

Ms Dunja Mijatović
Commissioner for Human Rights
of the Council of Europe

Geneva, 21 September 2018

Re: Apparently arbitrary restrictions on the right to assembly of the Saturday Mothers - Turkey

Dear Ms Mijatović,

I write on behalf of the International Commission of Jurists to bring to your attention the situation of the Saturday Mothers, a group of mothers of people who have allegedly been subject to enforced disappearances in Turkey since the 1990s.

On 25 August 2018 , the Sub-Governorship of Beyoğlu District of İstanbul announced¹ the prohibition of gatherings for assembly of any type of demonstrations in Galatasaray Square in Istanbul. The announcement said:

"Galatasaray square in our district, as the venue which has been called for assembly and sitting action on 25 August 2018 at 12:00 a.m. by social media accounts which are assisting the PKK terror organisation, is not among the venues identified as assembly and demonstration place and route on the grounds of the Law No.2911 and there has been no legal notification to our Sub-Governorship, it will not be permitted by our Sub-Governorship on the grounds of the Articles 10 and 17 of the Law no 2911 and the Article 32(ç) of the Law No 5442 (Provincial Administration Law)"²

The announcement of the restriction clearly referred to calls for assembly by "social media accounts assisting the PKK terrorist organisation".

¹ Announcement No 2/2018 of the Beyoğlu Sub-Governorship

² Unofficial translation. See original at <http://www.beyoglu.gov.tr/beyoglu-kaymakamligindan-duyuru-20182> .

The ICJ would like to draw your attention to the fact that the Saturday Mothers began its first sit-in at Galatasaray Square on 27 May 1995.³ Beginning in 1995, the Mothers sat in front of Galatasaray High School every Saturday at noon until 15 August 1998, when, in the 170th week of Galatasaray seating, they were subject to the excessive use of force by security forces which continued for seven months. On 13 March 1999, the Saturday Mothers announced that they would suspend their activities for an indefinite period of time due to the attacks by the Security forces. After 10 years, the Saturday Mothers resumed their sit-ins on 31 January 2009. These demonstrations continued regularly until the recent announcement by the Sub-Governorship of Beyoğlu District of İstanbul.

On the 700th week of their peaceful protests, the Saturday Mothers and their supporters congregated in Galatasaray Square at midday to once again raise awareness of the need for those responsible to be held accountable for the extrajudicial killings and enforced disappearances following their time in State custody in the 1990s.

Defying the ban, the Saturday Mothers announced on their twitter feed "under all circumstances we have held a vigil in this square for 699 weeks. We will be there again this week."⁴

On 25 August, the police used tear gas to stop the protest and arrested 47 people. All were released by Saturday evening.⁵

On 1 September, families came back again the Galasaray square. However, the Square had been closed by the security forces.

The Minister of Interior, Süleyman Soylu, on 27 August 2018 , during a training programme, made the following statement: "We did not grant permission for this event, we wanted this trickery and abuse to be stopped. What else should we have done? Should it be allowed that the motherhood should be abused by terrorist organisations or be used as a shield for the terrorist organisations?" (unofficial translation).⁶

Furthermore, Ömer Çelik, Spokesperson of the Justice and Development party (AKP), on 29 August 2018, following the AKP Management Board meeting, declared in a public statement:

"There is no contradiction between our stance on acceptance of these mothers by the then-Prime Minister (referring to President Erdoğan who received and listened Saturday Mothers in 2011, note added) and the latest police intervention. We respect all suffering of mothers concerning their children. Our doors are always open to them. However, according to our observations, this place has been turned into a platform grasped by terrorist organisations rather than being a platform representing the quest of mothers for justice. The

3 Hasan Ocak's tortured body was found 58 days later in the Homeless Cemetery

4 <https://twitter.com/CmrtesiAnneleri> (unofficial translation)

5 See video of the facts at <https://www.youtube.com/watch?v=a2VrWvjN2kA> and https://www.youtube.com/watch?v=6V9_AdWL4vA

6 See original statement at <https://www.icisleri.gov.tr/bakan-soylu-104-donem-kaymakamlik-kursu-acilis-programina-katildi>).

*intervention is not against the mothers who lost their children. The intervention is against terrorist organisations. This area (referring to Galatasaray square) will never be used anymore for this sort of activity."*⁷

The ICJ considers this situation to be at odds with Turkey's obligations under international human rights law, in particular of the right to peaceful assembly under article 11 of the European Convention on Human Rights and article 21 of the International Covenant on Civil and Political Rights.

The ICJ recalls that the European Court of Human Rights has held that, even when a ban against demonstrations is in place, the right to freedom of assembly is not extinguished, and interference with it must be assessed according to standards of necessity and proportionality. In the case of *Oya Ataman v. Turkey*, followed by several repetitive cases, the Court held:

39 ... an unlawful situation does not justify an infringement of freedom of assembly In the instant case, however, notification would have enabled the authorities to take the necessary measures in order to minimise the disruption to traffic that the demonstration could have caused during rush hour. ...

41. However, there is no evidence to suggest that the group in question represented a danger to public order, apart from possibly disrupting traffic. There were at most fifty people, who wished to draw attention to a topical issue.

...

42. In the Court's view, where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.

43. Accordingly, the Court considers that in the instant case the police's forceful intervention was disproportionate and was not necessary for the prevention of disorder within the meaning of the second paragraph of Article 11 of the Convention.

Furthermore, the ICJ recalls the *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, calling on Member States to

- i) create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights; (and)*
- vi) ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect;*⁸

⁷ Unofficial translation. See <https://www.evrensel.net/haber/360208/omer-celikten-cumartesi-anneleri-aciklamasi-o-alan-kullanilmayacak>

⁸ *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies), article 2.

The ICJ considers that, given the consistent record and presence of the Saturday Mothers in Galatasaray Square throughout the years, it is hard to see how the restriction on their right to peaceful assembly could in any way be necessary and proportionate to a legitimate purpose. It is clear that no prior warning for the gathering was needed for security reasons in light of its regular occurrence at least since its resumption in 2009, i.e. nine years ago. Furthermore, the demonstration took place on a pedestrian area where cars are not allowed.

Assuming that the basis for restricting was national security grounds, the ICJ strongly contests the idea that Saturday mothers generally pose a national security concern. Furthermore, the ICJ is concerned at the equation of the action and purposes of the Saturday Mothers protests with the idea of "assistance to a terrorist organisation" by several public authorities. Such unsubstantiated declarations appear to be abuses of the counter-terrorism framework to obstruct legitimate activities by human rights defenders.

The ICJ would appreciate any action that you are able to take as Commissioner for Human Rights of the Council of Europe to remind the Government of Turkey of its obligations under international human rights law with regard to the right to peaceful protest of the Saturday Mothers and to call for the immediate lifting of the protest prohibition on Galatasaray Square as well as a clear and unequivocal rehabilitation of their reputation at the highest levels of Government.

Yours sincerely



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Director
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