



PERMANENT MISSION OF THE REPUBLIC OF TURKEY
TO THE UNITED NATIONS OFFICE IN GENEVA

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-URGENT-

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 letter by Ms. Elina Steinerte, Chair of the Working Group on Arbitrary Detention, Ms. Annalisa Ciampi, Special Rapporteur of freedom of peaceful assembly and association and Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders dated 12 July 2017 (Ref: UA TUR 9/2017) and to its Verbal Note dated 21 August 2017 (Reference no: 12757911), has the honour to enclose herewith an information note and its attachments, comprising the response of the Government of the Republic of Turkey.

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, 26 September 2017

Encl: As stated



Office of the High Commissioner for Human Rights
Special Procedures Branch
Geneva

Observations Regarding the Joint Urgent Appeal of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

(REFERENCE: UA TUR 9/2017)

The Government would like to present its observations herein below in respect of the Joint Urgent Appeal of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders dated 12 July 2017.

The Government also considers that the allegations raised in the Joint Urgent Appeal should be better assessed by giving due consideration to the scope and the necessity of measures taken in Turkey with respect to severe and multiple terrorist threats that Turkey continues to face pursuant to terrorist coup attempt of 15 July 2016. Therefore, the Government would like to briefly point out the general context under which the investigations conducted against the persons in question take place prior to submitting the information on the points raised in the Communication.

A. GENERAL CONTEXT

The Republic of Turkey, a member of the United Nations and a founding member of the Council of Europe, as a democratic State, having adopted the principles of human rights, rule of law and democracy, maintains its fight against terrorist organizations within the bounds of the Constitution and laws, in line with the basic principles of a democratic state and universal law. Utmost care is displayed on this matter.

The Government wishes to highlight that the claims regarding State of Emergency measures in Turkey cannot be properly assessed without giving due consideration to the terrorism threat faced by Turkey in recent years emanating from terrorist organizations such as FETÖ/PDY (Fetullahist Terrorist Organization/Parallel State Structure), PKK, DAESH and DHKP-C. With a view to giving an insight into the grave threats posed to Turkey during the 15th July 2016 terrorist coup attempt, as well as elaborating on the nature of terrorist organization FETÖ/PDY, who was behind the attempt, an Information Note is enclosed herewith (Annex-I).

It is unequivocal that ensuring terrorist coup plotters are brought to justice, holding them accountable and eliminating the existing threat of a coup is among the positive obligations of any state. To this end, taking the necessary steps to prevent future terrorist attacks is also a responsibility of the state.

i) State of Emergency

In Turkey, two types of emergency rule procedures have been defined in the Constitution, characterized by the reason of their declaration. The emergency rule defined in Article 119 of the Constitution is based on a “natural disaster, dangerous epidemic diseases or a serious economic crisis”, whereas the emergency rule defined in Article 120 shall be declared “in the event of serious indications of widespread acts of violence aimed at the

destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence”. Moreover, how these powers shall be used are laid down in detail in the State of Emergency Law (no. 2935), adopted based on the powers conferred by the Constitution.

Also, in a number of international human rights instruments, states are allowed in time of war or other public emergency threatening the life of the nation, to take measures derogating from their obligations relating to fundamental rights and freedoms, consistent with international law. This circumstance has been laid down in Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and Article 15 of the European Convention on Human Rights (ECHR).

In this context, taking into account the extent of the threat posed to democratic constitutional order by the terrorist coup attempt of 15th July 2016, the restrictions imposed on fundamental rights and freedoms are in line with the Constitution and international obligations.

Indeed, the Constitutional Court has ruled in the individual application *Aydın Yavuz and Others* (no. 2016/22169, 20 June 2017) and in another application for the annulment of State of Emergency decree laws on unconstitutionality (2016/177 E, 2016/160 K) that State of Emergency was constitutional and legal, that actions were taken in conformity with the powers conferred in the Constitution and dismissed allegations of unconstitutionality. The said judgments have been published in the Official Gazette of Turkey and are also available at the website of the Court.

ii) Notices of derogation under Article 4 of the ICCPR and Article 15 of the ECHR

Within the context of the State of Emergency, declared in conformity with the Constitution and international law, Turkey has made notices of derogation under Article 4 of the ICCPR and Article 15 of the ECHR regarding obligations of protecting rights and freedoms emanating from these conventions.

The notice of derogation based on Article 4 of the ICCPR was submitted to the Secretariat-General of the United Nations on 2 August 2016 and renewed upon extension of the state of emergency. The articles that would be subject to derogation were specified clearly in the notification. Therefore, there exists a notice of derogation duly put into effect, which is applicable in the present case.

To shed light on the issue and provide a comparative view, the case law of the European Court of Human Rights (ECtHR) and practices should be noted as regards the implementation of Article 15 of the ECHR. For example, according to ECtHR, in an emergency, an extended interference with freedom of expression as compared to normal periods for the protection of public order might be “necessary in a democratic society” (*Brind v. United Kingdom*, no. 18714/91). A similar conclusion can be made when a need arises to secretly monitor terror suspects, certain restrictions may be brought on the right to private life (*Klass and others v. Germany*, Series A, no. 28). More importantly, the Court acknowledged that following a notice of derogation by the UK Government with respect to IRA activities in Northern Ireland, normal legislation offered insufficient resources for the campaign against the massive wave of violence and intimidation by the IRA and that recourse to measures outside the scope of the ordinary law proved necessary. In this context, the European Court

did *not* find it established that derogations from paragraphs 1 to 4 of Article 5 (extrajudicial deprivation of liberty in breach of Art. 5 § 1 and deprivation of liberty in breach of Art. 5 § 4) exceeded the extent strictly required by the exigencies of the situation, for coping with the public emergency (*Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978). How the administration shall act in such circumstances are laid down clearly in Article 15 of the Constitution, similar to Article 4 of the ICCPR and Article 15 of the ECHR. In accordance with these provisions, the principles of “absolute necessity” and “proportionality” are diligently followed in the measures taken during the post-coup State of Emergency.

iii) Steps taken on aligning State of Emergency measures with Turkey’s international human rights obligations and on freedom from arbitrary detentions, fair trial, freedom of expression, freedom of assembly and association and the protection of persons from the impact of State of Emergency

In Turkey, the measures taken during the State of Emergency have not caused any major changes in daily life. No restrictions are imposed on fundamental rights and freedoms which would affect the daily lives of people. The measures taken have remained limited to the issues required by the State of Emergency. State of Emergency was not declared to restrict the rights and freedoms of individuals but to ensure a prompt response by the State in the fight against terrorist organizations whose acts threaten the exercise of fundamental rights of the citizens. It is a natural right by the State to use its legal powers to protect democracy and to take necessary measures to maintain the safe environment for the exercise of fundamental rights and the freedoms.

Following the attempted coup, Decree-Laws were issued to start necessary proceedings for the persons in state institutions who were deemed to have a membership, affiliation or connection to terrorist organizations. During this process, legal principles are followed and each case is assessed with utmost care.

There are mechanisms in place to review the measures for those who claim violations of their rights. Through the administrative boards of review, more than 35 thousand public employees have been reinstated to date. Nearly 350 institutions have also been reopened. Moreover, an Inquiry Commission on the State of Emergency Measures has been established as an effective domestic legal remedy. This Commission is entitled to take binding decisions with due process. Its decisions are also open to judicial control.

State of Emergency measures are regularly reviewed to meet changing circumstances. Issues raised within the context of the experts dialogue established between Turkey and the Council of Europe (CoE) and recommendations by other CoE organs and UN mechanisms are taken into consideration. In that regard, a number of improvements have been made in terms of State of Emergency measures.

Accordingly, the upper limit of 30 days for police custody in terror and collective crimes, which had not been actually implemented, was limited to 7 days in conformity with the case-law of the ECtHR, ensuring compliance with the judgments of *Aksoy v. Turkey*, *Lawless v. the United Kingdom* and *Demirel* group of cases by the Court. Custody period may be prolonged only once for utmost 7 days. It is worth noting that, for the remaining types of offenses and for the said offenses after the end of the State of Emergency, the maximum

period of detention in police custody shall be one day under general provisions, which can be extended to four days in compelling cases.

In addition, the provision which enabled the public prosecutor to restrict the suspect's right to meet a defense lawyer for five days during a State of Emergency, is now repealed. On this matter, the general investigation provisions laid down in Article 154 § 2 of the Code of Criminal Procedure (CCP) apply. Accordingly, a suspect's right to meet a defense lawyer may be restricted for 24 hours at the request of the public prosecutor, during which period no statement shall be taken. It should be underlined that, the mentioned provision has been brought in line with the judgments of *Ibrahim v. the UK*, *Simeonovi v. Bulgaria* and *Salduz v. Turkey* group of cases by the ECtHR.

B. Proceedings against Nalan Erkem, Şeyhmuz Özbekli, Özlem Dalkıran, İdil Eser, Veli Acu, Günel Kurşun, İlknur Üstün, Nejat Taştan, Ali Gharavi and Peter Steudtner:

It should be underlined from the outset that proceedings in Turkey concerning people who may also be members of certain human rights organizations are not related with their activities within these organizations and are conducted in connection with the individual criminal charges.

The Government would like to underline that right of peaceful assembly, freedom of association, right to hold opinions without interference, the right to freedom of expression, equality before the courts and tribunals as highlighted in the Urgent Appeal with respect to present case are safeguarded by the Turkish Constitution and the relevant national legislation.

Moreover, within the framework of the comprehensive judicial reforms that have been undertaken over the fifteen years, upholding the international standards and principles for the protection and promotion of freedoms of expression, assembly and association, as well as the rule of law and impartiality of the judiciary have also been addressed. Accordingly, the national legislation is developed fully in line with the conventions to which Turkey is a party, in particular, the ICCPR and the ECHR.

Taking this opportunity, the Government further stresses that utmost importance is attached to the maintenance of vibrant and pluralistic nature of Turkish civil society, as well as to the work of human rights defenders. Whereas, the abovementioned reform process has greatly contributed to the enabling environment for the civil society, the work of civil society is always acknowledged as valuable contribution to Government's further efforts in this respect.

Against this backdrop, the Government regrets and strongly rejects unsubstantiated claims that the present case is highlighted as "a pattern of targeting human rights defenders."

Those who are strongly suspected to have links with terrorist organizations on evidentiary basis face judicial proceedings brought by the independent judiciary.

In the present case, the participants of Büyükada workshop were taken into custody on 5 July 2017 as a result of a search conducted by Turkish Police.

i) Custody period

The suspects' statements were taken on different occasions by the police and the prosecuting authority. During statement-taking, interpreters were made present for those suspects and defense lawyers unable to speak Turkish.

The public prosecutor's office requested on 5 July 2017 that the parties be restricted from examining the case file, and that suspects be restricted from contacting their defense lawyers for 24 hours from the time of arrest, on the condition that no statements shall be taken during this period, based on Article 153 of the Code of Criminal Procedure (CCP).

Adalar Criminal Magistrate's Office granted the public prosecutor's request on the date of request and added in its decision that an objection may be filed against this decision with the İstanbul Anadolu Criminal Magistrate's Office on duty.

On 10 July 2017, the defense lawyer of İlknur Üstün as well as the defense lawyer of Nejat Taştan, Nalan Erkem, İlknur Üstün, İdil Eser, Veli Acu, Günel Kurşun, Özlem Dalkıran, M.Şeyhmus Özbekli, Ali Gharavi and Peter Steudtner submitted separate petitions, asking release from police custody and the annulment of the restriction order. The İstanbul 13th Criminal Magistrate's Office dismissed the requests on the same date, on grounds that the decisions were in line with the law and procedure, the reasons given were adequate, and that there was no concrete evidence which would require a departure from the decisions.

On 10 July 2017, the Public Prosecutor's Office addressed a letter to the İstanbul Security Directorate, informing that the defense lawyer of Nejat Taştan, Nalan Erkem, İlknur Üstün, İdil Eser, Veli Acu, Günel Kurşun, Özlem Dalkıran, M.Şeyhmus Özbekli, Ali Gharavi and Peter Steudtner submitted a petition to the prosecutor's office and asked for information regarding his clients. The public prosecutor requested that the relevant information be drafted and submitted to the defense attorney, on the condition that the restriction order be respected.

On 10 July 2017, the public prosecutor extended the period of custody of the suspects for seven days under Article 91 of the CCP and Article 6/1-a of the Decree-Law no. 667 dated 23 July 2016, on grounds of the evidence and indications against the suspects, the nature of the charge, risk of fleeing and destroying evidence, and the time required for the completion of the investigation.

On 17 July 2017, the public prosecutor referred the suspects to the court, asking for their detention on remand with the charge of aiding an armed terrorist organization. On 18 July 2017, the İstanbul 10th Criminal Magistrate's Office ordered the detention of the suspects İdil Eser, Günel Kurşun, Özlem Dalkıran, Veli Acu, Ali Gharavi and Peter Frank Steudtner under Article 100 of the CCP. In its decision, the Criminal Magistrate's Office referred to a strong suspicion that the suspects had committed the offenses in question, having regard the submissions of an undisclosed witness, the contents of correspondence, HTS (Historical Traffic Search) logs and identification records. In addition, it was stated that, taking into account the state and nature of the charges and the lower and upper limits of the penalty laid down in the law, the risk of fleeing or hiding by the suspects was likely and judicial control measures would prove insufficient for that reason. Accordingly, it was ruled that the detention

of the suspects was a proportionate measure. The Criminal Magistrate's Office rejected the request for detention in respect of Muhammed Şeyhmus Özbekli, Nalan Erkem, Nejat Taştan and İlknur Üstün, and ordered that the suspects be taken into judicial control.

Custody process related with Peter Frank Steudtner

When Peter Frank Steudtner was taken into custody, the relevant police authorities informed him of the reasons for the custody and the suspected offences related to this proceeding as well as his rights. Medical examinations were conducted and forensic reports were drawn up for Peter Frank Steudtner on 5th July 2017 as well as on 8, 9, 10, 11, 13, 14, and 16 July 2017. He was also examined at the end of custody on 17 July 2017. Per request of Peter Frank Steudtner he was allowed to meet with German Consular Officers on 6th July 2017. During custody period, Peter Frank Steudtner was allowed to meet with his lawyer multiple times on 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16th July 2017. On 12th July 2017, the relevant police authorities informed Steudtner's lawyer that his custody period was extended.

Custody process related with Ali Gharavi

Ali Gharavi was informed on the reasons for custody decision taken against him, suspected offences as well as his rights. Ali Gharavi was medically examined on 5th July 2017 when he was taken into custody, later on 7, 9, 10, 11, 12, 14, 16 July 2017 as well as at the end of custody on 17th July 2017. Forensic medicine reports were drawn up. Upon his request, he was allowed to talk to Consulate General of Sweden over the phone on 6th July 2017. He was able to meet his lawyers multiple times, namely on 6, 7, 8, 9, 11, 12, 13, 14, 15, 16th July 2017. Ali Gharavi's lawyer was informed on 12th July 2017 on the fact that his custody period was extended.

Custody process related with İdil Eser

İdil Eser was informed on the reasons for custody decision taken against her, suspected offences as well as her rights. İdil Eser underwent forensic medical examinations on 5th July 2017 when she was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14, and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. She was able to meet her lawyers multiple times, namely on 8, 9, 11, 12, 13, 14, 15, and 16th July 2017. A close friend of her was informed on 12th July 2017 on the fact that Eser's custody period was extended.

Custody process related with İlknur Üstün

İlknur Üstün was informed on the reasons for custody decision taken against her, suspected offences as well as her rights. Üstün was medically examined on 5th July 2017 when she was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14, and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. She was able to meet her lawyers multiple times, namely on 8, 9, 11, 12, 13, 14, 15, and 16th July 2017. Her spouse was informed on 12th July 2017 on the fact that Üstün's custody period was extended.

Custody process related with Günel Kurşun

Günel Kurşun was informed on the reasons for custody decision taken against him, suspected offences as well as his rights. He was medically examined on 5th July 2017 when he was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14, and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. He was able to meet his lawyers multiple times, namely on 6, 7, 8, 9, 11, 12, 14, 15, and 16th July 2017.

Custody process related with Muhammed Şeyhmus Özbekli

Muhammed Şeyhmus Özbekli was informed on the reasons for custody decision taken against him, suspected offences as well as his rights. He was medically examined on 5th July 2017 when he was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14, and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. He was able to meet her lawyers multiple times, namely on 6, 7, 8, 9, 11, 12, 14, 15, and 16th July 2017. His father was informed on 12th July 2017 on the fact that Özbekli's custody period was extended.

Custody process related with Nalan Erkem

Nalan Erkem was informed on the reasons for custody decision taken against her, suspected offences as well as her rights. She was examined on 5th July 2017 when she was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14, and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. She was able to meet her lawyers multiple times, namely on 6, 7, 8, 9, 11, 12, 13, 14, 15, and 16th July 2017. Her spouse was informed on 12th July 2017 on the fact that Üstün's custody period was extended.

Custody process related with Nejat Taştan

Nejat Taştan was informed on the reasons for custody decision taken against him, suspected offences as well as his rights. He was medically examined on 5th July 2017 when he was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14, and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. He was able to meet her lawyers multiple times, namely on 6, 7, 8, 9, 11, 12, 13, and 16th July 2017. His lawyer was informed on 12th July 2017 on the fact that Taştan's custody period was extended.

Custody process related with Özlem Dalkıran

Özlem Dalkıran was informed on the reasons for custody decision taken against her, suspected offences as well as her rights. She was examined on 5th July 2017 when she was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14 and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. She was able to meet her lawyers multiple times, namely on 6, 7, 8, 9, 11, 12, 13, 15, and 16th July 2017. Her brother was informed on 12th July 2017 on the fact that her custody period was extended.

Custody process related with Veli Acu

Veli Acu was informed on the reasons for custody decision taken against him, suspected offences as well as his rights. He was medically examined on 5th July 2017 when he was taken into custody, later on 7, 8, 9, 10, 11, 12, 13, 14, and 16th July 2017 as well as at the end of custody on 17th July 2017. Forensic reports were drawn up. He was able to meet

her lawyers multiple times, namely on 6, 7, 8, 9, 12, 13, 14, 15, and 16th July 2017. His wife was informed on 12th July 2017 on the fact that Acu's custody period was extended.

In light of the foregoing, the individuals mentioned in the present case remained in police custody for 12 days from 5 to 17 July 2017. Having regard to the large number of persons taken into custody, the scope of the investigation, the severity of the charges and the complexity of the case, it has been considered that the length of police custody is necessary, proportionate and in line with international conventions.

The suspects were notified of the charges against them upon arrest. While in custody, the suspects were able to meet their lawyers multiple times. They gave statements in the presence of lawyers, thus the right to defense and the right of access to a lawyer while under custody were respected.

ii) Judicial proceedings

During the search, police officers found many documents and digital materials, strongly suspected to be related to the offences of "assistance/ being member to armed terrorist organization" at the venue of the workshop and at the hotel rooms of the participants.

10th Criminal Magistrate's Office in Istanbul examined the request of Public Prosecutor for the detention of all suspects and after due consideration, on 18 July 2017, decided for the detention on remand of six of them (İdil Eser, Özlem Dalkıran, Veli Acu, Günel Kurşun, Ali Gharavi, Peter Frank Steudtner) on the charges of aiding an armed terrorist organization. The remaining four suspects (Muhammed Şeyhmus Özbekli, Nalan Erkem, Nejat Taştan and İlknur Üstün) were released pending trial with judicial control measures which includes a ban on leaving the country.

Upon the objection lodged by the prosecutor, two of them (İlknur Üstün and Nalan Erkem) have later been detained on remand by the decision of 9th Criminal Magistrate's Office in Istanbul on the same grounds (aiding an armed terrorist organization) on 23 July 2017.

Whereas arrest warrants were issued for the remaining two (Muhammed Şeyhmus Özbekli and Nejat Taştan), 9th Criminal Magistrate's Office in Istanbul decided that Muhammed Şeyhmus Özbekli and Nejat Taştan be released pending trial with judicial control measures on 25 July 2017.

C. OBSERVATIONS ON THE QUESTIONS AND ALLEGATIONS RAISED IN THE JOINT URGENT APPEAL

- Legal grounds for the arrest, detention and ongoing judicial proceedings, as well as the claims of "infringement of Turkey's international obligations"

To begin with, it was laid down in Article 15 of Turkish Constitution that in a state of emergency, save for certain exceptions, measures derogating the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation. According

to said Article, in decree laws to be enacted during a state of emergency, no provisions shall be formed contrary to the right to life, prohibition of torture and ill-treatment, prohibition on being compelled to reveal one's religion, conscience, thought or opinion, nor being accused on account of them; the principle of no punishment without law, prohibition of slavery and presumption of innocence. The remaining rights and freedoms may be restricted by decree-laws enacted during a state of emergency. In any case, it is ensured that such restrictions are compatible with the principles of legality, necessity and proportionality.

As mentioned above, article 4 of the ICCPR regulates the procedure by which notices of derogation can be made under the Covenant by states in emergency situations. It is observed that the allegations raised in the Urgent Appeal are related to the rights and freedoms which fall within the notice of derogation of Turkey in respect of the ICCPR. Therefore, the purpose of the notice of derogation, its legal value and its impact on the present case should be taken into account.

- **With respect to claims of "arbitrary detention"**

The right to liberty and security, the rights of detainees and the right to a fair trial were secured and circumscribed in Articles 9, 10 and 14 of the ICCPR. Having said that, Turkish judicial authorities are also bound by relevant articles of the ECHR as well as the ECtHR case law, in accordance with the article 90 of the Turkish Constitution, which denotes that international conventions to which Turkey is a party bear the force of law.

In this respect, according to judgments by the ECtHR, the existence of reasonable suspicion or plausible reasons that the person(s) concerned committed the offense in question is a necessary condition for deprivation of liberty. This is a *sine qua non* requirement in terms of pre-trial detention. This condition must be present at every stage of detention and the suspect must be released upon the dissipation of the reasonable suspicion. The existence of reasonable suspicion, along with the evidence obtained and the particular circumstances of the case, should be sufficient to convince an objective observer with a detached view. If the evidence obtained, when presented to an objective observer, is sufficient to form an opinion in the observer that the suspect or defendant might have committed the offense, then it can be concluded that reasonable suspicion exists in a given case.

In other words, "*having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.*" (see. *Fox, Campbell and Hartley v. the United Kingdom*, no. 12244/86, 12245/86, 12383/86, 30 August 1990, par. 32; *O'Hara v. the United Kingdom*, no. 37555/97, par. 34.)

Moreover, according to Article 5 § 1 (c) of the ECtHR, the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether a genuine public interest continues to justify the deprivation of liberty.

In the present case, Istanbul 10th Criminal Magistrate's Office detained İdil Eser, Günel Kurşun, Özlem Dalkıran, Veli Acı, Ali Gharavi and Peter Frank Steudtner on remand, ruling that there was a strong suspicion that the suspects had committed the offenses in question. The Criminal Magistrate's Office took into account the submissions of an undisclosed witness, the contents of correspondence, HTS logs and identification records.

Similarly, the Istanbul 9th Criminal Magistrate's Office, which ordered the detention of İlknur Üstün and Nalan Erkem, indicated in its decision that concrete evidence such as submissions of an undisclosed witness, the contents of correspondence, HTS logs and all records, documents and reports contained in the case file showed that there was a strong suspicion that the suspects had committed the offense of aiding an armed terrorist organization.

9th Criminal Magistrate's Office in Istanbul decided that Özbekli and Taştan be released pending trial with judicial control measures on 25 July 2017, by taking into account the limited availability of evidence in their files and on the premise that detention would be contrary to the principles of proportionality and fairness.

In view of the foregoing, all arrest, custody and detention orders in respect of them were taken by independent judges, based on reasoned decisions. The allegations and evidence concerning the suspects were assessed by impartial judicial authorities and a number of suspects were detained and the remaining were released on judicial control as a result.

Taking into consideration the magnitude of the threat and the legal safeguards available, it can be observed that the preventive measures taken were in line with international obligations and not contrary to the principles of legality, necessity and proportionality. Accordingly, the Government believes that custody and detention proceedings against the suspects do not violate its ICCPR Article 9 obligations. Thus, the proceedings are entirely in line with international human rights obligations and the ICCPR.

- **With respect to claims that “the suspects referred to in the communication are kept *incommunicado*” during 24 hours;**

As per Article 154 § 2 of the CCP, in terror offenses, the detained suspect's access to a lawyer may be restricted for 24 hours, during which time no statement shall be taken. With reference to Article 7 of the Anti-Terror Law, since a charge of being a member of an armed terrorist organization, defined under Article 314 of the Turkish Penal Code (TPC) was also contained in the file, the public prosecutor's office requested on 5 July 2017 that communication between the suspects and their defense lawyers be restricted for 24 hours beginning from the time of arrest and that no statement shall be taken during this period. The Adalar Criminal Magistrate's Office granted the public prosecutor's request on the same date.

In view of the legal provision cited above, the decision by the Magistrate's Office, restricting access to a lawyer for 24 hours, is prescribed by law. In fact, the ECtHR ruled in the case of *Simeonovi v. Bulgaria* ([GC], no. 21980/04) that holding the applicant in police custody for three days without access to a lawyer was not in breach of the right to a lawyer.

- **Regarding allegations of ill-treatment**

The health state of persons taken in police custody is determined by medical checks upon arrest and while in custody. In fact, suspects shall undergo medical checks upon their arrest and taking into custody pursuant to Article 9 of the Regulation on Arrest, Custody and Statement-Taking, which reads *"In cases where the person arrested is to be taken into custody or has been arrested by use of force, his state of health at the time of arrest shall be determined by means of a medical examination by a doctor. Upon transfer to another institution, on extension of police custody, release or referral to judicial authorities for any reason, the state of health shall also be established by a medical report prior to these actions."*

In cases where it is found in the course of a forensic examination that the offences of torture, aggravated torture on account of its consequences and torment, which are respectively set out in Articles 94, 95 and 96 of the TPC, have been committed, it is obligatory for the doctor to immediately inform the public prosecutor of this situation. Where there is any finding of torture and ill-treatment, the public prosecutors directly initiate an investigation against the relevant law-enforcement officers.

Moreover, detention centers are continuously inspected by the public prosecutors. All places where persons are deprived of their liberty, including detention centers, can always be visited by both national institutions and organizations and by international institutions, notably the European Committee for the Prevention of Torture, and independent observers in line with the conventions to which Turkey is a party.

In the present case, medical reports were obtained for each suspect upon their taking into and release from police custody. Medical reports were also obtained on many occasions while they were in custody. No information has been found in the reports obtained to verify allegations of ill-treatment.

Therefore, allegations that the suspects were subjected to ill-treatment while in custody are entirely false, unsubstantiated and unfounded. It is considered that the ICCPR has neither been violated regarding the merits of the application.

The Government wishes to inform that regarding the claims of "holding the suspects referred to in the communication incommunicado", as well as on the allegations of "ill-treatment during their medical examination", the relevant Turkish authorities indicated that proper records have been drawn up to ensure that the suspects were treated in line with the domestic law and international standards protecting their human rights. Summary list of all these reports (originals of which are in Turkish) are enclosed herewith (Annex-II). All Turkish police lockups and detention centres are regularly inspected by Public Prosecutors and they are also open to the visits of international human rights mechanisms.

- Details on the decision of the Prosecutor to keep the investigations confidential, and the compatibility of these measures with article 14 of the ICCPR

It was alleged that the investigation was carried out in confidentiality and that this jeopardized rights of the detainees' right to adequate defense in trial.

As mentioned above, the public prosecutor's office requested on 5 July 2017 that, under Article 153 of the CCP, the examination of the contents of the case file be restricted. The Adalar Criminal Magistrate's Office granted the prosecutor's request on the same date.

In the present case, an investigation was conducted regarding the suspects, on the offense of aiding an armed terrorist organization, an offense defined under the section "Offenses Against Constitutional Order" in the Constitution. For that reason, the decision by the Adalar Criminal Magistrate's Office is permissible under the legislation.

In accordance with article 153 of the CCP, a number of documents were left out of the scope of this restriction, among which is the record of statements given by the suspects themselves.

In this context, the suspects were also informed of the charges during the interrogations upon arrest, by the police, the public prosecutor and the court.

Moreover, as the defense lawyer of the suspects asked in a petition addressed to the public prosecutor's office about information on their client, the Public Prosecutor's Office sent a letter to the security directorate on 10 July 2017, requesting that the relevant information be drafted and handed to the defense attorney, on the condition that the restriction order be respected.

Therefore, the suspects had the right to adequate challenge against their detention as they had been aware of the charges during statement-taking and since their defense lawyer was given documents excluding those within the scope of the restriction order. Thus, this circumstance was not in contravention of Article 14 of the ICCPR.

In fact, under Article 153 § 4 of the CCP, the restriction shall be lifted upon the approval of the indictment by the local court.

- Measures taken to avoid the leaking to media organizations of sensitive information regarding the investigation, misuse for defamation of persons and making a target of the persons concerned

In Turkey, as per Article 157 of the CCP, governing the confidentiality of investigations, unless where other law provisions exist and provided that the rights of defense are not harmed, the procedural steps during the investigation stage shall remain confidential.

The Turkish Penal Code (TPC) provides in Article 285 § 1 that any person who publicly breaches the confidentiality of an investigation shall be sentenced to a penalty of imprisonment for a term of one to three years and a judicial fine.

In conjunction with the principle of confidentiality of investigations laid down in Article 157 of the CCP, Article 285 of the TPC is aimed at the proper conduct of the investigation proceedings and thus establishing justice; and protecting the accused from being infringed by respecting presumption of innocence.

When Article 285 § 1 of the TPC is considered along with Article 157 of the CCP, it is clear that the disclosure of all steps relevant to the investigation and their contents shall be

considered a violation of the confidentiality of the investigation and constitute the offense defined under Article 285 § 1 of the TPC. In this context, it can be observed that there is sufficient legal framework in Turkey to protect presumption of innocence by ensuring the confidentiality of investigations.

Moreover, it should be recalled that freedom of the press and media and the right to cast news and comments have their own grounds of legality. The ban brought about by Article 285 of the TPC does not include a prevention of informing the public on a crime or trial. The ban provided for in the article concerns the aspects of the investigation or prosecution which are supposed to remain confidential. Press freedom is governed by Articles 28 to 32 of the Constitution; Articles 1 and 3 of the Press Law. An integral part of freedom of expression, press freedom enshrines not only the right of the press to impart ideas, comments and news, but also the rights of individuals to use these resources.

In this context, publishing news stories about judicial investigations and prosecutions should be regarded within the scope of press freedom.

As it is the case with all countries which are governed by rule of law, if there is adequate suspicion or evidence that an offense has been committed, it is the prosecutor's responsibility to launch legal proceedings. Human Rights Defenders cannot be expected to use their status as a shield against criminal investigations.

Legal rights of the above-mentioned suspects are under protection. They can continue to benefit from legal assistance and other related defense rights. The process continues in accordance with Turkey's national legislation, in line with the principles of the rule of law and in observance of Turkey's international obligations. Legal remedies are available including application to the Constitutional Court and the European Court of Human Rights.

Turkey is resolved to protecting its democracy by remaining within democratic rules and solving its problems within rule-of-law principles. It is a country where everyone has the freedom to vindicate their rights and apply to administrative and judicial review mechanisms as individuals or organizations against all acts and measures which bear consequences affecting them. In fact, the measures taken within the State of Emergency against the threat of coups and terrorism have been taken to ensure that Turkey remains such a democratic country.

As a result, the measures introduced are proportionate to the aims pursued and there are mechanisms to review applications by those who claim violation of rights.

Enc.2