecutors after the failed coup d'état was not sudden or unforeseen; they resulted from years of investigations and disciplinary procedures. Judges and prosecutors were first suspended and were dismissed only after sufficient evidence had been collected to establish that they were affiliated with the Fethullah Terrorist Organization. Thus, their dismissal ensured the right to a fair trial. They had an opportunity to request the re-examination of their files, lodge pleas and present evidence in their own favour. As a result, some judges and prosecutors were reappointed.

8.2 In an additional submission of 28 July 2022, the author states that he was arrested on 18 July 2022, when the police raided his house at dawn while he and his family members were sleeping. The police held him in incommunicado detention for four days and then took him to the Sincan T-type State Prison. International organizations report that torture is routinely carried out at the prison. It is overcrowded and has no potable water. Inmates are held in stress positions for up to 48 hours and are denied food, water and medical treatment. They are also subjected to verbal and psychological abuse. A deputy of a political party has called on the State party's authorities to investigate claims of mistreatment and torture at the Ankara Police Centre. There is no doubt that the author was subjected to torture and will continue to suffer ill-treatment in prison. There are reasonable grounds to believe that he is being beaten. He tried to communicate that information in a letter to his wife and family, but the letter did not reach them. He faces a high risk of being subjected to torture, ill-treatment and death. The State party cannot reverse or undo the physical pain and permanent disabilities that the author is suffering as a result of torture.

8.3 In its further submission of 21 October 2022, the State party maintains that the author met with two of his lawyers on the day that he was taken into police custody and on each of the following days. The individuals whom he requested to be notified of his arrest and detention were immediately notified. During his detention in police custody, the author had full access to medical care and underwent five medical examinations.²¹ He continues to benefit from medical care. He has not lodged a complaint to the domestic authorities for the allegations raised in his request for interim measures, which are unsubstantiated. It is difficult to justify alternative measures to imprisonment, such as house arrest, for a fugitive who was at large and obstructed justice for almost six years. The main objective of remand detention is to bring individuals to justice.

8.4 On 21 November 2022, the author informed the Committee that he was still in pretrial detention.

8.5 In a further submission of 16 June 2023, the State party maintains that the author's allegation that he was forced to live in hiding to escape from the law could not be more detached from the fundamental principles of the duties of the State and the criminal responsibility of individuals. The author chose not to defend himself before the authorities by evading justice, although he had the opportunity to challenge the allegations against him. The specific evidence against him included several witness reports identifying him as a

²¹ A record of the Sincan prison directorate, dated 22 July 2022, was provided. It was addressed to the Sincan Campus State Hospital and states that the author was examined and that the treating physician had stated that there were no signs of force or battery, no fever and no symptoms of the coronavirus disease (COVID-19). According to a similar record dated 23 August 2022, the treating physician stated that the author had refraction disorder. The author's prison phone call records were also included. He placed phone calls to relatives on 1, 8, 15, 22 and 29 August 2022; each call lasted 10 minutes. He stated each week that he would like to use his phone rights for the week to call his relatives. A record of the prison visits that the author received was also provided. From 22 July to 1 September 2022, the author received 16 visits from his wife, family, a notary and his lawyers.

member of the Fethullah Terrorist Organization, the provision of financial support to the organization and ByLock conversation transcripts. Contrary to his allegations, historical data from his two cellular phone lines was inspected upon the orders of the Konya office of the prosecutor on 17 January 2018 and the Konya First Judgeship of Peace on 9 April 2018.

8.6 In his submission of 10 May 2023, the author requests release from detention. He filed an objection to his arrest, which is pending before the Constitutional Court. He was held in a cell for interrogation without the right to contact his family. While the State party asserts that the author was not subjected to torture or ill-treatment, those acts are not limited to physical injuries. The prison conditions where the author is held are degrading. In cases involving other individuals, the European Court of Human Rights has found instances of ill-treatment owing to poor conditions of detention. The author strongly rejects the State party's assertion that he had lived in hiding since the issuance of the arrest warrant. Had he intended to do so, he would not have gone to public places and would have attempted to leave the country.

8.7 In a further submission of 4 December 2023, the State party considers that the Committee should evaluate the communication only with respect to the allegations and evidence submitted to it at the initial stage. The author was detained in accordance with articles 100 and 101 of the Code of Criminal Procedure and with international law. A court ordered his continued detention owing to a flight risk, the nature of the investigation, the state of the evidence and the insufficiency of alternative control measures. At hearings on 23 May, 13 July and 5 October 2023 concerning the author's continued detention, the Ankara Twenty-second Assize Court considered the insufficiency of the judicial control measures, explaining that the author could not be apprehended until several years after the issuance of the arrest warrant. The author did not exhaust domestic remedies with respect to his manifestly unfounded allegations regarding ill-treatment and prison conditions. The European Court of Human Rights has repeatedly considered that execution judgeships constitute an effective remedy for raising allegations concerning conditions of detention.²²

8.8 On 8 April 2024, the author stated that he remained in detention, and that the Constitutional Court had rejected his application for release. On 8 May 2024, the State party informed the Committee that the proceedings against the author were pending before the Twenty-second Assize Court of Ankara.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 As a preliminary matter, the Committee notes the timing of the communication, which the author submitted in 2019, more than two years before his arrest pursuant to a warrant. The Committee also notes that, in 2022, the author was arrested and placed in pretrial detention. According to the State party, in May 2024, the criminal proceedings against the author remained pending before the Twenty-second Assize Court of Ankara. The Committee's examination of the present matter relates to the facts and claims that preceded the author's arrest.²³

9.3 The Committee notes the State party's position that the author did not, as required by article 5 (2) (b) of the Optional Protocol, avail himself of all effective and available domestic remedies before submitting the communication.²⁴ The Committee recalls that authors of communications must exercise due diligence in the pursuit of available remedies.²⁵ The

²² See, for example, European Court of Human Rights, *Sakin v. Türkiye*, Application No. 20616/13, Judgment, 28 June 2016.

²³ This approach is taken with the understanding of the Committee that the author has the right to submit a separate communication regarding matters relating to his arrest and detention and the criminal proceedings.

²⁴ See, for example, *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5.

²⁵ *Alakuş v. Türkiye* (CCPR/C/135/D/3736/2020), para. 9.6.

author states that he did not exhaust domestic remedies because the State party's courts lacked independence and impartiality and were ineffective. The Committee recalls, however, that the effectiveness of a remedy does not depend upon the certainty of a favourable outcome for the author and that mere doubts about the effectiveness of a remedy do not absolve the author from the obligation to attempt to exhaust that remedy.²⁶

9.4 The Committee notes the State party's observation that the author could have filed, but did not file, an appeal to the Ankara administrative courts to contest the decision of the Inquiry Commission regarding his dismissal from employment. In the decision of the Commission, it was stated that the author had had 60 days to do so. According to the State party, had he been unsuccessful before the Ankara administrative courts, he could have filed an appeal to the regional administrative courts. While the Committee notes the author's detailed allegations regarding the ineffectiveness of the Inquiry Commission and the courts, it also takes note of the information provided by the State party regarding successful claims submitted by other individuals to those bodies. The Committee also notes that, although the author filed a complaint to the Constitutional Court to contest his dismissal, he did so in an untimely manner, i.e. before exhausting any other remedies, and the complaint was rejected on that basis. While the author asserts that he could not effectively contact his lawyers because he was hiding from the authorities, he did not provide further details or indications of specific obstacles that he had faced in attempting to file an appeal.²⁷ Alternately, the author also emphasizes that he was not, in fact, in hiding after the issuance of the arrest warrant. Meanwhile, his counsel stated in 2022 that the author had been in hiding for six years. While the author maintains that he was not required to resort to the administrative courts because they are not judicial in nature, the Committee notes that the administrative courts are part of the judiciary in Türkiye. Accordingly, the Committee considers that, because the author did not attempt to appeal the decision of the Inquiry Commission to an administrative court, he did not demonstrate due diligence in the exhaustion of domestic remedies regarding his dismissal. The author links his dismissal to alleged violations of articles 14 (1), 17 (1), 19 (2) and 22 (1) of the Covenant. Those claims are therefore inadmissible under article 5 (2) (b) of the Covenant.²⁸

9.5 The Committee also notes the author's claim under article 17 (1) of the Covenant that his honour and reputation were unlawfully attacked by the inclusion of his name on a list of individuals associated with terrorism in an annex to Decree Law No. 672. He alleges that he could not obtain redress for that violation because the Inquiry Commission could examine only the issue of his dismissal from employment. The Committee notes the State party's position that the author did not raise that allegation to any domestic authority but also notes that the State party has not indicated that there was a body to which the author could have submitted a petition for delisting during or after the state of emergency. Nonetheless, the Committee considers that that issue cannot be dissociated from the criminal proceedings against the author, for which the author has not exhausted domestic remedies. The Committee therefore declares that claim inadmissible under article 5 (2) (b) of the Optional Protocol.

9.6 Regarding article 12 (1) of the Covenant, the Committee considers that the author has not substantiated his claim that the issuance of the arrest warrant without proof represented an impermissible restriction on his freedom of movement by forcing him to live in hiding. With respect to article 12 (2) of the Covenant, the Committee considers that the author has not substantiated that he possessed a passport on 22 July 2016, when Decree Law No. 667 – under which the passports of dismissed public sector employees were cancelled – was issued. Those claims are therefore inadmissible under article 2 of the Optional Protocol.

9.7 Regarding the author's argument under article 12 (2) of the Covenant, that his application for a passport in 2016 was unfairly denied, the Committee notes the State party's observation that negative decisions on the issuance of passports may be contested before the administrative courts, which can both in principle and in practice offer a remedy. The Committee also notes that the author does not allege to have contested the denial of his request for a passport, filed in September 2016, before the administrative courts and does not

²⁶ See, for example, *D.C. v. Lithuania* (CCPR/C/134/D/3327/2019), para. 4.16.

²⁷ *A.T. v. Russian Federation* (CCPR/C/138/D/2669/2015), para. 7.5.

²⁸ See, for example, *Özçelik et al. v. Türkiye*, para. 8.7.

allege to have otherwise invoked his right to freedom of movement before the domestic authorities. Accordingly, the Committee declares that claim inadmissible under article 5 (2) (b) of the Covenant.

9.8 The Committee considers that the author has not sufficiently substantiated his claims under articles 7 and 17 (1) of the Covenant regarding the issuance of the arrest warrant as a form of torture or ill-treatment and the interception of his telephone communications as a form of interference with his home, honour, family, correspondence and reputation. In addition, the Committee considers that the author has not sufficiently substantiated his claim that, in violation of article 14 (1) of the Covenant, the arrest warrant prevented him from having access to the courts in order to defend himself. The Committee also notes the State party's assertion that the author did not submit those claims to the domestic authorities. Those claims are therefore inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

9.9 The Committee recalls its jurisprudence that article 2 of the Covenant, which lays out general obligations for States parties, can be invoked by individuals only in conjunction with other articles of the Covenant, and cannot, in and of itself, give rise to a claim under the Optional Protocol.²⁹ Accordingly, the Committee declares the author's claim under article 2 of the Covenant inadmissible *ratione materiae* under article 3 of the Optional Protocol.

9.10 In the light of its findings, the Committee does not deem it necessary to examine other grounds of inadmissibility.

10. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2, 3 and 5 (2) (b) of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.

²⁹ See, for example, *A.W.K. v. New Zealand* (CCPR/C/112/D/1998/2010), para. 9.4.