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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. 4275/2022*, **, ***

Communication submitted by:	S.N.K. (represented by the International Association for Human Rights Advocacy in Geneva)
Alleged victims:	The author and Y.T.
State party:	Türkiye
Date of communication:	8 December 2022 (initial submission)
Document references:	Decisions taken pursuant to rules 92–94 of the Committee's rules of procedure, transmitted to the State party on 16 December 2022 and 7 February 2024 (not issued in document form)
Date of adoption of decision:	19 July 2024
Subject matter:	Disappearance of a supporter of the Fetullah Terrorist Organization (FETÖ)/Gülen movement, following dismissal from civil service employment
Procedural issue:	Same matter – another procedure of international investigation or settlement
Substantive issues:	Arbitrary/unlawful detention; arbitrary/unlawful interference; cruel, inhuman or degrading treatment or punishment; discrimination; effective remedy; enforced disappearance; fair trial; family life; recognition as a person before the law; right to life
Articles of the Covenant:	2 (3), 6 (1), 7, 9 (1), 14, 16, 17, 20, 23 (1) and 26
Article of the Optional Protocol:	5 (2) (a)

1.1 The author of the communication is S.N.K., a national of Türkiye born in 1983. She submits the communication in her own name and on behalf of her brother, Y.T., a national

* Adopted by the Committee at its 141st session (1–23 July 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.

*** A joint opinion by Committee members Hernán Quezada Cabrera and Hélène Tigroudja (concurring) is annexed to the present decision.

of Türkiye born in 1981. The author asserts that the State party has violated the rights of Y.T. under articles 6 (1), 7, 9 (1), 16, 17 and 23 (1), read alone and in conjunction with articles 2 (3) and 14, themselves read in conjunction with articles 20 and 26, of the Covenant. The author also submits that the State party has violated her own rights under articles 7, 17 and 23 (1), read alone and in conjunction with articles 2 (3), 20 and 26, of the Covenant. The Optional Protocol entered into force for the State party on 24 February 2007. The author is represented by counsel.

1.2 On 16 December 2022, 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 take all measures necessary to establish the whereabouts of Y.T., immediately place him under the protection of the law and provide information about his whereabouts.

1.3 On 7 February 2024, pursuant to rule 93 of its rules of procedure, the Committee, acting through the same Special Rapporteurs, acceded to the request of the State party to examine the admissibility of the communication separately from the merits.

Factual background

2.1 Following a failed coup d'état attempt on 15 July 2016, the Government of Türkiye designated the Gülen (Hizmet) movement as a terrorist organization (Fetullah Terrorist Organization or FETÖ). A supporter of the Gülen movement, Y.T. lived in Ankara and worked in public administration. In 2016, he was dismissed from his employment under Decree Law No. 675 on the Measures to be Taken under the State of Emergency. He was also prohibited from occupying any position in public administration. Two official investigations were opened against Y.T.: one in relation to his role in the Gülen movement; and the other for his alleged participation in fraudulent schemes to obtain access to questions for the Public Personnel Selection Examination, to provide an advantage to supporters of the Gülen movement. The author maintains that, since Y.T. feared being detained and tortured, as other supporters of the Gülen movement had been, he and his family left their home and went into hiding for an unspecified time. The author states that the authorities searched the house of Y.T. in 2017 and that, on 6 August 2019, Y.T. left his home and disappeared. His family still does not know where he is. The author maintains that, on the day of his disappearance, Y.T. was using his brother's car. On 10 August 2019, the brother of Y.T. found the car, which had been abandoned and locked. The author asserts that the family made various requests for the authorities to properly investigate the disappearance, but they did not do so.

2.2 The author did not file a complaint to a domestic court. However, she maintains that there was no prospect that such a complaint would have succeeded. On 21 August 2019, the father and wife of Y.T. filed a complaint to the Constitutional Court, alleging violations of the rights of Y.T. with reference to the substance of articles 6, 7 and 9 of the Covenant. On 30 June 2020, the Constitutional Court found the complaint inadmissible on the ground that it was manifestly ill-founded. The author maintains that the claims under articles 20, 23 and 26 of the Covenant, while not expressly invoked before the Constitutional Court, were implied in the claims under articles 6, 7 and 9 of the Covenant. The status of Y.T. as a supporter of the Gülen movement was mentioned in the application to the Constitutional Court. The author also asserts that, because the Constitutional Court found the main claims to be manifestly ill-founded, it would not have reviewed the accessory claims. According to the author, the Constitutional Court is not an effective remedy for supporters of the Gülen movement. The author submits that domestic remedies have been exhausted.

2.3 On 2 September 2019, the wife and father of Y.T. lodged an application on his behalf before the European Court of Human Rights. They invoked articles 2 (right to life), 3 (prohibition of torture) and 5 (right to liberty and security) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). On 22 February 2022, the Court declared the application inadmissible in a decision issued by a chamber of seven judges. In the decision, the Court made the following findings: the State party's authorities had not failed to take the measures that they could reasonably have taken to prevent a certain and imminent risk to the life of Y.T.; they had not been informed of any hostility towards him during the period before his disappearance; there was

no indication that Y.T. had at any time been under surveillance by a law enforcement agency; the authorities had opened a criminal investigation into the claims of his family members; contrary to the applicants' allegations, the authorities had taken appropriate measures to find Y.T.; investigations into the last known sighting of Y.T. had been carried out; public highway video surveillance images had been analysed; witnesses had been interviewed, the mobile phone used by Y.T. had been examined and previous communications had been verified; the authorities had sought and obtained information from various private and public organizations to locate Y.T.; the investigation, which was continuing, aimed to locate Y.T.; the applicants had not provided proof of notable failures in the conduct of the investigation; the Court did not see any violation likely to call into question the overall adequate and prompt nature of the investigation carried out by the State party's authorities; there was no indication that Y.T. had been placed in detention or found dead or killed; no solid arguments supported the applicants' assertion that Y.T. had last been seen in a situation implicating the State party's authorities; Y.T. remained sought by the authorities and no information had emerged to indicate that his disappearance had taken place in circumstances in which his life was in danger; and the obligation in relation to the right to life was an obligation of means and not of result.

2.4 The author maintains that the European Court of Human Rights did not examine the same matter, given that she has raised additional claims in the present communication. Moreover, the analysis of the Court was deficient and succinct.

Complaint

3.1 The author submits that the State party has violated the rights of Y.T. under articles 6 (1), 7, 9 (1), 16, 17 and 23 (1) of the Covenant (read alone) by subjecting him to enforced disappearance. The State party engages in a pattern of forcibly disappearing supporters of the Gülen movement. That pattern constitutes circumstantial or indirect evidence of the enforced disappearance of Y.T. Two supporters of the Gülen movement who had been abducted by the authorities later reappeared and mentioned Y.T. in their confessions. Those confessions were used in the criminal investigation against Y.T. and constitute circumstantial evidence of his enforced disappearance, since he is likely to have suffered a similar fate as the two other individuals. An arrest warrant against Y.T. was withdrawn on an unknown date and was reissued after his disappearance. It is understandable that the police could not locate Y.T., since he was likely abducted by the Turkish intelligence services, a separate State body. The authorities initiated 1,576,566 investigations between 2016 and 2020 concerning membership of a terrorist organization. The investigation file relating to the abduction of Y.T. was merged and joined with other investigations several times without justification, thereby preventing his family from accessing the investigation. They could not access the file until 2020, nor have they received information about how the investigation into his disappearance was carried out.

3.2 The State party also violated the rights of Y.T. under articles 6 (1), 7, 9 (1), 16, 17 and 23 (1), read in conjunction with articles 2 (3) and 14, themselves read in conjunction with articles 20 and 26, of the Covenant. The investigation into the disappearance of Y.T. was manipulated and constituted an abuse of process, with the sole purpose of preventing his relatives from accessing information about the investigation. The State party's authorities also failed to conduct an effective and prompt investigation. Both the enforced disappearance of Y.T. and the lack of investigation into his disappearance resulted from widespread and systemic acts of discrimination and hate speech by the State party against supporters of the Gülen movement.

3.3 In addition, the State party violated the author's rights under articles 7, 17 and 23 (1) of the Covenant, read alone and in conjunction with articles 2 (3), 20 and 26, of the Covenant. She has faced distress and anguish for three and a half years owing to the lack of action and transparency from the State party's authorities in establishing the fate and whereabouts of Y.T.

State party's observations on admissibility

4.1 The State party considers that the communication is inadmissible on three grounds. First, the European Court of Human Rights has examined the same matter. The State party

made a reservation to article 5 (2) (a) of the Optional Protocol according to which the competence of the Committee shall not apply to communications from individuals if the same matter has already been considered or is being considered under another procedure of international investigation or settlement. In its 20-page decision of inadmissibility, the Court examined in great detail the claims presented on behalf of Y.T. regarding the substance of articles 6, 7 and 9 of the Covenant. The decision was issued by a chamber of seven judges, not by a single judge. As described in paragraph 2.3 above, the Court examined the merits of the claims.

4.2 Second, the author has not exhausted domestic remedies. The allegations that Y.T. was disappeared or abducted are still pending before the investigating authorities. The investigation procedures were also assessed by the European Court of Human Rights, which did not find that the investigating authorities had not fulfilled their obligations. In a separate, similar and recent case submitted against the State party, the Court found that domestic remedies had not been exhausted when an investigation into a disappearance was ongoing.[1]

4.3 Third, the communication is also inadmissible because it is insufficiently substantiated. No evidence as to the abduction of Y.T. could be found. His family was provided with various legal and procedural rights and safeguards. The European Court of Human Rights found no shortcoming or procedural flaw in the investigation. There is no indication that Y.T. was under surveillance by a law enforcement agency. The investigating authorities immediately initiated a criminal investigation into his alleged disappearance and took adequate measures to find him. It was clearly stated in the communication that Y.T. had gone into hiding. In several other similar cases submitted to the Court, the applicants eventually withdrew their applications or it found them inadmissible owing to a lack of substantiation.[2]

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

5. In her comments of 20 November 2023, the author maintains that the European Court of Human Rights did not address the suffering of the family of Y.T., the substance of article 26 of the Covenant or discrimination and prejudice against supporters of the Gülen movement; nor did it analyse the persecution of Gülen supporters in Türkiye. The Committee interprets the scope of protection against enforced disappearances more broadly than the Court. Moreover, the Court's decision did not contain detailed reasoning on the substance of articles 7 and 9 of the Covenant. The State party provided information to the Committee on the steps taken to investigate the disappearance but did not provide relevant dates and did not mention that, while the disappearance was first reported on 8 August 2019, 13 days elapsed before a prosecutor was assigned to the case. The prosecutor has taken no meaningful action. Domestic remedies in Türkiye are not effective for supporters of the Gülen movement. In 2023, the Court noted that 8,000 pending similar cases had been lodged with it after the exhaustion of domestic remedies, including those offered by the Constitutional Court.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 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.

6.2 The Committee takes note of the State party's argument that the communication is inadmissible under article 5 (2) (a) of the Optional Protocol, read together with the State party's reservation excluding the Committee's jurisdiction over cases in which the same matter has been or is being examined under another procedure of international investigation

[1] European Court of Human Rights, *Horzum and Others v. Türkiye*, Application No. 4475/18, Decision, 13 December 2022 (in French).

[2] European Court of Human Rights, *Irmak and Others v. Türkiye*, Application No. 18036/19, Decision, 8 June, 2021; *Zeybek and Others v. Türkiye*, Application No. 21330/19, Decision, 16 February 2021; *Kaya and Others v. Türkiye*, Application No. 14443/19, Decision, 11 February 2020; and *Okumuş v. Türkiye*, Application No. 58984/17, Decision, 31 January 2019.

or settlement. The Committee recalls that "the same matter" under article 5 (2) (a) of the Optional Protocol refers to the same claim concerning the same individual, as submitted by that individual, or by another person empowered to act on behalf of the individual, to the other international body.[3]

6.3 The Committee notes that the matter of the disappearance of Y.T. has been submitted to the Working Group on Enforced or Involuntary Disappearances, which transmitted the case to the State party on 24 September 2019. The Committee recalls its jurisprudence according to which extra-conventional mechanisms or procedures established by the Human Rights Council to examine and publicly report on human rights situations in specific countries or territories or on cases of widespread human rights violations worldwide do not generally constitute an international procedure of investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.[4] The Committee also recalls its jurisprudence according to which the special procedures and mechanisms of the Human Rights Council generally do not constitute a procedure of international investigation or settlement within the meaning of article 5 (2) (a) of the Optional Protocol.[5] Accordingly, the Committee considers that the concomitant examination of the disappearance of Y.T. by the Working Group does not constitute an obstacle to the Committee's examination of the present communication.

6.4 The author acknowledges that other family members have submitted claims on behalf of Y.T. to the European Court of Human Rights. Those claims were made under articles 2, 3 and 5 of the European Convention on Human Rights (relating, respectively, to the right to life, the prohibition of torture and the right to liberty and security). The Court, in a reasoned decision issued by a chamber of seven judges, declared the application inadmissible on the ground that it was manifestly ill-founded. The Committee observes that the detailed 20-page decision of the Court entailed a certain consideration of the merits of the claims submitted to the Committee on behalf of Y.T. under articles 6, 7 and 9 of the Covenant. The Committee therefore considers that it is precluded by article 5 (2) (a) of the Optional Protocol and the State party's relevant reservation from examining the claims under articles 6, 7 and 9 of the Covenant on behalf of Y.T. Thus, those claims are inadmissible.

6.5 The Committee notes the claims on behalf of Y.T. in relation to articles 16, 17 and 23 (1) of the Covenant; and the claims in the author's name in relation to articles 7, 17 and 23 (1) of the Covenant. The Committee considers that those claims – for the purpose of article 5 (2) (a) of the Optional Protocol – cannot be dissociated from the claims raised on behalf of Y.T. under articles 6, 7 and 9 of the Covenant. In particular, the claims regarding the right of Y.T. to family life and to recognition as a person before the law, and the rights of the author in relation to family life and freedom from prohibited ill-treatment, are all derived from the disappearance of Y.T. and the State party's investigation into the disappearance. Thus, the Committee could not examine those claims without re-examining the matter already adjudicated by the Court. Accordingly, with reference to its findings in the previous paragraph, the Committee declares those aspects of the communication inadmissible under article 5 (2) (a) of the Optional Protocol.

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

7. The Committee therefore decides:

(a) That the communication is inadmissible under article 5 (2) (a) of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author.

[3] See, for example, *Fanali v. Italy*, communication No. 75/1980, para. 7.2.
[4] See, for example, *Khelifati and Khelifati v. Algeria* (CCPR/C/120/D/2267/2013), para. 5.2.
[5] See, for example, *Djaou and Djaou v. Algeria* (CCPR/C/136/D/2808/2016), para. 7.2.

Annex

Joint opinion of Committee members Hernán Quezada Cabrera and Hélène Tigroudja (concurring)

1. With reluctance, we decided to join the decision to declare inadmissible the complaint of S.N.K. on her behalf and on behalf of Y.T. (her brother). Indeed, we are not fully convinced by the reasoning of the Committee in relation to the ground for inadmissibility set forth in para. 6.4. Our disagreement with the approach is based on the initial decision of inadmissibility adopted by the European Court of Human Rights on 22 February 2022 (mentioned in para. 2.3) regarding the facts and claims that triggered the application of the reservation of Türkiye concerning article 5 (2) (b) of the Optional Protocol.

2. According to the author (para. 2.4): "the European Court of Human Rights did not examine the same matter, given that she has raised additional claims in the present communication. Moreover, the analysis of the Court was deficient and succinct."

3. After a close reading of the decision of inadmissibility of the European Court of Human Rights, we partially endorse the author's argument. We consider that the analysis of the facts and claims of the application by the Court was, indeed, deficient, at odds with its long-standing jurisprudence on the substantive and procedural obligations of States in cases of enforced disappearances and a very regrettable step backwards in this regard, feeding a climate of impunity. The stance of the Court is also at odds with the Committee's well-established jurisprudence on disappearances. It is true, as noted by the Committee, that the formal requirements for the application of the State party's reservation were met: the decision of the Court was not adopted by a single judge but "by a chamber of seven judges". It is also true that the decision of inadmissibility was argued in a 20-page document (para. 6.4), in which the Court provided some details and reasons. However, the elements assessed by the Committee are purely formal. They ignore the fact that the methodology applied by the Court to assess the facts and, in particular, the proof of the disappearance led to a reversal of the burden of proof normally used in cases of disappearances.

4. Indeed, in its decision, the European Court of Human Rights fell short of properly addressing the allegation of the enforced disappearance of Y.T. for at least three reasons. First, the Court did not consider the overall context of repression of supporters of the Gülen movement after the attempted coup d'état in 2016. As a supporter of the movement – qualified as a terrorist organization by the domestic authorities – Y.T. was dismissed from his position and targeted by two criminal proceedings opened in 2016 and 2019 (para. 2.1). Second, the Court did not consider the shortcomings of Turkish legislation in relation to enforced disappearances, which fosters a climate of impunity for perpetrators. As stressed by the Working Group on Enforced or Involuntary Disappearances in a general allegation sent to Türkiye in 2022:

> Under the current criminal legislation, enforced disappearance is not codified as a separate crime, which renders extremely difficult, if not virtually impossible, to hold perpetrators accountable. On the one hand, this allegedly entails an enhanced burden of proof, which does not reflect the peculiarities of this crime, that is by nature shrouded in secrecy and where some information and evidence are not available to the relatives of the disappeared person. On the other hand, this has allegedly resulted [in] the discontinuation of several cases of enforced disappearance, due to the failure to comply with the said burden.[1]

The shortcomings in domestic legislation in relation to investigation, prosecution and punishment of perpetrators of enforced disappearances were denounced by the Working Group on Enforced or Involuntary Disappearances after its country visit to Türkiye in 2016

[1] General allegation: 127th session (9–13 May 2022), para. 1, https://www.ohchr.org/en/special-procedures/wg-disappearances/general-allegations.

and reaffirmed in its follow-up report published in 2020. In that regard, the Working Group indicated that:

> In the wake of the attempted coup, the Working Group is concerned that an entrenched culture of impunity provided a fertile ground for cases of enforced disappearance to increase. The Working Group is particularly alarmed by allegations of enforced disappearances reported to have been perpetrated under the pretext of combatting terrorism against actual or perceived members of [the] Gulen/Hizmet movement, classified by the Government of Turkey as "Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ)" or "Parallel State Organisation (Paralel Devlet Yapılanması, PDY)". Distressing reports of abductions by [S]tate agents in broad daylight, followed by months of torture and ill-treatment in clandestine detention sites aimed at extracting confessions for future prosecutions should be investigated as a matter of urgency.[2]

Therefore, it is obvious that, at the moment of the disappearance of Y.T., there was a pattern both of enforced disappearances used against supporters of the Gülen movement and of impunity of State-sponsored perpetrators.

5. Third, against that factual and legal background, the European Court of Human Rights decided to place the burden of proof on the relatives of the disappeared person.[3] It means that, instead of proceeding on the basis of the presumption of a person's disappearance and asking the State party to clarify the steps taken to investigate the facts, the European Court of Human Rights considered that the presumption did not apply since the State had not confirmed the detention or the death of that person. Such a step is not only at odds with the long-standing jurisprudence of the Court, but also with the internationally accepted definition of enforced disappearance, which is characterized by the denial of the deprivation of liberty of the victim, which puts the life of the individual in danger.[4]

6. Therefore, even if it is difficult not to apply the reservation of the State party, we would have favoured a more cautious wording of para. 6.4 of the present decision and we would have sought to distance the stance of the Committee from the solution reached by the European Court of Human Rights, which is at odds with the Committee's own jurisprudence on enforced disappearances. It would not have substantially changed the outcome of the decision since the State's reservation is valid, but it would have recalled the zero-tolerance approach to enforced disappearances, as an imperative norm of international law.

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[2] A/HRC/45/13/Add.4, para. 7.

[3] As outlined in paragraphs 75 and 77 of the decision of the European Court of Human Rights in 2022, the official version of which is in French.

[4] See, for instance *Djaou and Djaou v. Algeria* (CCPR/C/136/D/2808/2016), para. 8.5.