



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

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The Permanent Mission of the Republic of Türkiye 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 to the Joint Communication from Special Procedures dated 15 February 2022 (AL TUR 1/2022), has the honour to enclose herewith the observations provided by relevant Turkish authorities.

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

Geneva, 29 April 2022



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 RAPPORTEURS
(Reference: AL TUR 1/2022)**

1. With reference to the joint letter of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association dated 15 February 2022, regarding the information received on the alleged arrest and pretrial detention conditions of Ersin Berke Gök (hereinafter referred to as “Gök”) and Caner Perit Özen (hereinafter referred to as “Özen”), the Government would like to submit its observations herein below.

I. LEGAL AND FACTUAL BASE

2. On 1 October 2021, by a Presidential decision, five rectors have been appointed to five Universities including Boğaziçi University.
3. On 4 October 2021, demonstrations regarding said appointments were started and the video recordings which is available in the investigation file shows that, a group including Gök and Özen took some illegal actions; Gök climbed on the Rector’s vehicle, damaged the vehicle by bouncing on it, checked the interior of it and provoked others; Özen suffocated and dragged the security guard who tried to get Gök off the car. In addition they did not comply with the warnings of the security forces.
4. On 5 October 2021, Boğaziçi University Rectorate and the University's acting rector lodged a complaint to the Public Prosecutor's Office about the aforementioned actions of the demonstrators. An investigation was initiated thereupon.
5. Within the scope of the investigation, Gök and Özen were taken into custody for violating the Law on Meetings and Demonstration (Law No: 2911), insult, damage to property and prevention of public duty charges.
6. They were reminded of their rights to benefit from legal assistance, to present evidence in favour of themselves, to remain silent about allegations, to inform their relatives and to apply to the judge for their immediate release.
7. On 6 October 2021, their statements were taken by the public prosecutor in the presence of their lawyers.
8. On the same day, based on the evidence (video recordings, examination and incident reports, forensic reports and statements of the complainants), the Istanbul 9th Magistrates’ Office decided that judicial control measures would not be sufficient and ordered to arrest them.

9. Based on that decision of 6 October 2021, they were placed at the Bakırköy/Metris T Type closed penitentiary institution (hereinafter referred to as Bakırköy/Metris) and then transferred to the Silivri No. 6 L Type closed penitentiary institution (hereinafter referred to as Silivri).
10. On 26 November 2021, a public action was filed for Gök (for violating the Law on Meetings and Demonstration, deprivation of liberty, prevention of public duty, damage to public property and hijacking or seizure of vehicles charges) and Özen (for violating the Law on Assembly and Demonstration, deprivation of liberty, prevention of public duty, and hijacking or seizure of vehicles charges).
11. On the first hearing dated 7 January 2022, the Istanbul 22th Criminal Court released Gök and Özen with judicial control measures.
12. On 10 January 2022, the Court held an *ex officio* hearing in order to hear the statements of the complainants.
13. On 21 March 2022, the next hearing was decided to be held on 27 June 2022, in order to fulfill procedural requirements.
14. On the other hand, Gök, on 05 January 2022, and Özen, on 19 November 2021, lodged individual applications to the Constitutional Court, regarding partly similar allegations in question. The applications are pending.

II. COMPATIBILITY WITH ARTICLES 19 AND 21 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

15. Articles 19 and 21 of the ICCPR stipulate the freedom of expression and the right to peaceful assembly which are protected in the Constitution.

i. Compatibility with Article 19 of the ICCPR

16. According to Articles 25 and 26 of the Constitution, everyone has the freedom of thought and opinion, and the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively.
17. **The Government would like to emphasize that the charges levied against Gök and Özen have nothing to do with their statements or expressions, rather, they were taken into custody based on their actions that are deemed to be violent and against the public order.** In this respect, there was no intervention with respect to Gök's and Özen's freedom of expression by the authorities.

ii. Compatibility with Article 21 of the ICCPR

18. Pursuant to the Article 34 of the Constitution, everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. The right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of committing crime, protecting public health and public morals or the rights and freedoms of others.
19. In order to organize a peaceful assembly in a democratic society, a notification is necessary to inform the authorities in advance to assist the authorities in facilitating the smooth conduct of peaceful assemblies and protecting the rights of others. Prior notification serves the aims of reconciling, facilitating the rights and lawful interests of others and prevention of disorder or crime. (European Court of Human Rights (ECtHR), Judgment, *Eva Molnar v. Hungary*, 10346/05, § 37).
20. Making public assemblies a subject to an authorisation or notification procedure does not normally encroach upon the essence of the right as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering, be it political, cultural or of another nature (ECtHR, Judgment, *Sergey Kuznetsov v. Russia*, 10877/04, § 42). Organisers of public gatherings should respect the rules governing that process by complying with the regulations in force (ECtHR, *Primov and Others v. Russia*, Judgment, 17391/06, § 117).
21. In this context, as per Article 10 of the Law on Meetings and Demonstrations, in order to organize a meeting, relevant authorities should be formally notified with a written letter containing the meeting's purpose, the date and place of the meeting, identities of the organizers and their occupation and the signatures of the organizing committee.
22. As regards Article 21 of the ICCPR, in the General Comment No 37 (2020)-(CCPR/C/GC/37), the Human Rights Committee states that, the conduct of specific participants in an assembly may be deemed violent if authorities can present credible evidence that, before or during the event, those participants are inciting others to use violence, and such actions are likely to cause violence; that the participants have violent intentions and plan to act on them; or that violence on their part is imminent. Isolated instances of such conduct will not suffice to taint an entire assembly as non-peaceful, but where it is manifestly widespread within the assembly, participation in the gathering as such is no longer protected under Article 21.
23. In the case of *Gök and Özen*, on 4 October 2022, the crowd were not dispersing despite the warnings, and security forces duly intervened the meeting to restore the public order. The intervention carried legitimate purposes, was seen necessary in a democratic society and in line with the domestic provisions as well as international principles. The suspects were legitimately subjected to judicial proceedings for violation of the Law on Meetings and

Demonstration based on their actions during the incident. Accordingly, the Government is of the opinion that Article 21 of the ICCPR was complied with.

III. THE ALLEGED PRETRIAL DETENTION CONDITIONS

i. Compatibility of the arrest measures with Article 9/3 of the ICCPR

24. As mentioned above, Gök and Özen's statements were taken by the Public Prosecutor in presence of their lawyers and they were brought before the judge and a hearing was held the next day after they were taken into custody.
25. The Court, in the hearing, arrested Gök and Özen determining that the judicial control measures would be insufficient in light of the existence of strong suspicion on committing the crimes attributed, the risk of flight and absconding, and to complete the gathering of evidence.
26. After the evidence were gathered in reasonable time, a public action was filed and the Court decided to release Gök and Özen.
27. Considering that Gök and Özen were brought before a judge and public prosecutor promptly and the fact that their arrest were ordered with a reasoned decision by the Court, the Government is of the opinion that Article 9/3 of the ICCPR was complied with.

ii. Allegations regarding placement in a solitary confinement for 51 days

28. Based on the decision taken on 6 October 2021, Gök and Özen were placed at Bakırköy/Metris and then transferred to Silivri.
29. The decisions of placement in the penitentiary institutions are taken in conformity with the fifth section of the Law on the Execution of Sentences and Security Measures (Law no:5275) and the relevant regulations. Pursuant to those provisions, crime groups, risks, age, gender and security conditions are taken into consideration. The placement decisions can be appealed before the respective court.
30. In Bakırköy/Metris, Gök and Özen were placed in single-person wards due to the Covid-19 restrictions, security requirements and the fact that the other sections were at full capacity.
31. On the other hand, in Silivri, they were placed together. It should also be noted that in both penitentiary institutions, they did not lodge any complaint against the decision of placement.

iii. Allegations regarding the denied access to university exam papers

32. On 11 November 2021, Gök submitted a petition at Bakırköy/Metris, regarding his exams by virtue of his education at the Department of Physics of the Boğaziçi University.
33. The petition in question was submitted to Boğaziçi University and the University, in its reply, gave information regarding the dates of the exams and how they will be held. Despite being notified, he has not filed any application to the penitentiary institution in order to take the exams.
34. On the other hand, Özen did not file any application regarding his education.
35. Among other things, lecture notes, textbooks and other publications were delivered to both of them.

iv. Allegations regarding the denied access to medicine

36. According to Article 56 of the Constitution, the State is obliged to provide health services to everyone in order to maintain their physical and mental health. All necessary measures are taken by the administrations to prevent any loss of rights.
37. Gök's and Özen's first health examinations were made on 7 October 2021 by a physician. Both of them also declared that they do not have any chronic and contagious diseases.
38. On 19 October 2021, Özen, was referred to Başakşehir Çam and Sakura City Hospital due to complaint of myalgia (muscle pain). As a result of the examination, upon request by the physician, an MRI scan was made on 22 October 2021.
39. On 8 December 2021, Özen was hospitalized in the institution's infirmary with the complaint of itching. He was examined, given medication and his referral to the dermatology outpatient clinic was deemed appropriate. He was released before his planned transfer to the dermatology clinic.
40. On 7 and 31 December 2021, Gök, at his request, was examined by a physician. As a result of the examinations, necessary medication was prescribed with the diagnosis of "bronchitis and other lung illnesses". He was released before his transfer to the chest clinic.
41. In both cases, their medical reports have been issued and they were provided with the prescribed medication.

v. Allegations regarding the denied access to letters addressed to them by family members

42. Pursuant to Articles 68 and 116 of the Law on the Execution of Sentences and Security Measures (Law no:5275), subject to the restrictions specified in the law, the convict/detainee shall have the right to receive letters, fax messages and telegrams, and to send letters, fax messages and telegrams at his own cost and expense. The restriction is

related with endangering the order and security of the institution, holding up officers as a target, serving for communication between members of terrorist or criminal organizations, containing false and untrue information which would lead to panic, or containing threats or insults.

43. Accordingly, after the inspection, the letters are conveyed to the relevant person as in the case for Gök and Özen.
44. Gök has sent 19 letters, received 27 letters during his stay in Bakırköy; sent 7 letters and received 24 letters during his stay in Silivri.
45. Özen, has sent 26 letters, and received 23 letters during his stay in Bakırköy; sent 37 letters, received 15 letters during his stay in Silivri.
46. Therefore, they were able to send and receive letters.

vi. Allegations regarding denied access to food compatible with Gök's diet

47. On 19 October 2021, Gök submitted a petition regarding his vegan diet. Upon this request, from 20 October 2021, breakfast, lunch and dinner compatible with his diet were served. After he was transferred to Silivri, he did not have any request regarding his diet until 6 January 2022. On 6 January 2022, he submitted a petition regarding the fact that he does not eat any food derived from animals. While necessary steps were taken by the administration, he was released the next day.

IV. CONCLUSION

48. In light of the explanations above, the Government acts in line with its commitments to protect the human rights and in this vein, took necessary measures to ensure the complainants' access to medical care, education, letters and food.
49. As mentioned above, the applications lodged by the complainants before the Constitutional Court are still pending. The Government is of the view that reaching conclusions on the present allegations by the Special Rapporteurs before the Constitutional Court's judgment, would be inappropriate.