



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

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The Permanent Mission of the Republic of Turkey to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference the Joint Communication from Special Procedures dated 22 December 2020 (AL TUR 23/2020), has the honour to enclose herewith the observations provided by 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, 19 February 2021

Encl: As stated.

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



**INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM THE
SPECIAL PROCEDURES**

(Reference: AL TUR 23/2020)

1. With reference to the letter of the Special Rapporteur on the situation of human rights defenders, the Working Group on Arbitrary Detention and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health dated 22 December 2020 regarding Şeyhmus Gökalg, the Government would like to submit its observations herein below.

2. The Government would firstly like to point out that, regarding annexes sent along with this document, some parts (names of the officials etc.) of the original documents in Turkish are concealed and relevant parts therein are being sent in English.

I. OVERVIEW

3. The Constitution of Turkey imposes a positive obligation upon the state to ensure the welfare, peace and happiness of the people and the society, to protect the Republic and democracy, to remove the obstacles that limit the fundamental rights and freedoms of the persons. As a requirement of its positive obligations, the State takes the necessary measures to protect its people from terrorism.

4. In this context, the national authorities are actively and resolutely combatting, in accordance with the rule of law and with due regard to the criteria of necessity and proportionality, the terrorist organizations that threaten the national security and the public order by targeting the security forces and the civilians.

5. The PKK terrorist organization that Turkey has been fighting for 40 years is a terrorist organization committing murder and injuries towards civilians, soldiers, police, women and children; robbery, extortion, latrocination, raiding villages, police stations and arson along with many illegal activities such as money laundering, arms, human and drug trafficking.

6. In many countries worldwide as well as the European Union since 2002, the PKK is listed as a terrorist organization.

7. KCK (Union of Communities in Kurdistan) terrorist organization was established with the aim of bringing together all the existing pro-PKK elements under an illegal formation.

8. **The organization of the Democratic Society Congress (DTK) is the organ of the PKK/KCK terrorist organization and has been designated as a terrorist organization by the Court of Cassation.** In its decision the Court ruled that the DTK was a structure that functions as the so-called constituent assembly of the PKK/KCK, and was established in line with the instructions of the PKK/KCK terrorist organization leader. In other words, DTK is not an “*umbrella organization bringing together groups working on Kurdish issues*” as claimed in the communication, but a terrorist organization as established by the decision of the Turkish high court.

II. FACTS

Regarding Şeyhmus Gökalg's detention and arrest

9. Upon notification from a convicted PKK/KCK member that Gökalg is a member of the PKK/KCK terrorist organization, an investigation was initiated on 24 May 2019.

10. The investigation revealed that there were many activities in which Gökalg participated under PKK/KCK's sub-organization and the decision-making authority DTK, and these activities were aimed at disrupting the unity and integrity of the state and causing social segregation. Gökalg, accordingly was taken into custody on 20 November 2020, with the charge of “*being a member of an armed terrorist organization*”.

11. Gökalg was informed of his rights and of the search/seizure and arrest warrant during his apprehension. He acknowledged that he understood his rights and the reasons for detention (See Annex 1). His closest relative was informed of Gökalg's detention on the same date. His statement was taken on 23 November 2020 in presence of his lawyers (See Annex 2).

12. Gökalg met his lawyers during his custody. **Between 20-22 November 2020 he met 11 of his lawyers 14 times.** One example of lawyer meeting record is presented in Annex-3, in original and in unofficial translation.

13. On 23 November 2020, Gökalg was arrested with the charge of “*being a member to an armed terrorist organization*” based on the following evidences:

- Attending the DTK gatherings as a delegate,
- The fact that his name is included in the delegate list of several DTK gatherings,

- Witness statement from a convicted PKK/KCK member identifying Gökalp as a member of the terrorist organization.

The Court accordingly decided on the arrest of Gökalp, considering the charge attributed to him being an offense listed under Article 100/3 of the Criminal Code of Procedure (CCP), the existence of reasonable suspicion, the fact that judicial control measures would be insufficient given the risk of absconding and that his arrest would be in line with the principle of proportionality in accordance with Article 5 of the European Convention on Human Rights (ECHR).

14. Gökalp's lawyers appealed the said decision. On 10 December 2020, the Court rejected the appeal, considering that the arrest decision is in line with the law and there were no inappropriacy in the reasons of the arrest. On 16 December 2020, a public action was brought against him. On 21 December 2020, first hearing was held. Gökalp's continued detention was last re-examined on 19 January 2021 and it was decided that his detention shall continue as the prosecution phase is underway.

Regarding COVID-19 measures

15. In line with the recommendations of the Scientific Advisory Board of the Ministry of Health, in order to minimize the impact of the COVID-19 epidemic process on penal institutions and to eliminate the spread of the epidemic;

- New detainees and convicts are admitted to penal institutions according to their Polymerase Chain Reaction (PCR) test results. Those who are found to have symptoms of COVID-19 are admitted to penal institution only after necessary treatments are completed in a hospital environment and upon doctor's recommendation.
- If a detainee/convict is found to be COVID-19 negative, he/she is isolated in a separate ward for 14 days and tested afterwards. Those who are COVID-19 positive are sent to the hospitals. Detainees/convicts who had other illnesses are treated the same way upon their return from the hospital.
- Every detainee/convict who are transferred to another penal institution for compulsory reasons are referred to a hospital for a medical report before the transfer. The transfer is carried out depending on the result of the PCR test.

- Convicts are not allowed to carry out activities that would increase the risk of infection such as working in restaurants, social facilities, external canteens or any other outside activity that requires direct contact with the outside. Ward changes are avoided if possible.
- Convicts and detainees conduct their meetings with their lawyers in closed areas where physical contact is prevented, using masks. Lawyers are also provided with masks, if requested.
- Hearings of the convicts/detainees are held via the SEGBIS¹ system. Convicts and detainees who cannot attend the hearing with SEGBIS are put in isolation in a separate ward when they return to the penal institution for 14 days and tested afterwards.
- Detainees and convicts in penal institutions are included in the COVID-19 vaccination plan as a risk group.

III. OBSERVATIONS

16. According to Article 100/3 of Code of Criminal Procedure (CCP), if there are facts that show the existence of a strong suspicion of the crime of *“being a member of an armed terrorist organization”* is committed, grounds for arrest can be assumed to exist.

17. The Court, in giving Gökalp’s arrest decision, evaluated Gökalp’s statement and defense, the documents obtained within the scope of the investigation, the records showing Gökalp’s participation in DTK’s gatherings and the witness statement identifying him as a member of terrorist organization. Considering the risk of absconding and the reasons and evidences explained above in paragraph 13, alongside with Article 5 of the ECHR and Article 9 of the International Covenant on Civil and Political Rights (ICCPR), the Court determined that grounds for arrest exist and arrested Gökalp accordingly. In this context, allegations against Gökalp were evidenced and evaluated by the impartial and independent court, in accordance with national and international law.

18. Gökalp has access to legal assistance. As explained above in paragraph 11 and 12, due process is respected in taking Gökalp into custody. **He was informed of his legal rights and of the reasons**

¹ SEGBIS is the audio and video information system in which sound and image are transmitted, recorded and stored simultaneously within the National Judicial Network Information System. SEGBIS facilitates the hearing and recording the statements of persons (suspects, defendants, witnesses, complainants, participants etc.) who are outside the jurisdiction of the public prosecutor’s office and courts or who cannot be present at the court. The defendant attending the hearing with the SEGBIS system can access, present and challenge the evidence and raise questions to other defendants or witnesses in the courtroom.

for detention. He met his lawyers immediately after and he has access to his lawyers during his detention. His statement was taken in presence of his lawyers and his closest relative was informed of the detention. He was able to appeal to the Court and demand his release. In accordance with the Article 108 of the CCP, his detention is being evaluated by the Court upon appeal or *ex officio*. Gökalp's first hearing was held 5 days after the public action was brought against him. In this context, Gökalp's right to fair trial has been respected in line with the Article 6 of the ECHR and Articles 9 and 14 of the ICCPR.

19. As explained above in paragraph 15, necessary measures are taken in the penal institutions with respect to COVID-19 pandemic. Convicts and detainees are able attend their hearings via SEGBIS which facilitates direct contact between the defendant and the judges, witnesses and other people present.

IV. CONCLUSION

20. The Turkish Constitution as well as ICCPR enshrine the principle of equality of all persons before the law, courts and tribunals. While everyone is under the guarantee of the State in terms of protection and promotion of human rights and freedoms at both national and international level in accordance with the requirements of democratic society regardless of their title or profession; this guarantee does not give an absolute immunity from being subjected to the law. In this respect Gökalp, as with anybody suspected of the same crime would be, was investigated, is being prosecuted and tried by the independent and impartial judicial authorities.

21. The Government is of the view that Gökalp's rights under national and international law while in detention is being respected. As prosecution phase still continues, reaching conclusions on the present situation would be inappropriate.

Annexes

- 1- Suspect/defendant rights form
- 2- Gökalp's statement dated 21 November 2020
- 3- Lawyer meeting record dated 21 November 2020