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Human Rights Council Working Group on Arbitrary Detention

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Opinion No. 1/2017 concerning Rebii Metin Görgeç (Turkey)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 12 January 2017 the Working Group transmitted to the Government of Turkey a communication concerning Rebii Metin Görgeç. The Government has not replied to the communication in a timely manner. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Rebi Metin Görgeç is a Turkish citizen who was born in 1960. He usually resides in Istanbul with his wife, Dilek Görgeç, and their two children.

5. The source reports that as a businessman, Mr. Görgeç has been involved with three companies in the travel industry: Allegro Tours, MB Tours, and his current company Insieme Tours. At Insieme Tours, Mr. Görgeç specializes in organizing religious pilgrimages around the world for people of all faiths and he travels frequently in his professional capacity. He attended Istanbul University, where he obtained a Master in Business Administration and another master's degree. According to the source, he has never been involved in public life or political activities.

6. The source reports that in 2011 Mr. Görgeç was invited by a friend from university, Ali Ulvi Orhan, to join in an agricultural business venture — Lina Agriculture, Animal Husbandry and Energy, Industry and Trade, Inc. — hereinafter referred to as Lina Agriculture. Believing it could be a profitable opportunity, Mr. Görgeç contributed to the purchase of land in north-west Turkey. However, that particular project was never developed, and the land was sold in 2015. In the sale, Mr. Görgeç earned roughly the equivalent of US\$10,000, which was paid directly to him. He still maintains a 10 per cent share in the company, but he has not been involved in any other transactions through Lina Agriculture.

Arrest, detention and interrogation

7. The source reports that Mr. Görgeç was arrested at 5 a.m. on 16 August 2016 at his home in Istanbul by Turkish police. The wife of Mr. Görgeç was also arrested at the same time. When the police arrived, they knocked on the neighbours' door and woke them and asked the neighbours to witness the arrest. Mr. Görgeç and his wife were handcuffed and immediately taken to Kartal District Police Station. With only the neighbours as witnesses, the police then searched the Görgeçs' home for five hours. The source alleges that the police had no arrest warrant or search warrant and that the Görgeçs were not informed about the reasons for their arrest. When asked, the police told the Görgeçs that "this is a secret investigation" and they could not tell them anything other than a brief mention that the case was "related to" the so-called terrorist organization Fetullahçı Terör Örgütü/Paralel Devlet Yapılanması (FETÖ/PDY).

8. According to the source, at Kartal District Police Station in Istanbul, Mr. Görgeç and his wife were immediately separated and questioned by the police. There were no lawyers present during the questioning. During the entirety of the time they were detained at the police station, the Görgeçs were reportedly not allowed contact with each other or any family members. Their children spent nine days sleeping in their car outside the police station, just waiting for information or the chance to see their parents. Their lawyer was only able to see each of them separately for six minutes.

9. Mr. Görgeç was reportedly detained in an underground cell at the police station without any information about why he had been arrested. He was held in a small and unsanitary cell that smelled of urine and faeces. Additionally, the source is aware that he was subjected to severe sleep deprivation; it also believes that it is extremely likely that he was subjected to other forms of torture, as was reported by others in the same situation.

10. According to the source, Mr. Görgeç finally learned of the allegations against him during a formal police interrogation on 21 August 2016. Prior to the interrogation, he was permitted to meet with his lawyer for the first time, but only for one minute and their conversation was recorded and filmed. Mr. Görgeç denied all allegations against him, which are detailed below. As Mr. Görgeç did not know why he had been arrested, neither he nor his lawyer could prepare for the interrogation. Additionally, his lawyer was not permitted to speak in his defence, to correct baseless accusations or to object to any questions in any meaningful way.

11. The source reports that on 24 August 2016, Mr. Görgeç was brought before a judge at a courtroom in the police station for a “hearing”. According to the source, this was not a hearing in the traditional sense, as he was required to answer questions, but was not permitted to present any information in his defence. This reportedly took place in the middle of the night, and his case was one of approximately 18 unrelated cases. He was permitted to meet with his lawyer for five minutes before the start of questioning, but once again, during the questioning, his lawyer’s ability to speak in his defence or to object to any questions or answers scripted by the police was limited. Mr. Görgeç was presented with a slew of allegations and questions, but was presented with no evidence directly against him. According to the source, all of the evidence referenced by the authorities was circumstantial, factually incorrect (e.g. they confused the names of two different companies), or completely fabricated.

12. Additionally, the authorities referenced on multiple occasions a secret “MASAK” report; Mr. Görgeç’s lawyers requested to review this document, but were denied access to the full report on the pretence of “national security” (one paragraph was eventually provided to the lawyers). Mr. Görgeç was then quickly shown a report of the questioning and was forced to sign his “testimony”. The report included an acknowledgment that “I was given enough time and the proper environment to meet with my attorney and according to the accusations given to me, I gave my testimony with my free will”. Mr. Görgeç reportedly had to sign even though he was not given enough time to read the document, which was impossible in any case as his glasses had been confiscated.

13. After briefly considering his case, the judge almost immediately ordered Mr. Görgeç to remain in detention. Without explanation, several other men were released, even though they were facing similar allegations. According to the source, it seemed that in some cases, there was more concrete evidence presented against those released than was presented against Mr. Görgeç.

14. The source reports that Mr. Görgeç was then transferred to the high-security Silivri Prison later that day. Mr. Görgeç’s lawyer had submitted a request for release to the Chief Prosecutor on 29 September 2016, explaining that Mr. Görgeç was not at all associated with FETÖ/PDY and was therefore innocent of all suspected wrongdoing. That request was denied.

15. According to the source, Mr. Görgeç’s wife was also detained for eight days in an underground cell at the police station, with 17 women; the deplorable conditions of the cell where she was held were nearly identical to those of the cell in which her husband was kept. Because of the conditions in detention and the lack of access to proper medical care, she developed a 103°F (39.4°C) fever, diarrhoea and a gastrointestinal infection over a period of eight days. She was taken by ambulance to an infirmary for a medical check but was promptly brought back to the police station.

16. Mr. Görgeç’s wife first learned of the accusations against her and her husband during her formal police interrogation on 19 August 2016. Before the interrogation, she was permitted to meet with her lawyer for the first time, but only for one minute and their conversation was recorded and filmed. Her lawyer was present during the interrogation, but neither her lawyer nor Mrs. Görgeç were able to speak in her defence, correct baseless accusations, or object to any questions in any meaningful way.

17. Four days later, on 23 August 2016 at 1.30 a.m., she was brought before a judge in the courtroom located at the police station, for her “hearing”, along with the unrelated cases of approximately 12 other women. According to the source, her “hearing” was not a hearing in the traditional sense either, as she was given no meaningful opportunity to confront the accusations. She too was permitted to meet with her lawyer for five minutes before the start of questioning, but once again, during the questioning, her lawyer could not speak or object to any questions or answers scripted by the police. The authorities then wrote a short statement for her, which she could not challenge, and considered it to be her “testimony”. She was quickly shown her “testimony” and was told to sign it, even though she could not read what was written, as her glasses had also been confiscated. Unlike her husband, Mr. Görgeç’s wife was ordered by the judge to be released that morning. However, her passport was seized and she cannot travel out of Turkey.

“Suspected” violations of Turkish law

18. The source reports that Mr. Görgeç was told orally on 24 August 2016 that he had been arrested on suspicion of membership of the FETÖ/PDY armed terrorist organization. That was the first time that he had been officially given any information by the authorities about his arrest and detention. Throughout his time in detention he was not charged with any crime, but was referred to as a “suspect” for crimes under (a) article 314 of the Turkish Penal Code (Türk Ceza Kanunu), for membership in an armed organization; (b) article 282 of the Turkish Penal Code, for laundering assets acquired from an offence; and (c) article 158 of the Turkish Penal Code, for theft by deception.

19. Additionally, Mr. Görgeç was told that he was suspected of crimes under the following laws, though no specific provisions or violations were provided: the Law on the Prevention of the Financing of Terrorism (Law No. 6415), the Law on Cheque Violations (Law No. 5941), the Law on the Collection of Aid (Law No. 2860) and the Law on Tax Procedure (Law No. 213).

20. According to the source, the Government had never implicitly or explicitly explained their accusations against Mr. Görgeç. However, the questions and accusations made by the authorities during questioning allowed some vague suggestions to be made. The source summarizes them as follows: Mr. Görgeç and his business partners in Lina Agriculture, including Mr. Orhan, provided financial support to Fethullah Gülen, the Gülenist movement, and/or to FETÖ/PDY. They did this through Lina Agriculture, which is a subsidiary of AKFA Holding, a large corporation known to be “close” to FETÖ/PDY. The funding was channelled through AKFA Holding, AKFA Holding subsidiaries, and Asya Participation Bank, which conducted financial transactions for Mr. Görgeç, for his business partners and for Lina Agriculture.

21. When presented with these claims, Mr. Görgeç explained that his involvement with Lina Agriculture had been limited to one purchase and one sale of agricultural land. To date he has only been involved in the above-mentioned transactions, which relate to one piece of land that was bought in 2011 and sold in 2015. Mr. Görgeç acknowledged being friends with Mr. Orhan since their time in university and recognized his business relationship with the other Lina Agriculture shareholders. However, Mr. Görgeç vehemently denied any personal relationship or connection with Mr. Gülen, his movement, or FETÖ/PDY. Mr. Görgeç also denied having any knowledge that his business associates or business ventures had any connection to Mr. Gülen, his movement, or FETÖ/PDY.

22. According to the source, there are two possible explanations for Mr. Görgeç’s arrest. One is that he is the victim of accidental “guilt by association”, which is the result of misinformation and confusion about his business and personal activities. If that is the case, after receiving a clear explanation for these misunderstandings, the Turkish authorities should acknowledge the error and immediately release him. A brief in support of Mr. Görgeç’s release was filed by his lawyer on 29 September 2016 that clearly explains the confusion, but that request was denied.

23. Alternatively, the source alleges that Mr. Görgeç has been specifically framed and targeted as a means to seize his personal assets and the “guilt by association” is being used as the justification. This is supported by the fact that Mr. Görgeç’s wife has been approached by two different individuals to pay a bribe of 100,000 Turkish liras (roughly US\$34,000) to get her husband out of jail. When she initially expressed hesitation to one of those individuals, she was allegedly told to “hurry up before they start writing wrong testimonies and fill in false testimony reports”. Ultimately, Mr. Görgeç’s family refused to pay any bribes to anyone.

24. Additionally, the source reports that all of Mr. Görgeç’s assets have now been seized in connection with the arrest, even though he has not even been charged, let alone tried or convicted of any crimes. This is alleged to further support the proposition that Mr. Görgeç had been deliberately targeted. Furthermore, after his name was included in news articles connecting him with FETÖ/PDY suspects, the family had reportedly been targeted and harassed by neighbours, by business associates and even by their private bank.

Situation in Silivri Prison

25. After a nine-day detention at Kartal District Police Station, Mr. Görgeç was reportedly transferred to Silivri Penitentiaries Campus (Silivri Prison) on 24 August 2016, where he continued to be held at the time of the submission by the source.

26. The source reports that due to the massive influx of prisoners after the attempted coup in July 2016, Silivri Prison is overcrowded, with inmates having to sleep in shifts and taking turns to breathe fresh air at the windows. There are only small skylights in a common space where prisoners are sometimes allowed; Mr. Görgeç had only been allowed outside in the exercise yard twice. Prisoners are subject to strip searches whenever they enter or exit a cell, and a prison-wide ban on medical treatment has been put into place. Even more concerning are reports of the use of “old methods of torture” by Turkish authorities at Silivri Prison. Because of these poor conditions, one of Mr. Görgeç’s cellmates reportedly committed suicide by hanging himself with a towel.

27. As a result of the prison-wide ban on medical treatment, Mr. Görgeç had reportedly been denied access to nearly all his medications and to medical treatment of any kind. This was especially concerning as Mr. Görgeç suffers from a range of health conditions that make prolonged detention in the current conditions untenable. He has been diagnosed with an aortic aneurysm, early-onset Alzheimer’s disease, early-onset diabetes and chronic Lyme disease. All of these conditions are chronic and serious. Medications that Mr. Görgeç must take regularly in order to support his health include beta blockers (to protect him from cardiac problems), Lyme disease medication, antibiotics, anti-depression medication and a host of vitamin supplements. Additionally, his doctors had emphasized the need for Mr. Görgeç to maintain a special diet, to exercise, and to have regular check-ups and follow-up tests.

28. Furthermore, there were reportedly limits on the visits to Mr. Görgeç. He was completely banned from talking to or seeing his family for the first nine days of detention at the police station. Following his transfer to prison, he was allowed one 45-minute no-contact visit and one 15-minute telephone call per week with family members. All visits and calls were video- and voice-recorded, and monitored by prison officials.

29. According to the source, meetings with his lawyers were similarly restricted, monitored and recorded. As such, it was nearly impossible for them to discuss mistreatment in the prison or any details about Mr. Görgeç’s legal case. Lawyers were subject to full body searches when they visited, and they could not bring any legal documents with them. Furthermore, they could not leave any reading materials or notes with Mr. Görgeç.

Violations of categories I and III

30. The source asserts that the detention of Mr. Görgeç constitutes an arbitrary deprivation of his liberty under categories I and III as set forth by the Working Group on Arbitrary Detention.

No legal basis justifying the detention of Mr. Görgeç

31. The source submits that there is no legal basis justifying Mr. Görgeç’s detention. In the present case, the laws related to terrorism that Mr. Görgeç is suspected to have violated are so vague and overbroad as to raise concerns about any individual prosecuted under them. Additionally, the source asserts that the detention of Mr. Görgeç is arbitrary under category I because there is no evidence that he is a member of any terrorist organization or that he funded terrorist groups or activities. Furthermore, there is no evidence that he violated Turkish laws relating to: laundering of assets acquired from an offence; theft by deception; cheque violations; collection of aid; or tax procedure.

32. The source underlines that international organizations and experts have criticized the antiterrorism laws of Turkey for being overbroad, lacking in specificity and being easily manipulated for political purposes. Since the coup attempt of July 2016, concerns about the misuse of antiterrorism laws as a means to quash all dissent, real or not, have reportedly only intensified. With reference to the widespread condemnation from international experts and organizations, the source notes that antiterrorism laws of Turkey, which include article

314 of the Turkish Penal Code, and the Law on the Prevention of the Financing of Terrorism, are vague, overbroad and consistently applied in ways contrary to international law. Therefore, any detention based on article 314 of the Turkish Penal Code or on the Law on the Prevention of the Financing of Terrorism should categorically raise concerns that Mr. Görgeç's detention is arbitrary.

33. According to the source, the Government of Turkey has failed to explain with any specificity on what basis Mr. Görgeç was arrested and detained. There was no warrant for his arrest on 16 August 2016, and the police only told him that he was part of "a secret investigation" related to FETÖ/PDY. For five days, Mr. Görgeç was detained at the police station without any information about why he had been arrested. The first time that he was told he was a "suspect" for crimes under the Turkish Penal Code and four other laws was during the police interrogation on 21 August 2016. The source asserts that Mr. Görgeç has still not been charged with the commission of any crime.

34. Yet, even if the allegations against Mr. Görgeç were accompanied by "concrete charges", there is still no evidence to support any allegation that he violated Turkish law. In fact, the Turkish authorities have reportedly not provided any evidence that directly links Mr. Görgeç to any illegal activities, and there are no statements of complaint or witness statements against him. All of the evidence referenced by the authorities during Mr. Görgeç's interrogations has been circumstantial, incorrect (such as confusing the names of companies) or completely fabricated.

Violations of the right to a fair trial

35. The source submits that the continued detention of Mr. Görgeç is also arbitrary under category III, due to the fact that the Government of Turkey committed grave violations of numerous procedural requirements under both international and domestic law in his case. The source lists the following actions and/or failures by the Government: (a) arresting Mr. Görgeç without a warrant; (b) failing to provide him with a timely explanation of the reason for his arrest and holding him without charge; (c) failing to provide an independent and impartial tribunal; (d) interference with his right to prepare a defence and to call and examine witnesses; and (e) withholding key evidence from the defence. Furthermore, the Government (a) interfered with his right to the presumption of innocence; (b) substantially interfered with his right to access to counsel; (c) failed to provide equality before the law; and (d) has continuously denied medically appropriate detention conditions for Mr. Görgeç, constituting cruel, inhuman and degrading treatment.

Response from the Government

36. On 12 January 2017, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 13 March 2017, detailed information about the current situation of Mr. Görgeç and any comments on the source's allegations. On 22 March 2017, the Government of Turkey requested an extension of the time limit for its reply. Noting that such request came nine days after the expiry of the original deadline and contained no compelling reasons that would justify granting such an extension, the Working Group declined the request.

37. The Working Group regrets that it did not receive a response from the Government, and nor did the Government request an extension of the time limit for its reply in a timely fashion, as provided for in the Working Group's methods of work.

38. The Working Group notes that it received a response from the Government on 2 May 2017. However, the Working Group cannot accept the reply as if it had been presented within the time limit.

Further information from the source

39. On 24 March 2017, the Working Group received further information from the source that Mr. Görgeç had in fact been released on 26 November 2016 and together with his wife had fled to the United States of America, where he was seeking asylum on the basis of the circumstances described in the paragraphs above.

40. The Working Group notes that, in accordance with paragraph 17 (a) of its methods of work, it “reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned”. In the present case, the Working Group is of the view that the allegations made by the source are extremely serious and it will therefore proceed to deliver the opinion.

Discussion

41. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

42. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

Arrest and subsequent detention of Mr. Görgeç

43. The source has alleged that the arrest and subsequent detention of Mr. Görgeç is arbitrary and falls within category I of the categories applicable for the consideration of cases submitted to the Working Group.

44. The Working Group notes that Mr. Görgeç was arrested on 16 August 2016 without any arrest warrant and he first learned of the accusations against him only on 21 August 2016 when authorities told him of their suspicions, some five days after the arrest. However, he was not formally charged and in fact remained in detention without any formal charges brought against him. The source has submitted that the authorities made suggestions that Mr. Görgeç was suspected of having committed crimes under some seven different laws, but there have been no formal charges brought.

45. The Working Group recalls that article 9 (2) of the Covenant requires that anyone who is arrested is not only promptly informed of the reasons for the arrest but is also promptly informed of any charges against them. The right to be promptly informed of charges concerns notice of criminal charges, and as the Human Rights Committee has noted in its general comment no. 35 (2014) on liberty and security of person, that right “applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment”.¹ In the present case, Mr. Görgeç was in detention from 16 August 2016 until 26 November 2016, when he was suddenly released. He is still to learn formally of any charges against him which legitimized his detention for a period of over three months. However, the authorities have not formally invoked any legal basis justifying his detention. Consequently, the detention of Mr. Görgeç was arbitrary and falls within category I.

46. The source has also alleged that the arrest and subsequent detention of Mr. Görgeç is arbitrary and falls within category III of the categories applicable for the consideration of cases submitted to the Working Group, as his arrest and subsequent detention were carried out in breach of fair trial rights as enshrined in international law.

47. The source has alleged, and the Government has failed to challenge, the following: Mr. Görgeç was arrested without an arrest warrant; at the time of his arrest he was not presented with any reasons for his arrest, and he in fact only found out allegations against him during the interrogation some five days later; following the arrest, he was not permitted to contact his family or lawyer; and when access to his lawyer was granted, it was for extremely short periods of time and was not respectful of lawyer-client confidentiality as meetings were monitored and recorded. Moreover, Mr. Görgeç was initially held in an underground police cell in deplorable conditions and he was severely deprived of sleep. When he was brought before a judge some eight days after the arrest, neither Mr. Görgeç

¹ See para. 29.

nor his lawyer were allowed any meaningful representation; references were made to a secret report, of which they were shown one paragraph. Mr. Görgeç was reportedly forced to sign some testimony, although he could not even read it. He was subsequently detained in the high-security prison in deplorable conditions with very limited family contacts and was denied medication and treatment for a number of very serious health conditions that he suffers from. The access to the lawyer, which was allowed, was restricted, monitored and recorded.

48. These facts, presented by the source and not challenged by the Government of Turkey, reveal the *prima facie* violations of the rights of Mr. Görgeç under article 9 (2) of the Covenant (failure to inform of charges at the time of the arrest); articles 9 (3) and 9 (4) of the Covenant (failure to bring promptly before a judge); article 10 (1) of the Covenant (the right to be treated with humanity and respect during detention); and article 10 (2) (a) (the right of unconvicted persons to be treated in accordance with their status as not convicted).

49. Moreover, the denial of meaningful assistance by a lawyer constituted a violation of article 14 (3) (b) of the Covenant, as well as of principle 17.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court. The failure to allow Mr. Görgeç to notify his family of his whereabouts was a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

50. The Working Group also wishes to recall that according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings before a Court, 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.² This right includes equality of arms,³ which requires that all parties to the proceedings in question be ensured the right to equal access to present their full case and the right to have access to all material related to the detention or presented to the court by State authorities. Providing access to one paragraph of the report which apparently lies at the heart of Mr. Görgeç's arrest and subsequent detention cannot be deemed to be respecting the principle of equality of arms.

51. Moreover, although its mandate does not cover conditions of detention or the treatment of prisoners, the Working Group must consider to what extent detention conditions can negatively affect the ability of detainees to prepare their defence, as well as their chances of a fair trial.⁴ The detention of Mr. Görgeç took place in deplorable conditions, which is especially alarming in view of his status as an unconvicted person. Mr. Görgeç was also denied medication and treatment for the very serious health conditions that he suffers from. These are violations of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular rules 24, 25, 27 and 30.

52. The Working Group is particularly concerned about the allegations of torture and ill-treatment made by the source, which have not been challenged by the Government of Turkey. Sleep deprivation is torture which constitutes a breach of a peremptory norm of international law as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and of rule 1 of the Nelson Mandela Rules. The Working Group will refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

² See A/HRC/30/37, paras. 2 and 3.

³ *Ibid.*, see principle 12.

⁴ See E/CN.4/2004/3/Add.3, para. 33.

53. The Working Group is mindful of the state of emergency in force in Turkey. While the National Security Council of Turkey had already designated FETÖ/PDY as a terrorist organisation in 2015, the fact that this organization is ready to use violence had not become apparent to Turkish society at large until the coup attempt in July 2016. As noted by the Council of Europe Commissioner for Human Rights:

Despite deep suspicions about its motivations and modus operandi from various segments of the Turkish society, the Fethullah Gülen movement appears to have developed over decades and enjoyed, until fairly recently, considerable freedom to establish a pervasive and respectable presence in all sectors of Turkish society, including religious institutions, education, civil society and trade unions, media, finance and business. It is also beyond doubt that many organizations affiliated to this movement, which were closed after 15 July, were open and legally operating until that date. There seems to be general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another.⁵

54. In the light of this, the Council of Europe Commissioner for Human Rights pointed out that there was therefore a need “when criminalizing membership and support of this organization, to distinguish between persons who engaged in illegal activities and those who were sympathizers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence”.⁶

55. The Working Group wishes to reiterate the position of the Council of Europe Commissioner for Human Rights on the “urgency of reverting to ordinary procedures and safeguards, by ending the state of emergency as soon as possible. Until then, the authorities should start rolling back the deviations from such procedures and safeguards as quickly as possible, through a nuanced, sector-by-sector and case-by-case approach”.⁷

56. The Working Group consequently finds that the non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by Turkey, is of such gravity as to give the deprivation of liberty of Mr. Görgeç an arbitrary character (category III).

Arrest and subsequent detention of Mrs. Görgeç

57. The source has also furnished information regarding the arrest and treatment of the wife of Mr. Görgeç, who was arrested together with her husband on 16 August 2016 without an arrest warrant or any other explanation of the reasons for her arrest. Some four days later she was brought before a judge in the middle of the night in the courtroom located in the same police station. She was permitted to meet with her lawyer for five minutes before the start of questioning. She was reportedly also forced to sign a short statement as her testimony; she was not allowed to challenge the statement and was in fact unable even to read it as her glasses had been confiscated. The judge ordered her release in the morning but her passport was seized.

58. The Working Group cannot help but notice the similarities between the treatment of Mr. Görgeç and that of his wife. However, the Working Group was not asked to elaborate on the situation of Mrs. Görgeç, nor was the Government of Turkey invited to respond to any allegations made by the source in connection with Mrs. Görgeç.

59. The Working Group nevertheless notes with concern the apparently widespread practice in Turkey of “guilt by association” and echoes the concerns raised by the Council of Europe Commissioner for Human Rights in that respect, whereby such practices as arresting family members of suspects and seizing their passports appear to have become a common occurrence. The Working Group wishes to express its strongest support for the statement by the Council of Europe Commissioner for Human Rights that “any measure

⁵ “Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey”, CommDH(2016)35, 7 October 2016, p. 4.

⁶ Ibid.

⁷ Ibid., p. 10.

treating family members of a suspect also as potential suspects should not exist in a democratic society, even during a state of emergency”.⁸

60. The Working Group is aware that a large number of individuals have been arrested following the coup attempt in July 2016. With reference to the joint urgent appeal (TUR 7/2016)⁹ of 19 August 2016 by the Working Group and a number of other special procedure mandate holders as well as the press release issued subsequently on that same date, the Working Group urges the Government of Turkey to adhere to its human rights obligations, including the fundamental elements of due process, even under the declared emergency situation. In that respect, the Working Group wishes to reiterate its request for a country visit.

Disposition

61. Although Mr. Görgeç has been released, the Working Group, in accordance with paragraph 17 (a) of its methods of work, reserves the right to render an opinion as to whether or not the deprivation of liberty was arbitrary, notwithstanding the release. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Rebi Metin Görgeç, being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

62. Consequent upon the opinion rendered, the Working Group requests the Government of Turkey to take the steps necessary to remedy the situation of Mr. Görgeç without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

63. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to accord Mr. Görgeç an enforceable right to compensation and other reparations, in accordance with international law.

64. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Follow-up procedure

65. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Mr. Görgeç;
- (b) Whether an investigation has been conducted into the violation of Mr. Görgeç's rights and, if so, the outcome of the investigation;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Turkey with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

66. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

⁸ Ibid., p. 8.

⁹ See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=3314>.

67. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

68. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.¹⁰

[Adopted on 19 April 2017]

¹⁰ See Human Rights Council resolution 33/30, paras. 3 and 7.