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Date: 20 January 2021

FOR THE ATTENTION OF:

- **Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**
- **Special Rapporteur on the Independence of Judges and Lawyers**
- **Special Rapporteur on the Situation of Human Rights Defenders**
- **Working Group on Arbitrary Detention**
- **Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health**
- **Special Rapporteur on Minority Issues**

Dear Sir/Madam,

URGENT ACTION: Imminent risk to health and life of ill prisoner Aysel Tuğluk held in Kocaeli F-Type Prison, Turkey.

1. We are writing to express our grave concern over the treatment of the seriously ill prisoner Aysel Tuğluk (56) held in the Kocaeli Kandıra F-Type prison in Turkey.
2. Ms. Tuğluk was arrested in 2016 while she was the vice co-chair of the left wing and pro-Kurdish Peoples' Democratic Party (HDP) along with several other Kurdish opposition politicians. She was given a ten-year prison sentence on terrorism charges and has been held in prison since December 2016. Her political activities, speeches she delivered while she was a member of parliament (MP) and her attendance at funerals of Kurdistan Workers' Party (PKK) members were used as evidence against her in court.¹
3. Ms. Tuğluk was diagnosed with dementia while in prison, and as her condition deteriorated, Kocaeli University Hospital department of Forensic Medicine issued a report in July 2021, declaring that she was not fit to stay in prison due to her illness. However, despite this report and the calls from other medical experts asking for her immediate release, the Istanbul Forensic Medicine

¹ Stockholm Center for Freedom, September 6 2021, *Former HDP deputy Aysel Tuğluk unable to access proper healthcare in prison, her lawyers say* (accessed 5 January 2022) < <https://stockholmcf.org/former-hdp-deputy-aysel-tugluk-unable-to-access-proper-healthcare-in-prison-her-lawyers-say/> >

Institute determined in a later report that Ms. Tuğluk may stay in prison, as her routine visits to clinics were allowed.²

4. Her lawyer states that Ms. Tuğluk is experiencing severe memory loss and cannot handle her daily needs on her own. She has been forgetting to conduct her vital needs such as eating and drinking water, as well as forgetting how to read, write and speak to people.³ Ms. Tuğluk is at risk of death, if she remains in prison.

I. **Background**

5. The condition of detention in Turkish prisons remains to be a cause of concern with regard to human rights abuses. The issue of overcrowding became the source of many human rights abuses as the prison population grew rapidly from 55,000 in 2001 to 297,019 in 2020.⁴ Over the last years, the number of those incarcerated and on pre-trial detention has risen dramatically following the coup attempt in July 2016. Tens of thousands of people are currently in prison, many of whom face charges under the controversial terrorism legislation. Among them are many opposition politicians, journalists, lawyers and human rights defenders. The Special Rapporteur on Torture noted the above facts while noting that the anti-terror legislation and its definition of “terrorism” in Turkey are rather broad and vague and that the law could easily be abused for politically motivated prosecutions.⁵ Following the Covid-19 outbreak in 2020, Turkey adopted legislation resulting in the release of 90,000 prisoners, including those convicted of crimes such as murder, in order to alleviate the overcrowding in prison. However, the legislation specifically excluded prisoners convicted under anti-terror legislation. As a result, many who are believed to be political prisoners targeted due to their political beliefs remain in captivity. Among them are many opposition politicians from HDP including its elected deputies and mayors.⁶
6. There are a significant number of gravely sick prisoners in Turkey. According to the report published by the Human Rights Association of Turkey (IHD) in March 2020, there are currently more than 1,605 sick prisoners, including 604 in critical condition, in Turkish prisons.⁷ The IHD believes that the real number of sick inmates in Turkish prisons is much higher. Their report also suggests that in the year 2020, at least 18 sick prisoners died of suicide. The increase in the number of suicide cases in Turkish prisons in recent years is closely related to the increase in other violations of prisoners’ human rights. As for senior prisoners, between April and November 2020 four prisoners over the age of 70 died from serious health complications.⁸

² Ahval News, December 5 2021, *Kurdish politician Aysel Tuğluk experiencing memory loss behind bars – lawyer* (accessed 5 January 2022) < <https://ahvalnews.com/turkey-prisons/kurdish-politician-aysel-tugluk-experiencing-memory-loss-behind-bars-lawyer> >

³ *Ibid.*

⁴ Bianet, 29 December 2021, *Tika basa cezaevleri başlı başına sağlık sorunu* (accessed 5 January 2022) < <https://m.bianet.org/bianet/saglik/255453-tika-basa-dolu-cezaevleri-basli-basina-saglik-sorunu> >

⁵ Human Rights Council, “Compilation on Turkey - Report of the Office of the United Nations High Commissioner for Human Rights,” 12 November 2019, UN Doc A/HRC/WG.6/35/TUR/2, para 13.

⁶ BBC News, 25 October 2021, *Adalet nöbetindeki hasta tutuklu ve mahpus yakınları Cezaevlerinden cenazeler çıkmasın* (accessed 5 January 2022) < <https://www.bbc.com/turkce/haberler-turkiye-59415860> >

⁷ Human Rights Association, 1 April 2021, *IHD 2020 Yılı Türkiye hapisanelerinde hak izleme raporu* (accessed 5 January 2022) < <https://www.ihd.org.tr/ihd-2020-yili-turkiye-hapishanelerinde-hak-izleme-raporu/> >

⁸ Bianet, 19 November 2020, *‘49 prisoners lost their lives this year’* (accessed 11 January 2022) < <https://m.bianet.org/english/print/234697-49-prisoners-lost-their-lives-this-year> >

7. The lack of access to timely and adequate medical treatment is another serious issue in Turkish prisons. The European Court of Human Rights (ECtHR) has in the past ruled that Turkey has failed to offer adequate medical care to sick prisoners and that the conditions for them have been inadequate.⁹ Turkey has also refused to release terminally ill inmates and continues to imprison certain detainees who have been declared unfit to be in prison on medical grounds. Most recently, the case of Mehmet Emin Özkan, an 83-year-old prisoner whose conviction was based on two witness statements that were later withdrawn, has drawn significant attention to the treatment of seriously ill prisoners in Turkey. As explained in our joint letter to Special Procedures on 14 July 2021, Mr. Özkan suffers from several health issues including high blood pressure, toxic goiter, kidney disease and memory loss and he has also suffered five heart attacks over the past 26 years in prison.¹⁰ Despite his ailing health, he remains in prison and was recently hospitalized after testing positive for Covid-19.¹¹
8. Civil society organizations in Turkey have been raising their concern over the systematic torture applied to severely ill prisoners in Turkish prisons by keeping them in solitary confinement and preventing them from receiving medical care.¹² It is reported that since 2020, 104 inmates died in prisons and many of them were suffering from illnesses. In the month of December 2021 alone, at least 7 inmates died while behind bars.¹³ Some of these deaths were under suspicious conditions and were ruled as a suicide by the authorities. Most recently, prisoner Garibe Gezer, who had reported that she was tortured and sexually abused in the prison was found dead by alleged suicide in her cell.¹⁴ After trying to report her abuse in prison, she was punished by being placed in a padded cell on her own with no access to the outside world.¹⁵ She died at the age of 28 in the cell in which she was being held in solitary confinement. Another recent case of suspicious death by alleged suicide was of prisoner Vedat Cem Erkmen, whose autopsy was completed without the presence of lawyers and family members.¹⁶

⁹ ECtHR, *Tekin Yildiz v. Turkey* (no. 22913/04), *Gulay Cetin v. Turkey* (no 44084/10), *Ebedin Abi v. Turkey* (no. 10839/09)

¹⁰ Urgent action letter by the Turkey Human Rights Litigation Support Project and 20 other civil society organisations concerning Mehmet Emin Özkan, 14 July 2021; *Gazete Duvar*, 21 December 2021, *83 yaşındaki hasta tutuklu Mehmet Emin Özkan yine tahliye edilmedi* (accessed 6 January 2022) < <https://www.gazeteduvar.com.tr/83-yasindaki-hasta-tutuklu-mehmet-emin-ozkan-yine-tahliye-edilmedi-haber-1546377>>

¹¹ *Ahval*, 21 December 2021, *Ağır hasta tutuklu Özkan'ın korona testi ikinci kez pozitif çıktı* (accessed 6 January 2022) < <https://ahvalnews.com/tr/hasta-mahkumlar/agir-hasta-tutuklu-ozkanin-korona-testi-ikinci-kez-pozitif-cikti>>

¹² *Bianet*, 17 December 2022, *"Ağır hasta mahpuslar tek kişilik hücreye atılıyor"* (accessed 7 January 2022) < <https://m.bianet.org/bianet/insan-haklari/254990-agir-hasta-mahpuslar-tek-kisilik-huceyre-atiliyor>>

¹³ *Duvar English*, 22 December 2021, *As human rights abuses increase, more and more inmates die in Turkish prisons* (accessed 5 January 2022) < <https://www.duvarenglish.com/as-human-rights-abuses-increase-more-and-more-inmates-die-in-turkish-prisons-news-59933>>

¹⁴ *Duvar English*, 10 December 2021, *Following torture and sexual abuse, female prisoner dies by alleged suicide in prison* (accessed 5 January 2022) < <https://www.duvarenglish.com/following-torture-and-sexual-abuse-female-prisoner-garibe-gezer-dies-by-alleged-suicide-in-prison-news-59818>>

¹⁵ *Ibid.*

¹⁶ *Evrensel*, 20 December 2021, *Tekirdağ Cezaevi'nde bir tutuklu daha yaşamını yitirdi* (accessed 5 January 2022) < <https://www.evrensel.net/haber/450727/tekirdag-cezaevinde-bir-tutuklu-daha-yasamini-yitirdi>>

II. The case of Aysel Tuğluk

9. Aysel Tuğluk is a Kurdish politician and a human rights lawyer. She is a member of the Istanbul Bar Association, IHD and served as executive board member of the Society and Legal Research Foundation (TOHAV). She was also a founding member of the now banned pro-Kurdish Democratic Society Party (DTP). She was the first woman co-chair of a political party in Turkey after the DTP had introduced the system of co-chair to ensure representation of women in politics. She undertook a pioneering role in this progressive action which led the 2014 legislative change in the Law on Political Parties allowing the political parties to adopt the co-chair system.
10. Aysel Tuğluk is currently imprisoned at the Kocaeli F-Type Prison in Turkey. She was arrested on 29 December 2016 while she was co-chair of the HDP, along with seven other Kurdish opposition politicians. She was sentenced to 10 years in prison on terrorism charges related to the PKK. Her activities as a politician, public speeches she delivered during her mandate as deputy and her attendance at funerals of PKK members were used as evidence against her in Court.¹⁷
11. Ms. Tuğluk has worked in several NGOs as a human rights lawyer before being elected to parliament in 2007 from the Kurdish-majority Diyarbakır province as an independent deputy. Due to her legal immunity as an elected deputy, she avoided going to prison after being sentenced to 18 months in prison in 2007, over the distribution of party leaflets in Kurdish.¹⁸ She was sentenced again to 28 months imprisonment in 2009, this time on charges of spreading “terrorist propaganda”, a charge she then interpreted as a form of political pressure on her former party, DTP.¹⁹ In 2009, the Constitutional Court of Turkey decided unanimously that the DTP should be closed down.²⁰ The Court also stripped Aysel Tuğluk, along with fellow lawmaker Ahmet Türk, of parliamentary immunity.²¹ On 12 January 2016, the ECtHR decided that the dissolution of the DTP was not in line with the standards of the European Convention on Human Rights (ECHR).²²
12. In 2011, she was re-elected as an MP. The following year, a court sentenced her to 14 years and 7 months in prison for ten separate speeches she delivered as a deputy, on the charges of “committing a crime on behalf of the armed terrorist organization PKK without being a member” and “making terrorist propaganda”.²³ Her lawyers argued that Ms. Tuğluk had delivered her speeches under her identity as a politician and that her freedom of speech has been violated by the courts. She did not have to serve jail time for this conviction as a result of the legislative changes made in the course of the proceedings. In 2018, Suruç Criminal Court of First Instance sentenced her to 1 year and 6 months in prison for “opposing to law on rallies and

¹⁷ See, *supra* note 1.

¹⁸ Reuters, 5 February 2009, *Turkish Court sentences Kurdish lawmaker to jail* (accessed 6 January 2022) < <https://www.reuters.com/article/idU5L5778001>>

¹⁹ *Ibid.*

²⁰ France 24, 11 December 2009, *Top court bans main Kurdish political party* (accessed on 6 January 2022) < <https://www.france24.com/en/20091211-top-court-bans-main-kurdish-political-party>>

²¹ *Ibid.*

²² ECtHR, *Party for a Democratic Society (DTP) and others v. Turkey*, judgement of 12 January 2016 (applications nos. 3870/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10)

²³ Bianet, 12 June 2012, *Independent deputy Aysel Tuğluk sentenced to 14.5 years behind bars* (accessed 6 January 2022) < <https://bianet.org/english/human-rights/139020-independent-deputy-aysel-tugluk-sentenced-to-14-5-years-behind-bars>>

demonstrations”, while she was already behind bars after her arrest in 2016.²⁴ Although the judgment of the lower court was later quashed on appeal, her retrial is still ongoing. In a further proceeding, Van 4th Assize Court sentenced her to 1 year and 8 months prison on 14 October 2021 for two speeches she gave while she was an MP. Her appeal has been pending as of the date of this letter.

13. In 2017, Ms. Tuğluk lost her mother, Hatun Tuğluk, whose funeral ceremony in Ankara was attacked by a fascist mob. She was allowed to participate in the funeral from prison, and she witnessed the attack. While her mother Hatun Tuğluk’s body was initially buried in Ankara, due to the threats to the integrity of her grave, it was transferred to Dersim to be re-buried. According to Ms. Tuğluk’s lawyers, her memory loss was triggered by these events, including treatment she and her family faced in the process of her mother’s death and funeral. Her loss of memory began following the serious trauma she experienced upon witnessing the attack on her mother’s funeral and the unearthing of the body.²⁵
14. Her lawyers observed over time that her health started rapidly deteriorating, and she was later diagnosed with dementia.²⁶ On 12 July 2021, a chamber of medical experts from Kocaeli University who examined Ms. Tuğluk’s health for four months have concluded that:

“Dementia disease has a chronic course and will show a progressive character, the person [Ms. Tuğluk] should be followed up in tertiary health institutions; there may be problems in the adequacy of the medical support and care that can be provided to the person in prison conditions; it is not possible [for her] to continue her life without the help of someone else; it is not possible [for her] to care for her basic needs in prison conditions without the help of someone else; therefore the execution of her sentence should be postponed; she cannot lead her life alone under the prison conditions.” (see Annex I)

However, this detailed analysis by nine experts was disregarded by the Istanbul Forensic Medicine Institute. The Institute, reportedly after just a two-hour examination of Ms. Tuğluk’s state, summarily concluded in a 3 September 2021 report that her health condition does not justify an exemption from execution of her sentence in prison.²⁷

15. Ms. Tuğluk’s lawyers requested an independent report from the Turkey Human Rights Foundation (TIHV). A group of prominent medical experts analysed all previous reports on Ms. Tuğluk’s health state and medical documents to which they had access (18 sets of medical files and previous reports were examined by the experts). In their report dated 30 September 2021, they criticized the analysis of the Istanbul Forensic Medicine Institute on several aspects. They indicated that:

“Although dementia was diagnosed in the examinations made by different health institutions, it was stated in the report of the Forensic Medicine Institute [ATK] that “the results of the

²⁴ Bianet, 2 January 2018, *HDP Deputy Co-chair Tugluk sentenced to 1.5 years in prison* (accessed 6 January 2022) < <https://bianet.org/english/politics/192938-hdp-deputy-co-chair-tugluk-sentenced-to-1-5-years-in-prison>>

²⁵ See, *supra* note 2.

²⁶ *Ibid.*

²⁷ Duvar English, 21 December 2022, *68 Civil society organizations call for release of Kurdish politician suffering from illness* (accessed 6 January 2022) < <https://www.duvarenglish.com/68-civil-society-organizations-call-for-release-of-kurdish-politician-aysel-tugluk-suffering-from-illness-news-59919>>

[previous] tests and examinations [by other medical institutions] were not reliable". This decision was given by referring to articles of the relevant law without explaining clearly why the previous diagnoses were found to be wrong and which objective diagnostic criteria were used to disregard them. To eliminate the difference between the diagnoses, the ATK had to carry out and expand the necessary examinations. In order to reach reliable scientific conclusions, it must use and repeat the examinations and analysis of the health institutions that have clinical facilities and experience on the matter. It must obtain the medical records of the person in prison, the results of her psychosocial assessment, and the observations of the prison officers and people with whom the person lives [in prison]." (see Annex II).

- 16.** After visiting Ms. Tuğluk in prison on 24 December 2021, the HDP co-chair Pervin Buldan stressed that Ms. Tuğluk was in a situation where she could not meet her own needs and that even the prison administration had observed a rapid deterioration in her condition.²⁸ Her lawyer, Reyhan Yalçındağ, recently stated that there has been a significant deterioration in Ms. Tuğluk's memory loss at an observable level over the last weeks and that she was not able to care for herself under prison conditions.²⁹ In December 2021, some 68 civil society organizations jointly called for the release of Ms. Tuğluk and the IHD stated that it may already be too late to save her from an early death.³⁰ In the joint statement, the 68 civil society organizations directly blamed the Ministry of Justice for Ms. Tuğluk's continued imprisonment and stated that it is the responsibility of the state to release her in compliance with the medical report stating that she cannot remain in prison. The organizations also state that the report by the Istanbul Forensic Medicine Institute "cannot be trusted due to the troubled and partisan history of the institution".³¹ Ömer Faruk Gergerlioğlu, who is a deputy from the HDP and a medical doctor, stated that the report delivered by the Istanbul Forensic Medicine Institute did not contain medical facts and observations but rather incorrectly accused Ms. Tuğluk of 'faking' her condition.³² He adds that according to recent visitors, it takes a long time for Ms. Tuğluk to perform basic movements such as sitting down on a chair or picking up the phone and that these are common symptoms of dementia.³³
- 17.** As her health condition worsens, Ms. Tuğluk was, on 21 December 2021, once again transferred to a hospital for the preparation of a new report regarding her current condition. ³⁴ The Istanbul Forensic Medicine Institute will be evaluating her condition once more in order to decide if Ms. Tuğluk must be released from prison as a result of her rapidly deteriorating health. The undersigned organizations believe that the intervention of Special Procedures in this matter, at

²⁸ Bianet, 27 December 2022, 'Even the prison administration says Aysel Tuğluk is not in good health' (accessed 6 January 2022) < <https://m.bianet.org/english/human-rights/255397-even-the-prison-administration-says-aysel-tugluk-is-not-in-good-health>>

²⁹ Medyanews, 18 December 2021, *Each passing hour is going against Aysel Tuğluk's health* (accessed on 6 January 2022) < <https://medyanews.net/each-passing-hour-is-going-against-aysel-tuglugs-health/>>

³⁰ See, *supra* note 24.

³¹ *Ibid.*

³² Bianet, 6 January 2022, *Gergerlioğlu : ATK'nın raporu tıbbi beyanlar içermiyor* (accessed 7 January 2022) < <https://bianet.org/bianet/insan-haklari/255844-gergerlioglu-atk-nin-raporu-tibbi-beyanlar-icermiyor> >

³³ *Ibid.*

³⁴ Medyascope, 21 December 2021, *Aysel Tuğluk sağlık raporu için yeniden hastaneye kaldırıldı* (accessed 7 January 2022) < <https://medyascope.tv/2021/12/21/aysel-tugluk-saglik-raporu-icin-yeniden-hastaneye-kaldirildi/>>

this stage, would contribute to a more objective and medically accurate evaluation of Ms. Tuğluk's health state by the Istanbul Forensic Medicine Institute, which could eventually lead to her access to the urgent medical care she needs outside of prison without further delay.

III. Turkey's Obligations under Domestic and International Law

Domestic law relating to the treatment of prisoners

18. Under Article 17(1) of the Turkish Constitution, everyone has the right to life.³⁵ Article 17(3) states that no one shall be subject to torture or ill-treatment. It also provides that no one shall be subjected to penalties or treatment incompatible with human dignity.³⁶
19. Article 104 of the Constitution gives the President of the Turkish Republic the authority to grant a pardon to certain prisoners, on grounds of chronic illness, disability or old age if a series of conditions are met.
20. Article 71 on the Law on the Execution of Penalties and Security Measures guarantees the right to treatment and medical care necessary for a prisoner's health condition. It also states that a prisoner shall be treated primarily in the institution infirmary or, where this is not possible, in university hospitals.³⁷
21. According to Article 16(2) of the Law on the Execution of Penalties and Security Measures, in case of illness, the execution of the prison sentence may be suspended provided that there is an absolute danger for the life of the convict.³⁸ The sentence may be suspended until the convict is healthy.³⁹ The Law on the Amendment of Law on the Execution of Penalties and Security Measures and Certain Laws (No. 6411) adopted in January 2013, however, provides that such suspension of a sentence can be restricted on the grounds that a convict may pose danger to the security of the society.⁴⁰ The decision on a suspension is made by the Office of Chief Public Prosecutor at the convict's prison, upon a request issued by the Forensic Medicine Institution or the health committee of a fully equipped hospital designated by the Ministry of Justice.⁴¹
22. Article 90 of the Constitution provides for the supremacy of international human rights law standards above domestic law in case of contradiction on the subject of rights and freedoms.⁴² Turkey is bound to abide by international legal norms relevant to this case, including the right to life and the prohibition of torture or cruel, inhuman or degrading treatment or punishment.

³⁵ Article 17(1), the Constitution of the Republic of Turkey.

³⁶ Article 17(3), the Constitution of the Republic of Turkey.

³⁷ Article 71, the Law on the Execution of Penalties and Security Measures, 13 December 2004.

³⁸ Article 16(2), the Law on the Execution of Penalties and Security Measures.

³⁹ *Ibid.*

⁴⁰ Stockholm Center for Freedom, *HDP demands parliamentary debate on situation of sick prisoners*, 17 June 2021 (accessed 6 January 2022) < <https://stockholmcf.org/hdp-demands-parliamentary-debate-on-situation-of-sick-prisoners/> >

⁴¹ Daily Sabah, Mahmut Övür, 9 February 2015, *The question of ill inmates* (accessed 6 January 2022) < https://www.dailysabah.com/columns/mahmut_ovur/2015/02/09/the-question-of-ill-inmates >

⁴² Article 90, the Constitution of the Republic of Turkey as amended on 23 July 1995.

International law related to the treatment of prisoners

23. Under Article 3 of the ECHR, Article 7 of the International Covenant on Civil and Political Rights (ICCPR), and Article 1 of United Nations Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Turkey has a duty to refrain from committing any act of torture or cruel, inhuman or degrading treatment. This includes protection of prisoners under its jurisdiction from being subject to these acts by state actors.⁴³ The prohibition of torture and cruel, inhuman or degrading treatment is an absolute and non-derogable right.
24. Under Article 2 of the ECHR and Article 6 of the ICCPR, every person has an inherent right to life. That right is to be protected by law, and no one should be arbitrarily deprived of his or her life. The United Nations Human Rights Committee on numerous occasions reiterated that adequate or appropriate and timely medical care must be provided to all detainees as part of a state's duty to ensure the enjoyment by all persons of the right to life.⁴⁴ In *Salakhov and Islyamova v. Ukraine*, the ECtHR held there was a violation to the right of life in a case where a prisoner was refused medical treatment, which led to his death.⁴⁵
25. Under Article 3 of the ECHR, Article 7 ICCPR and Article 1 of UNCAT, the states must ensure that a person is detained in conditions which are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance.⁴⁶
26. With respect to the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and Article 10 of the ICCPR, detainees shall be treated with humanity and dignity.⁴⁷ The Nelson Mandela Rules state that each prisoner must be provided with appropriate care, prompt medical attention in urgent cases, timely check-ups, and must be transferred to specialized institutions or civil hospitals when specialized treatment is needed.⁴⁸ Thus, the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.⁴⁹

⁴³ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5; UN General Assembly (UNGA).

⁴⁴ Lawyers' Rights Watch Canada, 8 October 2014, *Prisoners: The Right to Medical Treatment-Summary of Preliminary Research/Report* (accessed 6 January 2022) <<https://www.lrwc.org/prisoners-the-right-to-medical-treatment-summary-of-preliminary-research-report/>>

⁴⁵ ECtHR, *Salakhov and Islyamova v. Ukraine*, judgement of 14 March 2013, application No. 28005/08.

⁴⁶ ECtHR, *Kudla v. Poland*, judgement of 26 October 2000, application No. 30210/96, para. 94; ECtHR, *Gelfmann v. France*, judgement of 14 December 2004, application No. 25875/03, para. 50; ECtHR, *Serifis v. Greece*, judgment of 2 November 2006, application No. 27695/03; ECtHR, *Mouysel v. France*, judgment of 14 November 2002, application No. 67263/01; ECtHR *Tekin Yildiz v. Turkey*, judgment of 10 November 2005, application No. 22913/04.

⁴⁷ *Ibid.*

⁴⁸ UNODC, 2015, *the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (accessed 19 January 2022) <https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf>

⁴⁹ *Ibid.*, Rule 45.

27. A further UN document provides that there should be at least one qualified medical officer who should have knowledge of psychiatry; any prisoners who require specialist treatment should be transferred to specialist institutions or to a civil hospital; a qualified dental officer should be available to every prisoner; and authorities must transfer prisoners who need specialist treatment to specialized institutions, including civilian hospitals, without unnecessary delay.⁵⁰

Application of the law to the situation of Aysel Tuğluk

28. As many case studies illustrate, the treatment of gravely ill prisoners in Turkish prisons, such as Aysel Tuğluk, does not satisfy Turkey's international obligations. With respect to the UN's *Mandela Rules*, each inmate must be provided appropriate medical care and prisoners who need specialist treatment should be moved to specialized institutions, including civilian hospitals, without unnecessary delay. Ms. Tuğluk's continued imprisonment despite her serious health issues and her vulnerabilities to both conditions in the prison and the ongoing Covid-19 pandemic, show a failure of Turkish authorities to adhere to both their own domestic laws and international standards with regard to treatment of prisoners.

29. Under international law, inflicting suffering in the course of state-imposed punishment with the acquiescence of state officials is defined as torture. The current treatment of severely ill prisoners in Turkish prisons clearly amount to inhuman or degrading treatment. In Ms. Tuğluk's case, she is no longer able to satisfy her own vital needs such as eating and drinking, and her memory loss illness is worsened each day by the conditions of prison. Her continued imprisonment, while being in her current state where she cannot meet her own needs and can barely communicate with others, not only amounts to torture and degrades her quality of life but puts her life at risk. The dismissal of medical reports finding that Ms. Tuğluk is not fit to stay in prison by the Turkish authorities - including the Istanbul Forensic Medicine Institute and the public prosecutor determining the continuance of her imprisonment - highlights a culture of complacency and abuse within the Turkish prison system that fails under international standards and obligations set out in the Turkish Constitution.

30. In sum, it is clear from an examination of the medical reports, publicly accessible information on the case, and statements from Ms. Tuğluk's visitors and lawyers that Ms. Tuğluk is not healthy enough to survive much longer in the conditions to which she is subject in Kocaeli Kandıra F-Type Prison and that her immediate release is necessary. Should she fail to be released soon, Ms. Tuğluk's life will remain at serious risk as her health keeps deteriorating at a rapid rate.

IV. **Actions Requested**

- i. We request the Special Procedures to urge the Turkish Government to immediately release Aysel Tuğluk and other severely ill prisoners who are not fit to remain in prison in compliance with Turkey's domestic and international law obligations.
- ii. We request Special Procedures to intervene in this grave matter and to raise all of these issues with the Turkish Government. Special Procedures are particularly requested to communicate the concerns in relation to violation of prisoners' rights

⁵⁰ United Nations Office on Drugs and Crime, 2009, *Prisoners with Special needs* (accessed 6 January 2022) <<https://www.unodc.org/documents/justice-and-prison-reform/Prisoners-with-special-needs.pdf>>

to medical services and to investigate the circumstances behind the refusal to release severely ill prisoners.

- iii. We further request the Special Rapporteurs to invite the Turkish Government to ensure that all prisons in Turkey have an adequate number of medical staff, including doctors and that they work freely without any undue interference with their work.
- iv. We ask the Special Procedures to urge the Turkish Authorities to introduce and enforce legal provisions for the release of seriously ill prisoners on compassionate grounds. Those legal provisions should create impartial and fair procedures for the medical evaluation of all ill prisoners and the grounds for their release.
- v. We request the Special Procedures to ensure the Turkish Government allow greater accountability and transparency of prison living conditions by enabling visits and inspections from human rights groups and nongovernmental entities.
- vi. We would be grateful if you would notify us of what action you decide to take on this matter and to inform us, in due course, of any response received from the Turkish Government. We would also be grateful if you are able to acknowledge receipt of this letter. Should you require any additional information, please contact us, and we will provide any support that we can.

Yours faithfully,

Sanya Karakaş, Turkey Human Rights Litigation Support Project (TLSP), the United Kingdom
(and on behalf of)

AĞ-DA Toplumsal Cinsiyet Eşitliği Dayanışma Ağı (Gender Equality Solidarity Network), Turkey

Asociación Libre de Abogadas y Abogados, (Free Association of Lawyers, ALA), Madrid, Spain

Batman Barosu (Batman Bar Association), Turkey

Bingöl Barosu (Bingöl Bar Association), Turkey

Conseil national des barreaux (CNB), France

Çağdaş Hukukçular Derneği (Progressive Lawyers' Association, ÇHD), Turkey

Dersim -Tunceli- Barosu (Dersim -Tunceli- Bar Association), Turkey

Diyarbakır Barosu (Diyarbakır Bar Association), Turkey

Düşünce Suçu(!?)na Karşı Girişim (Initiative for Freedom of Expression), Turkey

Eşit Haklar İçin İzleme Derneği (Association for Monitoring Equal Rights), Turkey

European Association of Lawyers for Democracy and World Human Rights (ELDH)

European Democratic Lawyers (AED)

Hak İnisyatifi Derneđi (the Rights Initiative), Turkey
Hakkari Barosu (Hakkari Bar Association), Turkey
Human Rights Committee of the German Bar Association (Deutscher Anwaltverein, DAV), Germany
Indian Association of Lawyers, India
İnsan Hakları Gündemi Derneđi (Human Rights Agenda Association), Turkey
International Association of Democratic Lawyers (IADL)
International Bar Association's Human Rights Institute (IBAHRI)
International Commission of Jurists (ICJ)
International Federation for Human Rights (FIDH)
International Observatory for Lawyers at Risk (OIAD)
Lawyers' Rights Watch Canada (LRWC), Canada
London Legal Group, the United Kingdom
Mardin Barosu (Mardin Bar Association), Turkey
Medya ve Hukuk Arařtırmaları Derneđi (Media and Law Studies Association, MLSA), Turkey
Muř Barosu (Muř Bar Association), Turkey
National Union of Peoples' Lawyers (NUPL), Philippines
Özgürlük için Hukukçular Derneđi (Association of Lawyers for Freedom, ÖHD), Turkey
P24 (Platform for Independent Journalism), Turkey
Republikanischer Anwältinnen - und Anwälteverein e.V. (Republican Lawyers Association, RAV), Germany
Rosa Kadın Derneđi (Rosa Women's Association), Turkey
Siirt Barosu (Siirt Bar Association), Turkey
Syndicat des Avocats pour la Démocratie: le SAD, Belgium
řanlıurfa Barosu (řanlıurfa Bar Association), Turkey
řırnak Barosu (řırnak Bar Association), Turkey
The Center for Research and Elaboration on Democracy/ Group of International Legal Intervention (CRED/GIGI)
The Italian Association of Democratic Lawyers (Giuristi Democratici), Italy
The National Association of Democratic Lawyers, (NADEL), South Africa
Toplum ve Hukuk Arařtırmaları Vakfı (Foundation for Society and Legal Studies), Turkey
Turkish-German Forum of Culture, Germany
Van Barosu (Van Bar Association), Turkey