



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 Communication from Special Procedures dated 5 December 2023 (UA TUR 9/2023), has the honour to enclose herewith the information note 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, 9 February 2024



Encl: As stated.

**Office of the High Commissioner for Human Rights
Palais Wilson
Rue des Pâquis 52
1201 Geneva**

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

(Reference: UA TUR 9/2023)

With reference to the communication of the Special Rapporteur on the situation of human rights defenders dated 5 December 2023, the Government of the Republic of Türkiye (hereinafter, the Government) would like to submit its responses and observations hereinbelow.

FACTS AND OBSERVATIONS

1. First of all, the Government would like to reiterate that the Republic of Türkiye is a democratic State governed by the rule of law and established on respect for human rights. According to Article 90 of the Constitution of the Republic of Türkiye (hereinafter, the Constitution), in the event of a conflict between international agreements concerning fundamental rights and freedoms and national legislation, priority is given to international treaties. Being fully aware of its international obligations, the Republic of Türkiye fulfils all of its responsibilities to protect fundamental rights and freedoms by taking the measures envisaged by law and required by democratic governance.

On the legal and factual grounds for arrest and detention:

2. The individual referred to in the communication was the subject of an investigation conducted by the Hakkari Chief Public Prosecutor's Office under investigation number 2023/3737 in connection with the crime of "being a member of an armed terrorist organisation" (more specifically, on suspicion of membership in PKK/KCK/PJAK terrorist organisation), in accordance with Article 314/2 of the Turkish Penal Code No. 5237 (hereinafter, the TPC).
3. Within the scope of the investigation, he was apprehended by the Hakkari Provincial Gendarmerie Command upon the instruction of the Hakkari Chief Public Prosecutor and was remanded in custody between 11 and 13 September 2023, pursuant to Article 91/2 of the Code of Criminal Procedure No. 5271 (hereinafter, the CCP), as the concerned latter

measure was necessary for the investigation and there was concrete evidence indicating that the suspect committed the offence in question. At the time of apprehension, he was duly informed of his right to benefit from the assistance of a lawyer, the right to put forward exculpatory evidence against the accusations, the right to remain silent against the allegations, the right to inform his relatives and the right to apply to the criminal judge of peace against his detention with the request of immediate release, and he confirmed having been informed of these rights via his signature.

4. On 13 September 2023, his statement was taken at Hakkari Provincial Gendarmerie Command in the presence of his lawyer and an interpreter. On the same date, he was questioned by the Public Prosecutor again in the presence of his lawyer and an interpreter. Before his statement was taken both in the Provincial Gendarmerie Command and the Public Prosecutor's Office, he was provided with the necessary explanations regarding the offence he was charged with and reminded of his rights under Article 147 of the CCP.
5. Considering the information and documents in the file and **his statement containing his confession of the crime in question**, the Public Prosecutor referred him to the Hakkari Criminal Judgeship of Peace with the request for his arrest in connection with the crime of "being a member of an armed terrorist organisation" (PKK/KCK/PJAK). The Hakkari Criminal Judgeship of Peace, as a result of the interrogation it conducted, decided on his arrest in accordance with Article 100 of the CCP, with the decision dated 13 September 2023 and numbered 2023/113.
6. Upon the request of the Hakkari Chief Public Prosecutor's Office, the Hakkari Criminal Judgeship of Peace issued a restriction decision on the investigation file no. 2023/3737, with its decision dated 11 September 2023 and numbered 2023/1508, in accordance with Article 153/2 of the CCP.
7. A public case was filed against the concerned individual by the Hakkari Chief Public Prosecutor's Office, with the indictment bill dated 11 October 2023 and numbered 2023/1176, on the charge of "being member of an armed terrorist organisation" pursuant to Article 314/2 of the TPC and Article 5/1 of the Law Against Terrorism No. 3713. The

indictment bill was accepted by the Hakkari 2nd Assize Court and the prosecution stage was initiated.

8. In the hearing held on 14 December 2023 in the case before the Hakkari 2nd Assize Court (file no. 2023/271), the offence attributed to the individual and the decision of acceptance of the indictment were pronounced and the individual's detailed defense was taken in the presence of his lawyer and interpreter. During the hearing, he was reminded of his rights under Articles 147 and 191/3(c) of the CCP through an interpreter.
9. Also, during both the investigation and the prosecution phases, the individual's requests to be released were duly examined and rejected. A review of the justifications of the relevant decisions demonstrate that the following elements were taken into consideration in deciding on the continuation of the individuals's arrest: the nature of the crime he was charged with, the fact that the concerned crime is listed in Article 100/3 of the CCP, the state of the evidence, the proportionality of the measure of detention considering the upper limit of the punishment prescribed in the law for the charged crime, and the risk of the individual's escape.
10. It shall further be underlined that during the prosecution stage, the defendant was represented by a defense counsel designated by him and the trial was duly conducted in the presence of the counsel.
11. As a result of the trial, with the decision of the Hakkari 2nd Assize Court dated 14 December 2023 (case no. 2023/271 and decision no. 2023/376), the individual concerned was sentenced to imprisonment of 6 years and 3 months, within the scope of Article 314/2 of the TPC.
12. The individual's defense counsel appealed against the judgment and the file was sent to the 2nd Criminal Chamber of the Van Regional Court of Appeals for review. **The appeal examination is still ongoing before the said Court.**
13. Article 9 of the Constitution stipulates that judicial powers shall be exercised by independent and impartial courts. The CCP also sets out the basic principles and procedures

to be applied in investigations and prosecutions in a clear, comprehensible and predictable manner, in accordance with the provisions of the European Convention on Human Rights (hereinafter, the ECHR) and the International Covenant on Civil and Political Rights (hereinafter, the ICCPR). In line with the mentioned legal framework, it is ensured that judicial proceedings before national courts are conducted in a manner that guarantees the defendants' right to a fair trial and the effective use of legal remedies.

14. In this context, while Article 14/5 of the ICCPR states that "*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*", the Turkish legal system envisages a three-tier trial process composed of first instance, appeal and cassation stages in order to strengthen the remedies and increase legal security.
15. In addition, provisions on custody are regulated in Article 91 the CCP and subsequent articles. According to Article 91 (paragraphs 1 and 2), the power to issue a detention order belongs to the public prosecutor and this power is subject to the following two conditions: "the necessity of this measure for the investigation" and "the existence of concrete evidence indicating the suspicion that the person has committed the offence in question".
16. In the same Article, it is stated that the duration of detention cannot exceed twenty-four hours from the moment of arrest, except for the time necessary for the transfer of the person to the nearest judge or court. Thus the detained person must be brought before a criminal judge of peace within this period. The third paragraph of the same Article stipulates that in the case of collective offences, the public prosecutor may order the extension of the detention period in written format for a maximum of three days, not exceeding one day at a time. Furthermore, the notification of the extension orders to the person concerned is obligatory.
17. It should also be noted that, unlike arrested or convicted persons, persons in custody are not held in a penal institution, but in a holding cell within a police or gendarmerie station, under the supervision and control of the police.

18. Pursuant to Article 91/5 of the CCP, the arrested person, his/her defence counsel or legal representative, spouse or first or second degree blood relative may appeal to the criminal judge of peace against both the detention orders issued by the prosecutor's office and the extension of detention orders issued by the judge, with the request for the concerned person's immediate release.
19. Arrest with a warrant, which is regulated under Article 100 of the CCP and subsequent articles, is not a punishment imposed before sentencing, but a protection measure that may be applied against the person regarding whom there is concrete evidence indicating strong suspicion of having committed a crime and regarding whom a "reason for arrest" is present, in order to carry out an effective judicial process in accordance with the law.
20. In the second paragraph of Article 100, "the existence of concrete facts that raise the suspicion that the suspect or the accused may flee, hide or escape" is listed among the reasons for arrest. "Suspicion of destruction of evidence" is stipulated as another reason for arrest. Also, in the third paragraph of the same Article, it is stated that if there is a strong suspicion based on concrete evidence that the offences listed in that paragraph were committed, a reason for arrest may be deemed to exist (the concerned list of offences includes Article 314 of the TPC, which the individual concerned in the present communication was charged with).
21. Pursuant to Article 101 of the CCP, in the investigation phase, the arrest warrant for the suspect shall be issued by the criminal judge of peace upon the request of the public prosecutor, and in the prosecution phase, the arrest warrant for the accused shall be issued by the court upon the request of the public prosecutor or *ex officio*.
22. In the Turkish criminal procedure system, the possibility for the suspect or accused to apply to the legal remedies for objection against the arrest warrant is provided. The objection to the protection measure of arrest is regulated in Articles 101/5 ("*The decision for arrest with a warrant*"), 104 ("*Motion of release by the suspect or accused*"), 105 ("*The procedure*"), 267 ("*Decisions subject to objection*") and 268 ("*The procedure for objection and the reviewing authorities*") of the CCP. According to these Articles, decisions given within the scope of Articles 100 and Article 101 can be appealed, and the suspect or accused may

request their release at every stage of the investigation and prosecution. After the views of the public prosecutor and the suspect/accused or his/her defence counsel are sought by the competent authority, a decision shall be taken to either accept or reject the request to be released, or to impose judicial control.

23. Furthermore, according to Article 108/1 of the CCP, in the investigation phase, during the period in which the suspect is under arrest and at least every thirty days, the criminal judge of peace shall decide on whether continuation of the arrest is necessary or not, upon the request of the public prosecutor, taking into account the provisions of Article 100 and after hearing the suspect or his/her defence counsel. The review of the status of arrest may also be requested by the suspect within the period stipulated in the abovementioned paragraph. In the prosecution phase, the judge or court shall decide *ex officio* whether the measure of arrest should be continued or not, at each hearing or between hearings if the circumstances so require, or within the period stipulated in the first paragraph.
24. On the other hand, individuals have the right to request compensation from the State in accordance with Article 141 of the CCP, in cases of unjustified application of protection measures such as detention and arrest.
25. In the context of the case referred to in the present communication, it should also be taken into consideration that the defense counsel of the individual concerned was present during both the investigation and prosecution stages, and that both he and his defense counsel had the opportunity to effectively present a defence against the charges and to put forward their objections and requests to the court at every stage. In this context, it is considered that the allegations communicated to the Special Rapporteur do not reflect the truth and are groundless.

On the period in the penal execution institution and the individual's health condition:

26. Turkish national legislation, particularly the Constitution, guarantees the right to life, including that of convicts and detainees. First of all, Article 17/1 of the Constitution reads as follows: "*Everyone has the right to life and right to protect and improve his/her corporeal and spiritual existence.*"

27. The protection of the health of convicts and detainees in penal execution institutions, the diagnosis and treatment of their medical conditions and illnesses, and the facilitation and protection of their right to access to health are among the basic elements of the modern execution approach. In this regard, maximum effort is exerted and all necessary measures are taken to prevent any disruption and undermining of fundamental rights of convicts and detainees.
28. Article 2 of the Law on the Execution of Criminal and Security Measures No. 5275 stipulates that: "*The rules on the execution of penalties and security measures shall be applied without discrimination and without privileging anyone on the basis of race, language, religion, sect, nationality, color, sex, birth, philosophical belief, national or social origin, political or other ideas or opinions, economic power and other social status of the convicts. Cruel, inhuman, degrading and humiliating treatment shall not be imposed in the execution of penalties and security measures.*"
29. Paragraph 6/1(f) of the same Law stipulates that "*In penal execution institutions, it is obligatory to take all kinds of protective measures to protect the right to life and the physical and mental integrity of convicts.*"
30. Furthermore, according to Article 34 of the Protocol on the Conduct of Administration, External Protection, Transfer of Prisoners and Detainees and Health Services of Penal Institutions, when convicts and detainees get ill, they shall first be referred to the hospitals in the province, and if there is no possibility of treatment at the provincial level, they shall be referred to the relevant departments of hospitals in other provinces and university hospitals.
31. The decision as to which specialized unit the ill prisoner will be examined and treated in is given by the doctor of the institution, or if the institution does not have a doctor, the doctor in charge at the relevant family health center or hospital. The administration of the penal institution has no authority to get involved at this stage.
32. In the context of the case at issue, the individual concerned was convicted of "being a member of an armed terrorist organization" and was placed in Van F-Type High Security

Closed Penal Institution, upon the decision of the Hakkari Criminal Judge of Peace dated 13 September 2023.

33. On 14 September 2023, following his placement into the penal institution, he had an individual interview with the psychologist of the institution. During the interview with the psychologist, it was determined and also confirmed by the individual that he had no history of psychiatric diagnosis and treatment, that he did not use any medication regularly and that he did not have any psychiatric illness or condition. Within the period from the specified date to the present day, the individual has not requested another meeting with the psychologist from the administration of the institution.
34. In addition, it should also be underlined that the first physical examination of the individual was carried out on 15 September 2023, upon which it was determined that he did not have any physical health problems and the individual did not make any statement indicating that he had any illness. Again, according to the official records, he has not reported any medical problem or requested to be examined by a medical doctor since the specified date.
35. The individual concerned was able to exercise his rights to be visited and to have telephone calls in the penal execution institution within the framework of the provisions of the Law on the Execution of Criminal and Security Measures No. 5275.
36. On the other hand, it should be reiterated that there are national and international monitoring mechanisms for all places where persons deprived of their liberty are held, including penal institutions. In the national context; "The Human Rights Inquiry Committee of the Grand National Assembly of Türkiye", "Commissions for the Compensation of Damages Arising from Terrorism and the Fight against Terrorism", "Ombudsman Institution", "Human Rights and Equality Institution of Türkiye", "Department of Judicial Support and Victim Services of the Ministry of Justice " and "Law Enforcement Oversight Commission" as well as the individual application mechanism to the Constitutional Court can be listed.
37. Furthermore, monitoring can also be undertaken by international mechanisms such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the United Nations Subcommittee on Prevention of Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), as well as the UN Special Rapporteur on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

38. In this framework, the Government would also like to refer to the significant steps taken by the Republic of Türkiye to ensure the harmonization of national legislation and practice with international standards in order to prevent torture and ill-treatment within the scope of the "zero tolerance to torture" policy.

In response to concerns with regard to possible deportation:

39. According to the information received from the Directorate of Migration Management, there is no deportation decision taken against the individual concerned.
40. Furthermore, according to Article 53/3 of the Law on Foreigners and International Protection No. 6458; "*The foreigner or his/her legal representative or lawyer may appeal against the removal decision before the administrative court within seven days as of the date of notification. (...) Except for cases where the concerned foreigner consents, the foreigner shall not be deported within the period prescribed for filing a lawsuit or until the finalisation of the legal proceedings in case judicial remedies are resorted to.*" Accordingly, the individual referred to in the communication has the right to file an appeal against any deportation proceedings and in such case, the appeal would stop the execution of the deportation. The official records do not reveal any record of an application filed in this context by or on behalf of the individual concerned.

CONCLUSION

41. In conclusion, the legal procedures and proceedings regarding the crime attributed to the concerned individual have been carried out by the judicial authorities in accordance with the ECHR and the ICCPR, pursuant to the domestic legislation established in a clear, predictable and understandable manner, in line with the legitimate aim of protecting the democratic social order and combating terrorism. The three-stage trial process, which is envisaged for the effective realization of the right to a fair trial, is being carried out by

independent and impartial courts, in full respect of the individual's right to a fair trial. All fundamental rights of the individual concerned, in particular the right to life, are constitutionally and legally guaranteed.

42. Finally, it should be reiterated that the judicial proceedings have not yet been finalized. Thus, the ongoing domestic legal processes should be respected and their results should be awaited.