

**Mandates 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**

REFERENCE:  
AL TUR 23/2020

22 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 43/16, 42/22 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the detention of human rights defender **Şeyhmus Gökalg**.

Dr **Şeyhmus Gökalg** is a human rights defender, medical doctor and member of the Turkish Medical Association. He volunteers with the Human Rights Foundation of Turkey, a non-governmental organisation that has been providing treatment and rehabilitation for victims of torture and documenting human rights violations in Turkey since 1990. He was also a former Board member of the Human Rights Association.

A previous communication relating to Dr Gökalg was addressed to your Excellency's Government on 23 July 2019 (case no AL TUR 8/2019). This communication, sent by Special Procedures mandate holders concerned the sentencing of eleven members of the Turkish Medical Association's council on 3 May 2019. We thank your Excellency's Government for its reply to this communication, received on 20 September 2019, and would request the inclusion of an update on any development in the legal proceedings relating to this case in your Government's response to the current communication.

According to the information received:

On the morning of 20 November 2020, Dr Gökalg was arrested by police and brought into police custody on the basis of an arrest warrant issued within the context of an investigation opened by the Diyarbakır Prosecutor's Office into the Democratic Society Congress (*Demokratik Toplum Kongresi – DTK*), an umbrella organisation bringing together groups working on Kurdish issues in Turkey. At least 75 other individuals, including lawyers, journalists, doctors, trade unionists, writers and members of political parties, were arrested on the same date, within the context of the same investigation, before the large majority were released on probation. The arrests took place in Diyarbakır and other cities in the southeast of Turkey.

On 23 November 2020, the Diyarbakır Second Criminal Court of Peace ordered Dr Gökalg's pre-trial detention. The decision of the Court was based on allegations that he had provided medical care for alleged members of a terrorist

organisation and had participated in a meeting deemed illegal by the authorities, amounting to the “strong suspicion of a crime” by Dr Gökalp. These allegations were reportedly un-evidenced. At the time of finalising this communication, Dr Gökalp remained in pre-trial detention.

Without wishing to prejudge the accuracy of the information received, we express serious concern at the arrest of Dr Gökalp and the proportionality of his pre-trial detention, which we fear may be directly linked to his work as a physician and his prominence as a human rights defender in the southeast of Turkey. We express particular concern that he was placed in pre-trial detention in the context of the continuing Covid-19 pandemic, during which time detention should be considered a last resort in light of the elevated risks of the spread of the virus within prisons.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to the legal and factual grounds for Dr Gökalp's arrest and pre-trial detention, whether legal assistance was made available to him and how this complies with Turkey's obligations under international human rights law, in particular articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).
3. Please provide information on the measures taken in the context of the Covid-19 pandemic to ensure a fair trial and that pre-trial detention, particularly in cases of human rights defenders, is consistent with the human rights obligations of your Excellency's Government.
4. Please indicate what measures have been taken to ensure that all human rights defenders in Turkey, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted a joint communication to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the **International Covenant on Civil and Political Rights (ICCPR)**, ratified by Turkey in September 2003.

We would like to draw particular attention to article 9 of the Covenant, which in its first paragraph guarantees the right to freedom from arbitrary detention and establishes that no one shall be deprived of their liberty except on such grounds and in accordance with such procedure as established by law. In elaborating on this paragraph in its General Comment No. 35, the Human Rights Committee underscored the arbitrariness of any arrest or detention without a legal basis and further held that an arrest or detention may be arbitrary irrespective of its being authorized by domestic law, with the notion of "arbitrariness" introduced in article 9 (and finding its origins in article 3 of the Universal Declaration of Human Rights) to be broadly interpreted to include elements of "inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."<sup>1</sup> In the same elaboration, the Human Rights Committee also held any arrest or detention carried out as punishment for the legitimate exercise of the rights as guaranteed by the Covenant to be arbitrary.

In its third paragraph, article 9 holds that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. According to the Human Rights Committee, any delay longer than 48 hours in this regard must remain absolutely exceptional and be justified under the circumstances.<sup>2</sup> Article 9(3) also holds that it shall not be the general rule that persons awaiting trial shall be detained in custody. As set out by the Human Rights Committee, pre-trial detention must be based on an individualized assessment of the reasonableness and necessity of such detention for the purposes of preventing flight, interference with evidence or recurrence of the crime alleged. A decision to enforce pre-trial should not be made on vague or expansive grounds of "public security", even where these are codified in law as such.<sup>3</sup>

We also wish to refer to Deliberation No. 11 of the Working Group on Arbitrary Detention, where the Working Group underlines that circumstances of each instance of pretrial detention should be assessed; at all stages of proceedings, non-custodial measures should be taken whenever possible, and particularly during public health emergencies.<sup>4</sup> The Working Group also notes that the public health emergency measures introduced to combat the Covid-19 pandemic may limit access to detention facilities, which in turn may effectively prevent persons held in places of deprivation of liberty from attending their court and other judicial hearings, meetings with parole boards or other entities empowered to consider their continued deprivation of liberty, or from holding meetings with their legal counsel and family. This may have an adverse

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<sup>1</sup> Human Rights Committee, *General Comment No. 35 – Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para 12.

<sup>2</sup> CCPR/C/GC/35, para. 33.

<sup>3</sup> *Ibid.*, para 38.

<sup>4</sup> Deliberation No. 11 of the Working Group on Arbitrary Detention on prevention of arbitrary deprivation of liberty in the context of public health emergencies, para. 14.

effect particularly on those in pretrial detention, and on detainees seeking a review of a decision to detain them, as well as those seeking to appeal against a conviction or sentence.<sup>5</sup>

We recall that anyone detained has the right to challenge the legality of his or her detention before a court, as envisaged by article 9(4) of the Covenant. According to the UN Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings before a Court (A/HRC/30/37), the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society. Moreover, in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing as stipulated in the UN Basic Principles and Guidelines. In its most recent report to the Human Rights Council (A/HRC/45/16), the Working Group on Arbitrary Detention highlighted that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty, and that such assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees.<sup>6</sup>

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to articles 1, 2 and 6 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, as well as the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

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<sup>5</sup> Ibid, at para. 20.

<sup>6</sup> A/HRC/30/37, paras. 50-55.