

## **PRESS RELEASE**

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### **TÜRKIYE FACES INTERNATIONAL CRIMINAL COURT PROBE FOR CRIMES AGAINST HUMANITY, AFTER GROUNDBREAKING INVESTIGATION BY PANEL OF INTERNATIONAL LEGAL EXPERTS**

- The Erdogan regime has subjected more than 200,000 victims to crimes including Torture, Enforced Disappearance, Imprisonment in Violation of Fundamental Rules of International Law, and Persecution.
- Evidence shows that Turkish officials have committed crimes not only in Türkiye, but also within the territories of 45 ICC State Parties through kidnapping, arbitrary deprivation of liberty, expulsion, denying most essential services such as delivering ID papers and collective dismissal of opponents of the Erdogan regime.
- A large number of persons – for the first time- spoke up under the discretion rule of the ICC.
- Not all the documented Crimes can be judged by the ICC. Crimes committed against some 1300 persons have been described and analysed in detail and can be judged by the ICC.
- Mr. Karim Khan, the ICC's prosecutor must now consider whether the court will open the investigations with a possible result that high ranking officials of a NATO ally could be in cause.

On 9 February 2023, a communication was submitted to the Office of the Prosecutor of the ICC. The Communication has been introduced by:

- The Belgian lawyers office Van Steenbrugge Advocaten (VSA), under the guidance of Prof. Em. Dr. Johan Vande Lanotte, former Deputy Prime Minister of Belgium and reputed professor on International Human Rights law, on behalf of an important number of victims.
- The Belgium-based NGO Turkey Tribunal vzw, the organizer in September 2021 of the Turkey Tribunal in Geneva, on behalf of which the president Prof. Em. Dr. Marc Baron Bossuyt, former president of the Belgian Constitutional Court and former president of the UN Human Rights Commission, has signed the communication.
- MEDEL (*Magistrats Européens pour la démocratie et les libertés*), an organisation of judges and prosecutors, composed of 23 national organizations, from 16 countries, representing 18 000 magistrates, on behalf of which the President, Mrs. Judge Mariarosaria Guglielmi has signed.

The letter whereby the communication was sent to the OTP is joined in Annex 1. The communication submitted to the Office of the Prosecutor of the ICC consists of 4,000 pages

of legal and factual analysis and includes testimony from hundreds of individuals, who have broken the silence imposed on victims and their families by the Erdogan regime. A summary of the Communication is joined in Annex 2.

### **A. The “Attack”**

To fall under the definition of Crimes against Humanity, two elements are crucial:

1. The Crimes must be in the list of Crimes enumerated in the Rome Statute
2. The Crimes must be committed as a part of a widespread or systematic attack against a civilian population, whereby the crimes were committed pursuant to or furtherance of a state policy to commit such an attack.

1. The Crimes must be in the list of Crimes enumerated in the Rome Statute

The Crimes against Humanity that have been committed and are documented in the communication are:

- a) Torture,
- b) Enforced Disappearances,
- c) Imprisonment in Violation of Fundamental Rules of International Law and
- d) Persecution.

2. The Crimes must be committed as a part of a widespread or systematic attack against a civilian population, whereby the crimes were committed pursuant to or in furtherance of a state policy to commit such an attack.

To assess the presence of an attack, both the Crimes committed in Türkiye and the Crimes outside Türkiye must be taken in account.

The communication to the court includes 463 individual statements of Torture, relating to 800 identified or identifiable persons. The statements describe in detail how torture has been inflicted on a large and consistent scale. Evidence from the Turkish Human Rights Association shows that the organisation received on average 1,460 complaints per year related to Torture in the period 2003-2021, with systematic torture continuing into 2022.

The communication to the court documents 59 cases of extraterritorial and domestic Enforced Disappearance, relating to 109 persons. While the Turkish state has always denied involvement in domestic disappearances, authorities have consistently boasted about illegal abductions made overseas. Most recently, in July 2021, President Erdogan gave a press conference next to an image of a Turkish teacher proclaiming that he had been abducted from a foreign country. In an arrogant demonstration of impunity, the published image of the abducted person showed clear signs of torture, and he later underwent surgery to treat his broken arm.

Concerning the Imprisonments in Violation of Fundamental Rules of International Law, official Turkish statistics show that investigations into alleged membership of a “terrorist organisation” were launched against 2,217,000 persons in the period 2015-2021. 560,000 persons were put on trial and 374,000 persons were convicted, 270,000 of whom were found to be members of a terrorist organisation. The communication to the court documents 1,789 collective actions of Imprisonment in Violation of Fundamental Rules of International Law, relating to 51,205 persons. The European Court of Human Rights and the UN Working Group on Arbitrary Detention have documented how numerous cases constituted clear breaches of the European Convention on Human Rights, to which Turkey is a signatory but routinely ignores. Prosecutions are even carried out for entirely arbitrary reasons, such as people visiting the graves or attending funerals of deceased individuals who were seen as opponents of the regime.

Perceived opponents of the regime have been subjected to the crime of persecution through actions such as forced mass sackings of civil servants and private sector staff, and the withdrawal of passports and consular services from Turkish nationals overseas, even to newborn children. The only reason for this was the discriminatory persecution of persons (allegedly) linked to the Gülen movement. Official Turkish statistics show that 129,410 public servants have been dismissed and 19,962 teachers had their teaching licences cancelled, since 2016. In total, 234,419 passports were withdrawn in relation to arbitrary investigations against the alleged members of the Gülen movement. Of these, 155,000 relate to persons against whom no judicial action was launched, such as, for instance, the spouses of the persons against whom an investigation or persecution was launched. Outside Türkiye, passports were cancelled or consular services were refused in a discriminatory manner in 46 states, 25 of which are ICC party states. These acts relate to 4,084 persons, many of whom were children, 1,255 of whom were persecuted in ICC party states. Schools were closed outside Turkey, at the behest of the state. The teachers were expelled, prosecuted, abducted and their passports were cancelled, condemning them to a life in exile.

As a conclusion it can be said that the communication indicates that Turkish officials have committed crimes against humanity against hundreds of thousands of opponents of the Erdogan regime. These crimes amount to a “widespread and systematic attack against a civilian population”, meeting the threshold for the ICC to launch proceedings against high-ranking officials of the Erdogan regime.

## **B. The cases of individual criminal responsibility that can be judged by the ICC**

Not all the crimes documented in the communication, can be judged by the ICC in procedures of individual criminal responsibility. Only the Crimes committed or started in a State that ratified the Rome Statute can be judged by the ICC. This is the reason why Crimes against Humanity committed on alleged members of the Kurdish movement (Torture, Enforced Disappearance and Imprisonment) and opponents of the regime (mostly Imprisonment) cannot lead to an individual criminal procedure before the ICC, as they were all committed in Türkiye or an Non-Party State. The cases submitted are:

- a) 17 cases of Enforced Disappearance whereby the victims were abducted from Kenya, Cambodia, Gabon, Albania, Bulgaria, Moldova, Mongolia and Switzerland and brought to Türkiye<sup>1</sup>;
- b) The closure of 73 schools in 13 Party States (Mali, Niger, Tunisia, Chad, Afghanistan, Venezuela, D.R. Congo, Gabon, Senegal, Jordan, Zambia, Liberia, and Congo-Brazzaville, related to the dismissal 522 Turkish teachers and their families, in total more than 1000 persons<sup>2</sup>;
- c) The discriminatory withdrawal of passports, the discriminatory non-extension of passports and the discriminatory non-issuance of ID cards (even for new-born children) in 29 Party States (Afghanistan, Austria, Bangladesh, Belgium, Bosnia Herzegovina, Cambodia, Canada, Denmark, France, Georgia, Germany, Guinea, Liberia, Lithuania, Luxembourg, Madagascar, Mali, Mongolia, Nigeria, North Macedonia, Peru, Poland, Romania, Switzerland, Tanzania, The Netherlands, Tunisia, Uganda and The United Kingdom) relating to 206 persons.

These crimes, relating to some 1300 persons, are not only described in detailed, but all legal aspects have been thoroughly examined.

### **C. Türkiye is not a party to the ICC. How then the ICC can be competent?**

Türkiye is not a party to the ICC. However, the court determined in 2019 that it could pursue Myanmar's ethnic cleansing of Rohingya Muslims – despite Myanmar's failure to recognise the court's authority – because the victims were deported to Bangladesh, an ICC signatory, and therefore elements of the crime had been committed in a member state.

The communication indicates that an important number of the Crimes against Humanity were committed on the territory of ICC party states. Indeed, the crimes were committed on the territory of 45 party states, for which the ICC has territorial jurisdiction. These specific crimes are related to some 1300 victims.

### **D. What now?**

The Rome Statute leaves an important discretion to the Prosecutor to decide if it must be considered appropriate to start investigations. Of course, the legal requirements of admissibility must be (and are) fulfilled, but the prosecutor also must make a judgement about the gravity of the facts. In the present case, the communication shows that the gravity threshold has been reached. Indeed: the crimes that can be taken in account in the current case to assess the gravity requirement relate to more than 200,000 persons. The crimes cover a broad geographical scope and a long period of time. Moreover, there is complete and deliberate disrespect for the binding and non-binding decisions of international authorities and jurisdictions such as the European Court of Human Rights, the crimes are executed with cruelty and new-born children are also targeted. The crimes must be considered as deliberate

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<sup>1</sup> The cases in Mongolia and Switzerland were attempts that did not succeed.

<sup>2</sup> Only the Turkish teachers (who all were dismissed and had to leave the country) are taken in account, although also the domestic personnel were affected by the decisions.

disdain for the non-refoulement principle and other basic principle of the international legal order. They clearly challenge the international legal order. Therefore, it would not be reasonable to state that the gravity requirement is not met.

Em. Professor Vande Lanotte says: “The evidence is clear that Türkiye has committed Crimes against Humanity against hundreds of thousands of people, purely on the basis that they are perceived to be enemies of the Erdogan regime. The persons responsible for these acts knew that what they did was against all basic rules of international law, but were certain of their impunity. The ICC was created to halt this impunity and should do so here. We call on the ICC prosecutor to take up this case and ensure that no individual – not even if he serves as a high official of a NATO ally of the West – can be considered above the law. In the past the ICC concentrated on non-European countries, often failed states. This policy has been criticised for its selectivity. Türkiye is not a failed state as such. But Türkiye, without any doubt is a failed state as far as the rule of law is concerned and is a failed state as far as the criminal procedures against officials committing Crimes against Humanity are concerned. The Crimes committed by Russia in Ukraine constitute a war against the people of Ukraine and against the most elementary principles of international Law. The Crimes committed by Turkish officials against opponents of the regime are another type of war condemning the opponents to torture, to imprisonment and to a social death. But this war is also deliberately and proudly attacking the most fundamental principles of international law. After more than five years, it is clear that the only way to punish these crimes in Türkiye and abroad, to prevent the same crimes to happen again and to protect the basic elements of the international legal order, is an investigation by and a procedure before the ICC. The case is broader than the situation in Türkiye. It is the international legal order that is at stake. The initiators of the Communication cannot imagine that the gravity of the situation would not be recognised by the Prosecutor”.

#### **E. Declaration of Em. Prof. Marc Baron Bossuyt**

Em. Prof. Marc Baron Bossuyt: “The submission of this communication should not be perceived as a hostile act against Türkiye. It is neither an action in support of those that were involved in that failed coup d’état. It is an action in support of all those - and there are many - that suffer under those gross violations of human rights.”

#### **F. Declaration of MEDEL**

The declaration of MEDEL is joined to this release.

#### **G. Declaration of Enes Kanter Freedom and of Doğan Özgüden**

At the press conference statements were made by two Turkish personalities.

NBA star and Human Rights activist Enes Kanter Freedom stated : “Crimes against Humanity are committed. Sadly enough, such Crimes committed by strong, Western countries, never were prosecuted. Criminal responsibility for Crimes against Humanity, however cannot be

selective. The introduction of the Communication is a strong signal of the wish of so many people that impunity cannot be tolerated.”

Doğan Özgüden, Info-Türk Chief Editor: "For decades, human rights violations in Turkey have gone unresolved at national courts and the judgements of the European Court of Human Rights never were respected by political powers in Ankara. I hope that this new initiative will open a new horizon of freedom and democracy for all citizens of Turkey."

Some extra technical information:

- The communication to the court documents Crimes against Humanity committed by Turkey in 45 ICC party states Afghanistan, Albania, Austria, Bangladesh, Belgium, Bosnia Herzegovina, Burkina Faso, Cambodia, Canada, Chad, Congo, Democratic Republic of the Congo, Denmark, France, Gabon, Georgia, Germany, Greece, Guinea, Jordan, Kenya, Liberia, Lithuania, Luxembourg, Madagascar, Mali, Mongolia, Netherlands, Niger, Nigeria, North Macedonia, Peru, Poland, Republic of Moldova, Romania, Senegal, Switzerland, Tajikistan, The Gambia, Tunisia, Uganda, United Kingdom, United Republic of Tanzania, Venezuela, and Zambia.
- The ICC's Pre-Trial chamber [ruled in November 2019](#) that the court could investigate crimes against humanity, such as deportation and persecution, allegedly committed against the Rohingya population in Myanmar, a non-ICC nation, where they were committed "at least in part" on the territory of any ICC signatory.