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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the joint urgent appeal sent by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders, dated 24 June 2016 and Reference: UA TUR 4/2016, has the honour to enclose herewith an information note comprising the response of the Government of the Republic of Turkey to the aforementioned appeal.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 3 August 2016



Encl: As stated

Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10

Information Note in reply to the letter of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders dated 24 June 2016

(Reference: UA/TUR/4/2016)

With reference to the letter of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders dated 24 June 2016 which transmitted claims on the arrest of Rasime Şebnem Korur, Erol Önderoğlu and Ahmet Nesin, the Government would like to submit the following:

- The decision to detain Rasime Şebnem Korur (Fincancı), Erol Önderoğlu and Ahmet Nesin was taken by İstanbul Criminal Magistrates Office, pursuant to ongoing criminal investigations which include charges under Article 7/2 of the Counter-Terror Law; Articles 214, 215 and 44 of the Penal Code (making propaganda of a terrorist organization, public incitement to commit crime and praising criminals), through Article 11/3 of the Press Law.
- Whereas detailed information on the grounds of the charges will be presented in the following sections, it should thus be underlined that linking the detention of the persons in question to “their involvement in the solidarity campaign for the journal *Özgür Gündem*” does not correspond to the reality on the ground. The Government regrets that the letter of the Special Rapporteurs has been largely taken over by the contrary presumption. The Government also noted with concern the comments of the Special Rapporteurs that “while national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices”, which constitutes reaching broad and hasty conclusions prior to the official reply on the grounds of the investigations of the particular case in question; the content of the publications which has been considered as terrorist propaganda, and the national legislation that holds the editors in chiefs responsible for the anonymous content published in a newspaper.
- The Government reiterates its firm belief that the freedom of expression is *sine qua non* for a pluralistic democratic society. The existence of different views in democratic societies provides individuals with the opportunity to make a choice among different opinions. Freedom of expression is applicable not only to “information” or “ideas” that are favourably received, but also to those that offend, shock or disturb the State or any sector of the population. It includes *freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*.
- On the other hand, as is the case for any right, freedom of expression has its limits. These limits are set out in relevant international covenants and conventions. In addition to the Article 19/3 of the International Covenant on Civil and Political Rights, Article 10/2 of the European Convention of Human Rights provides that “*the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety,*

for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

- The European Convention on Human Rights, in its various judgments considered the right balance to be struck between the various interests involved, which, for this particular case may be interpreted as between the right to freedom of expression and the right of the public to be protected against the actions of the PKK terrorist organization.
- Mr. Önderoğlu, Mr. Nesin and Ms. Korur had assumed the duties of editor-in-chief on May 18th, June 7th and May 30th, respectively. On each of these dates, Özgür Gündem published articles which were considered to have legitimized PKK violence and praised persons who had committed crimes in the name of this terrorist organization, or otherwise engaged in PKK propaganda. Taking the ECtHR case-law into consideration, the judicial authorities deducted that such content could not be considered to fall within the exercise of the right to freedom of expression, or the freedom to receive and impart information.
- As no specific author was named in any of these articles, charges were brought against the responsible editor-in-chief of the newspaper pursuant to Article 11/3 (on criminal liability) of the Press Law.
- Article 11/3 of the Press Law stipulates that in the event that the author of the work (content) cannot be tried in Turkey -as he/she cannot be identified, is abroad or lacks criminal capacity- persons holding titles such as editor in chief, editorial director, the editor in chief is attached to, managing director, editor, and press advisor shall be responsible for the content.
- In the present case, the authors of almost all works/content subject to the investigation could not be identified, or their identities were not provided. Therefore the persons in question who stated that they have assumed the post of editorial director together with the editor in chief, that they were aware of the content to be published and that there were no problems with the content, were charged under Article 7/2 of the Counter-Terror Law and Articles 214, 215 and 44 of the Penal Code (making propaganda of a terrorist organization, public incitement to commit crime and praising criminals), through Article 11/3 of the Press Law.
- Upon these charges Rasime Şebnem Korur, Erol Önderoğlu and Ahmet Nesin were brought before the Criminal Magistrate's Office on duty on charges for making propaganda of a terrorist organization, under Article 7/2 of the Counter-Terror Law, with the request for their detention on remand. They were subsequently detained by the order of the magistrate. Later, the competent court, after having examined their objection to detention, released Korur, Önderoğlu and Nesin, pending trial.
- The judicial process is still in progress. It should be borne in mind that the Republic of Turkey is governed by the rule of law and proceedings are carried out by independent courts. Legal remedies are available within our system, including the right to individual application to the Constitutional Court.

- Further information relating to the newspaper content which glorified and praised terrorist acts of the PKK/KCK terrorist organization and its affiliated units (such as PYD, HPG, YPG/YPJ, YPS, YPS-Jin), within or outside Turkish territory against the security forces of the Republic of Turkey, which contained incitement to violence and therefore which has been subjected to investigation is summarized at Annex.
- As regards Article 7/2 of the Counter-Terror Law the Government would like to inform that:

Article 7/2 of the Counter-Terror Law has been amended on 11 April 2013. As stated in the reasons for its amendment, the European Court of Human Rights (ECtHR) has expressed that statements which do not promote violence should be protected under freedom of expression and has found the punishment of individuals under Article 7/2 of the Counter-Terror Law contrary to freedom of expression when such statements do not contain an encouragement of resorting to violence or an incitement to armed rebellion.

By the amendment, the elements of the offense contained in the second paragraph of the article have been redefined and brought in line with ECtHR standards by adding the phrase to the provision: "in a manner which justifies, praises or promotes the use of methods involving coercion, violence or threatening". As a result, whereas a total of 11,849 conviction decisions were taken during the period from 1 January 2011 to 11 April 2013, only 5,462 conviction decisions were taken from 11 April 2013, on which the amendment came into force, until 1 May 2016. In other words, the number of convictions has been dropped by more than 50 percent following the amendment.

Moreover, the allegation that terrorism charges are used against the exercise of the right to freedom of expression by journalists and academics in relation to the rights of citizens of Kurdish origin is unfounded. As stated above, the addition to Article 7 of the Counter-Terror Law has set certain conditions for the application of the article. Therefore, expressions which do not justify, praise or promote the use of methods involving coercion, violence or threatening are not penalized. Resorting to coercion, violence or threats by any sector of the population is unacceptable in any democratic society. This fact has been confirmed by the established case-law of the European Court of Human Rights.

The Government would like to underline that, expressions which justify, praise or promote the use of methods by terrorist organizations involving coercion, violence or threatening have been criminalized and punished in all countries.

In this case, the organization whose acts were justified by the said persons and whose violent acts were promoted by way of publication is the PKK, which is a terrorist organization, listed as such internationally by numerous countries, including the members of the European Union (EU) and others such as United States, Canada and Australia. The EU also designated PKK as a terrorist entity in 2004. North Atlantic Treaty Organization (NATO) also refers to PKK as a terrorist entity. Since its inception in 1984, more than 40 thousand people lost their lives because of PKK terrorism.

Moreover, as from July 2015, PKK has increased the number of terror attacks with an adventurous view to declaring so-called autonomous regions by force. Compiled with

various other terrorist attacks and threats, as of 26 July 2016, 257 civilians and 563 security officers (total: 820) have been murdered; 1.430 civilians and 3.519 security personnel (total: 4.949) have been injured; 198 civilians and 18 security personnel (total: 216) have been kidnapped by the PKK terrorist organization

Against such backdrop, the imminent nature of PKK terrorism for Turkey is beyond doubt.

ANNEX

Information relating to the news which glorified and praised armed rebellion, assault and similar acts by the terrorist organizations of PKK/KCK and their affiliated units within or outside Turkish territory against the security forces of the Republic of Turkey, and which contained incitement to violence is hereby summarized:

A. The expressions which have been the subject of an investigation, published under the responsibility of Rasime Şebnem KORUR, the editor in chief:

- The content "... *Sozdar Avesta, member of the KCK Presidential Council on the continuing bombardment despite the withdrawal of YPS from Nisebin and the portrayal of the civilian population as terrorists: 'The State has lost in Nusaybin. Nusaybin has torn down the enemy by its stance'*" was published on page eight of the newspaper *Özgür Gündem* on 30 May 2016, under the heading "Nisebin Has Torn Down the Enemy". The news continued with statements by a high-ranking PKK/KCK member which glorified/praised acts by the organization. An image of persons armed with long-range weapons who took positions behind a barricade/wall was visible below the heading of the story which occupied half of the page.

- On page nine of the paper, a statement by the "HPG Press Liaison Center" was published under the heading "HPG: 40 Soldiers Killed", which contained the following: "*HPG warns: 'the village guards in the Çaldıran district of Van are cooperating with the Turkish army, trying to spot the positions of our guerilla force. The guards in this region should immediately give up such attempts.'*". Next to the story was an image of apparent members armed with long-range weapons, taking up positions.

- On page three of the supplement named *Binevs* of the newspaper, the following passage was published under the heading "Let's Exchange Our Smiles": "*There are women who leave their mark in history. YPS-Jin fighter Altun YARAY (Baran ASMİN) who was immortalized in Gever, which is synonymous with resistance against surrender, left the strongest mark of the revolutionary action, her smile to the autonomy regions...*". The person, who took part in the armed women's wing (YPS-Jin) of the armed terrorist organization PKK/KCK and her actions were praised and even sanctified.

- On pages eight and nine of *Binevs*, actions by groups and persons who carry out armed activity for PYD, the PKK/KCK affiliate in Syria, were introduced and praised under the heading "HSD Commander Rojda FELAT: We will end bondage".

B. The expressions which have been the subject of an investigation, published under the responsibility of Ahmet Aziz NESİN, editor in chief:

- On page one of the newspaper *Özgür Gündem*, dated 7 June 2016, the following passage was published under the heading "We are Proud of You": "*Ebu Leyla, great commander of the Syrian Revolution, who had been killed in the Minbiç campaign, was laid to rest in Kobane. Just like Mehmet Tunç, the unyielding martyr of Cizir, has been a source of pride for the oppressed peoples...*" By this way, Mehmet Tunç, who was captured dead in a security operation while he was carrying out activities in Cizre, in the subordinate units of the PKK/KCK, was praised in the passage.

- On page eight of the paper, a full-page story titled "Ebu Leyla, Syria's Sun", covers a top-ranking member of YPG/YPJ, the armed wing of the PYD, an extension of PKK/KCK in Syria, who had been killed in an armed clash, and his actions were praised.

- On page ten of the paper, under the heading "The Fight Will Result in Victory", the following passage was published: "... Stating that the YPS has displayed a historical resistance in Kurdistan against attacks by the State, Delal AHMED, the Central Headquarter Commander of YJA Star said: 'Resistance for autonomy against the attacks in Kurdistan will bring the fight to a victory'". Acts by members of the organization, who entered into armed clashes with the security forces were explicitly praised and violence was promoted in the passage which occupied half of the page. Moreover, the image posted on the page showed photographs of members armed with long-range weapons, apparently in a training camp.

- On page eleven of the paper, in a story titled "HPG: Two Soldiers Dead in Dersim and Şirnex", an act by HPG, the armed wing of the PKK was blessed. Directly below the heading was an image of a member in position, armed with a long-range weapon.

C. The elements contained in the issue which has been the subject of an investigation, published under the responsibility of Erol ÖNDEROĞLU, editor in chief:

- The following passages were published on page one of the newspaper *Özgür Gündem* dated 18 May 2016 under the headings "War is Devastating" and "Akar Slammed over JÖH": "... As the shock created by the helicopter crash carried out by HPG continues, heavy losses resulted again in Nisebin, Şirnex and many other locations. Heavy clashes happened again yesterday in Nisebin, where the PÖH and JÖH forces were traumatized..."; "... Chief of Staff Hulusi Akar faces a storm of criticism over PÖH and JÖH forces. The trauma caused by heavy losses in Nisebin...". The passages praised acts by the armed wing of the terrorist organization and aimed to boost the morale of militants.

- On page nine of the paper, the following excerpts were published under the heading "JÖH-PÖH crack is growing in Nisebin": "In Şirnex and Nisebin, resistance for autonomy and attacks by State forces are continuing at full force...

Resistance by YPS and YPS-Jin members continue on the 66th day against the attacks by the State forces in Mardin's Nisebin (Nusaybin) district. As the State forces are unable to proceed since the first day of the resistance, the disputes and disagreements erupting between the Gendarmerie Special Operations and Police Special Operations are deepening..." Armed uprisings/attacks against the security forces by groups subordinate to the PKK/KCK organization were justified, praised and even encouraged.

- On the same page, a passage titled "Tanks, Artillery and Howitzers Cannot Pass Through Şirnex" containing sentences such as "Resistance by YPS and YPS-Jin members continues against attacks launched in Şirnex on 14 March by the State under the disguise of curfews..." was published, where acts by members of the terrorist organization were shown to be reasonable or acceptable. Armed attacks and uprisings were glorified and shown as if carried out against an enemy force.