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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

#### Opinion No. 38/2017 concerning Kursat Çevik (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 3 February 2017 the Working Group transmitted to the Government of Turkey a communication concerning Kursat Çevik. The Government replied to the communication on 11 April 2017. 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. Kursat Çevik, born in 1978, is a police superintendent (*emniyet amiri*) of Turkish origin. He usually resides in Mardin, Turkey. He is married and the father of two young children.

5. According to the source, Mr. Çevik had booked plane tickets for himself and his two children to fly on the morning of 16 July 2016 from Ankara to Paris, where he was due to spend holidays with his wife and her family. He had spent the week of 9 to 16 July 2016, the days following the end of Ramadan, in a village in the province of Ankara where his parents live. On 15 July 2016, he had reportedly left his service weapon at a safe in a bank in Ankara in order to leave for his holidays the next morning.

6. The source reports that, in the meantime, Mr. Çevik's holiday request was cancelled, so he drove back to Mardin (1,700 km). Mr. Çevik was subsequently suspended from his duties and placed under administrative investigation on 19 July 2016, but without any supporting evidence being presented.

7. According to the source, Mr. Çevik was arrested, together with 15 of his colleagues, on 21 July 2016 by the police on the basis of an arrest warrant. He is allegedly suspected of membership of a terrorist organization (Gülen movement, or Fetullah Gülen Terrorist Organization) and treason.

8. He was reportedly brought to the police general headquarters in Mardin where he remained until 29 July 2016. On that day, he was brought before a judge and placed in detention, together with his 15 colleagues, reportedly without any evidence being presented against him or any grounds for keeping him detained, and transferred to the local prison. Subsequently, in late August 2016, he was transferred to Urfa prison, where he was held at the time of the submission by the source.

9. According to the source, Mr. Çevik was arrested following the attempted military coup that took place in Turkey on 15 July 2016. However, the reason for his arrest is reportedly not linked to suspicions that he might have taken part in the coup, but that he had been classified as an opponent to the Justice and Development Party many months before the coup, like most of his colleagues who were arrested with him in Mardin and elsewhere in Turkey.

10. The source reports that Mr. Çevik was an officer of the intelligence branch of the police from 2000 to 2006 and of the organized and drug trafficking crimes branch from 2007 to 2013, which were regarded as being among those most infiltrated by the Gülen movement. According to the source, they are also the two branches of the police that were most involved in investigating allegations of fraud and corruption against then Prime Minister Erdoğan, his family and his close political allies in December 2013, after which those branches of the police (and other branches of the Turkish State institutions) were supposedly cleared of all suspected Gülen followers.

11. The source also reports that since 2013, Mr. Çevik has suffered intimidation and discrimination in his position. He was reportedly put under administrative investigation several times for dubious reasons, including for not wearing a tie at work; his duties were changed up to seven times in three years; and he was denied promotion. He also applied to the administrative court against most of the decisions taken against him and while not all cases were adjudicated, he won all those that were. For all these reasons, he was allegedly thought to be an opponent of the regime.

12. According to the source, Mr. Çevik was, as were many officers like him, also said to be a Gülen follower because he had worked and lived abroad for several years. That is allegedly based on a stereotype of Gülen followers, who are supposed to be highly educated, hard-working and open to relations with the Western world. Given that Mr. Çevik had worked as a member of the United Nations Police in Liberia for one year from June 2006 to June 2007 and studied for a PhD degree at a British university from 2008-2013, he was reportedly classified as a Gülenist with no further investigation being undertaken. The source notes that this is despite the fact that Mr. Çevik was part of the Turkish police

contingent in Liberia at a time when the Turkish National Police was sending several dozen officers on missions every year, and that he did his PhD on a scholarship from the Turkish National Police.

13. According to the source, it has only been possible to obtain very limited information as to the types of questions that Mr. Çevik was asked during the investigation following his arrest. He was reportedly questioned about the reasons for:

(a) Owning some books, most probably unrelated to the Gülen movement but related to his PhD thesis or his wife's PhD thesis;

(b) Having decided to do a PhD in the United Kingdom of Great Britain and Northern Ireland;

(c) Having decided to work as a United Nations Police Officer;

(d) Having appealed to the administrative courts against the decisions taken against him in the past two and a half years;

(e) Having employed a specific lawyer when dealing with those appeals. The source reports that this lawyer is also said to be accused of being a Gülen follower, has been disbarred and, according to the latest information, disappeared to avoid arrest in the days following the attempted coup.

14. The source emphasizes that the lists of police officers dismissed in the earliest days after the attempted coup have been published in the official gazette. A close study of those lists reveals that all the officers who took part in United Nations missions (mainly in Kosovo but also in Liberia, Timor-Leste, Côte d'Ivoire and the Democratic Republic of the Congo) and/or got a scholarship for a Master's degree or a PhD abroad (mainly to study in the United States of America, but also in the United Kingdom, Germany and Australia) have been dismissed.

15. According to the source, it is quite clear that there were pre-established lists of officers to be dismissed should an occasion occur and the attempted coup allegedly presented the Government with such an occasion.

16. The source reports that the investigation against Mr. Çevik is being held in secret and there is thus no known charge and no evidence to support a charge has been presented. It is believed that the charges are to be membership of a terrorist organization and treason, but Mr. Çevik's lawyer has yet to gain access to his file. There are reportedly no known grounds for his continued detention and his lawyer has appealed against his detention on a monthly basis, to no avail so far. His trial date has reportedly been set for 14 April 2017.

17. According to the source, Mr. Çevik's lawyer also appealed to the Constitutional Court in September 2016, on the basis that some local courts had declared themselves incompetent, but the Constitutional Court has been overwhelmed with over 20,000 similar cases since last summer and has yet to rule on any of them. According to the source, there is, at this point, no recourse to justice in Turkey.

18. Against this background, the source notes that the European Court of Human Rights is also unlikely to provide recourse, because it has ruled on two cases of detention in Turkey since the coup and declared them inadmissible on the basis that recourse to national justice had not been exhausted, even though it was clear that there was no possible recourse to justice in Turkey.

19. On the basis of the foregoing, the source submits that the detention of Mr. Çevik constitutes an arbitrary deprivation of his liberty under international human rights law.

#### *Response from the Government*

20. On 3 February 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 detailed information by 5 April 2017 regarding the situation of Mr. Çevik since his arrest, including any comment on the source's allegations. The Working Group also requested the Government to clarify the facts and legal provisions justifying his deprivation of liberty, as well as its compatibility with the obligations of the

Government under international human rights law, particularly those treaties which Turkey has ratified.

21. On 21 March 2017, the Government sought an extension of the deadline to submit its response. In conformity with paragraph 16 of its methods of work, the Working Group granted an extension of one week for the Government to submit its response by 12 April 2017. The Government submitted its response to the regular communication on 11 April 2017.

### **Background**

22. At the outset, the Government provides an overview of the threats from various terrorist organizations faced by Turkey in recent years and of the legal measures taken in the face of the grave security challenges posed by those terrorist organizations. In that context, the Government submits background information, especially with regard to terrorist organizations, including the Kurdistan Workers' Party (PKK) and the Fetullahist Terrorist Organization/Parallel State Structure (FETÖ/PDY), as well as the measures taken against them and other terrorist organizations. The Government also refers to the attempted coup of 15 July 2016.

23. The Government explains that taking the existing conditions into account and in order to combat the FETÖ/PDY effectively, in line with the recommendation of the National Security Council, by a decision of the Council of Ministers, a nationwide state of emergency was declared from 21 July 2016 for three months, pursuant to article 120 of the Constitution and article 3/1-b of Law No. 2935 on a state of emergency.

24. The Government notes that with a view to ensuring continuity of the effective implementation of measures for the protection of Turkish democracy, the principle of the rule of law and the rights and freedoms of citizens, the Council of Ministers decided to extend the state of emergency for a period of three months from 19 October 2016 and later for another three months from 19 January 2017.

25. In that context, the Government of Turkey resorts to the right of derogation from the obligations in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Covenant. Notification of derogation from those obligations was submitted to the Council of Europe in accordance with article 15 of the European Convention on Human Rights and to the Secretariat of the United Nations in accordance with article 4 of the Covenant.

26. The Government emphasizes that it is fully aware of its obligations under international conventions and is acting in full respect for democracy, human rights and the principle of the rule of law; that due respect is being shown for fundamental rights and freedoms; and that the rule of law is being strictly observed. The principles of "necessity", "proportionality" and "legality" have been sensitively complied with as regards the measures taken under the state of emergency in the aftermath of the attempted coup. The Government also wishes to emphasize that while taking measures under article 15 of the European Convention on Human Rights, States parties naturally continue to be subject to the supervision of the European Court of Human Rights.

27. The Government notes that a decree with the force of law (decree law) is a legal measure permissible in the context of the state of emergency in Turkey. By the decree laws issued within the scope of the state of emergency, measures have been taken in proportion to the current situation facing the administrative authorities, to the extent necessitated by the situation and in pursuit of a legitimate aim, namely national security. Legal remedies are available. The Government further notes that the scope of the decree laws issued in that respect has been limited to terrorist organizations in order not to interfere with the rights and freedoms of others.

28. The Government notes that the general provisions of the Code of Criminal Procedure remain in effect. In that respect, taking into consideration the large number of those involved in the attempted coup and members of terrorist organizations, the maximum duration of police custody has been raised to 30 days by decree law, which will be limited to the duration of the state of emergency. The purpose of this measure is to allow

statements to be taken in a proper manner and to collect evidence for and against the suspects, thus fulfilling the obligation of the State to conduct effective investigations.

29. The Government also reports that persons in custody, their lawyers or legal representatives, spouses or first- or second-degree relatives may appeal against the written order of the public prosecutor, in accordance with article 91 (5) of the Code of Criminal Procedure, before a magistrate entitled to hear criminal cases. The maximum period of detention is limited to offences against State security, constitutional order and national defence, or offences in regard to State secrets, terror or collective offences. The 30-day custody period has never been applied in full and the vast majority of the suspects have remained in custody for four or five days. During the custody period the order of detention can be appealed against and release requested at all stages. The magistrates' office dealing with criminal offences decides upon such appeals. Legal assistance is provided during police custody and health reports are obtained upon entry into and release from custody.

30. Given changing circumstances, the measure of the extended custody period has been reviewed. Under Decree Law No. 684, the maximum duration of police custody has been reduced to seven days. It can be extended for another seven days only by a decision of the public prosecutor, taking into account difficulties in collecting evidence or a large number of suspects. Furthermore, the provision enabling public prosecutors to impose postponements of up to five days on meetings between detainees and their lawyers has been abolished.

#### **Circumstances of the case**

31. As for Mr. Çevik, before he was taken into custody on 21 July 2016, various materials were seized after a search conducted at his home. Among them was a DataTraveler USB drive containing video files of Fetullah Gülen, leader of the FETÖ/PDY. While serving at police headquarters in Mardin Province, he reportedly systematically filed cases against the administration. In those cases, his lawyer was an individual who was also providing legal counsel to FETÖ/PDY members in Mardin Province. The Government reports that the lawyer has escaped and has not yet been apprehended.

32. According to the Government, Mr. Çevik was also subject to a pending disciplinary proceeding, numbered 03.703.16, on the grounds of "treating his superiors and subordinates as inferior through verbal and written statements or attitudes" which provided for 12 months' suspension from duties in line with article 7/A-2 of the national police disciplinary regulation.

33. While Mr. Çevik was subject to another disciplinary proceeding on the grounds of "looseness and negligence in the assessment and implementation of duties" in accordance with article 13 of the national police disciplinary regulation, which provided for 24 months' suspension from his duties, the relevant file was transferred to the Supreme Disciplinary Board of the National Police owing to the statute of limitations and the file is before the Board for processing. Finally, by Decree Law No. 670, dated 17 August 2016, Mr. Çevik was dismissed from the National Police.

34. The Government emphasizes that an investigation into Mr. Çevik was initiated by the Chief Public Prosecutor's Office in Mardin for the offence of being a member of an armed terrorist organization, in line with article 314 of the Criminal Code of Turkey. He was taken into custody by the Chief Public Prosecutor's Office on 21 July 2016. During the custody period, he was reminded of the offence of which he was suspected and the rights he could enjoy pursuant to the legislation in force. Furthermore, he also enjoyed the right to inform his relatives that he had been taken into custody and met his lawyer four times during the custody period.

35. On 21 July 2016, the Chief Public Prosecutor's Office in Mardin requested that a decision of restriction be given regarding the file, in accordance with article 153 of the Code of Criminal Procedure. By its decision of the same date, the magistrates' office dealing with criminal offences in Mardin, considering the fact that the offences in question were related to an attempt to abolish the constitutional order and being a member of an armed terrorist organization, restricted the authority of defence counsel to examine the

content of the files and take samples from those files, other than the exceptions provided for in article 153/2 of the Code of Criminal Procedure.

36. The indictment regarding Mr. Çevik was accepted by the second assize court in Mardin on 1 February 2017. The decision of restriction given during the investigation was reportedly abolished.

#### **Detention process**

37. On 27 July 2016, Mr. Çevik gave a statement in the presence of his lawyer at the Mardin police department. In his statement, he did not admit the accusations against him. The following day, he also gave a statement before the Public Prosecutor, accompanied by his defence counsel. In his statement before the Public Prosecutor, he again refuted the accusations levelled against him, claiming that he was not in contact with the terrorist organization FETÖ/PDY. Mr. Çevik was detained on 28 July 2016 by the magistrates' office dealing with criminal offences in Mardin for being a member of an armed terrorist organization. The reasons given for his detention were the existence of concrete evidence indicating a strong suspicion that the suspect had committed the crime of being a member of a terrorist organization, the status of existing evidence and the strong suspicion that he might escape.

38. According to the Government, Mr. Çevik's detention status was reviewed by the magistrates' office in Mardin on 26 August 2016, 23 September 2016, 21 October 2016, 21 December 2016 and 19 January 2017 and his continuing detention decided, as the information and documents in the case file indicated a strong suspicion of guilt and on the grounds that there was a suspicion that he might escape, considering the nature of the criminal charge, and the lower and upper limits of the punishment stipulated by the law for the crime.

39. An investigation into Mr. Çevik was subsequently initiated by the Public Prosecutor's Office in Mardin (indictment No. 2016/4439) and an action brought on 30 January 2017 before the second assize court in Mardin (file No. 2017/163). The indictment stated that Mr. Çevik had committed the crime of being a member of an armed terrorist organization, as stipulated in article 314/2 of the Criminal Code. In the indictment, detailed information was given regarding the terrorist nature of FETÖ/PDY.

40. In that context, the Government refers to the findings in the indictment filed against Mr. Çevik. The indictment stated that he had used a communication programme called "Bylock". As specified in various court decisions, it is common knowledge that this programme is an encrypted communication programme used for communication and organizational contact among the members of the FETÖ/PDY terrorist organization.

41. The Government also emphasizes that according to the findings in the indictment, Mr. Çevik's original lawyer acted as the joint lawyer for FETÖ/PDY members in applications filed against the administration in order to obstruct its functioning. Mr. Çevik went to the United Kingdom to study for a doctorate within the scope of the State-sponsored "training abroad" programme, which had reportedly been monopolized by FETÖ/PDY members.

42. The Government notes that according to judgments by the European Court of Human Rights, the existence of reasonable suspicion or plausible reasons that the person(s) concerned have committed the offence in question is a necessary condition for deprivation of liberty. That is a *sine qua non* requirement for the imposition of pretrial detention, such reasonable suspicion must be present at every stage of detention and the suspect must be released upon dissipation of that reasonable suspicion.

43. In the present instance, a criminal case was filed against Mr. Çevik. In other words, it was accepted that there was sufficient suspicion concerning the offence, beyond the reasonable suspicion required for custody. Furthermore, considering that he had used the application of a terrorist organization as a means of confidential communication and had been suspended from his job as a result of an administrative investigation, it should be accepted that it was not reasonable to deviate from the conclusions reached by the national judicial authorities.

44. The Government notes that it was alleged by the source that the investigation was conducted confidentially and did not include any charges. With regard to the file, the magistrates' court in Mardin issued a decision of restriction in accordance with article 153 of the Code of Criminal Procedure, which determines under what circumstances and in relation to which offences the defence lawyer's authority to investigate the file may be restricted, including if this is likely to jeopardize the aim of the ongoing investigation. In that regard, the Government considers that the case law of the European Court of Human Rights (including its judgment in the case of *Ceviz v. Turkey* No. 8140/08, 17 July 2012, para. 43,) can shed light on the subject, as the European Convention on Human Rights has similar regulations.

45. In accordance with the provision in the Criminal Code on offences against constitutional order and article 314 of the Code, an investigation into Mr. Çevik was undertaken for the offence of membership in a terrorist organization. For that reason, the Government asserts that there is no violation in the decision of the magistrates' office in Mardin. However, access to a number of documents was excluded from this restriction, as outlined in the above-mentioned article of the law. One of the documents excluded from the restriction was the record of statements made by Mr. Çevik himself. In that regard, he was reportedly informed of the charges against him through the questions addressed to him during interrogation by the police, the prosecutor's office and the court when he was taken into custody.

46. Evaluating the case in the light of the judgments of the European Court of Human Rights, it is considered that Mr. Çevik had already been informed of the accusations against him when his statement was being taken and he had the right to object to his detention. Moreover, the restriction was lifted with the acceptance of the indictment by the second assize court in Mardin, in accordance with article 153/4 of the Code of Criminal Procedure.

47. During the investigation into Mr. Çevik, a number of items of evidence were obtained and the indictment with the evidence and the accusations was presented to the second assize court. It is therefore understood that there is no violation in the decision of restriction taken in the investigation and the allegation of an arbitrary investigation conducted into Mr. Çevik without evidence is ill-founded.

48. Furthermore, regarding the allegations that the arrest of Mr. Çevik and the ongoing process are illegal or arbitrary, the Government notes that neither Mr. Çevik nor his lawyer have objected to the decisions of arrest, detention or extension of the detention period, in accordance with article 91 (5) of the Code of Criminal Procedure. The Government further notes that in domestic law, there is an opportunity for complaints of arbitrary custody or detention to be assessed by the courts of first instance, in accordance with article 141 of the Code of Criminal Procedure entitled "claim for compensation". However, Mr. Çevik did not file any actions before the domestic courts in accordance with article 141 and subsequent articles of the Code of Criminal Procedure.

49. The Government notes that the European Court of Human Rights, in its judgment of 13 September 2016 in the case of *A.Ş v. Turkey* (No. 58271/10) approved the objection of the Government in regard to inadmissibility that the applicant who had submitted complaints regarding his prolonged detention should have primarily filed an action for compensation in accordance with article 141 of the Code of Criminal Procedure. In many recent judgments, including in those where there have been claims of violations of rights and freedoms on account of the legal procedures following the attempted coup of 15 July 2016, the European Court has noted that an individual application to the Constitutional Court is an effective remedy that should be exhausted before the case can be brought to it (see *Mercan v. Turkey*, No. 56511/2016, 8 November 2016; *Bıdık v. Turkey*, No. 45222/15, 22 November 2016; *Zihni v. Turkey*, No. 59061/2016, 29 November 2016).

50. To that end, the Government emphasizes that in the present case, Mr. Çevik has not lodged an individual application with the Constitutional Court on all allegations and complaints, including allegations of unjustified arrest and detention.

51. According to the Government, Mr. Çevik remained in police custody for eight days between 21 and 28 July 2016. Therefore, although the period of detention allowed under the decree law was up to 30 days, a shorter period of detention was applied by taking into

account the specific circumstances of the situation. However, although he had the right to appeal against his detention, he did not do so. Given the nature and complexity of the charges, it is considered that the period of detention was proportionate and in conformity with the provisions of international conventions.

52. The Government reports that Mr. Çevik was informed of the charges against him. He gave his statement in the presence of a lawyer, so the right to defence and the assistance of a lawyer during custody was respected. In that context, all arrest, custody and detention decisions against him were given by independent judges and they were given with reasons. In other words, those decisions were not arbitrary and did not contain an obvious mistake of discretion. In addition, Mr. Çevik had the right to appeal against those decisions.

53. The Government further reiterates that Mr. Çevik has made no application at the national level in relation to the complaints made to the Working Group. In other words, those complaints were made directly to the Working Group for the first time without having been submitted at the national level. The Government also wishes to emphasize that Mr. Çevik did not make any individual application to the Constitutional Court in respect of all the complaints submitted to the Working Group.

54. The Government therefore considers that the complaints, which have not been submitted at the national level and have been reported directly to the Working Group for the first time, should be rejected in accordance with article 41, paragraph 1 (c), of the Covenant because of non-exhaustion of domestic remedies in the light of the principle of the subsidiarity of the Covenant. Regarding the merits of the claims, the Government considers that there is no violation of the Covenant.

*Further information from the source*

55. On 13 April 2017, the response from the Government was sent to the source for further comment. The source responded on 20 April 2017.

56. The source maintains that the arrest and continued detention of Mr. Çevik are politically motivated and that they reflect a decision taken to remove from public service positions, and in particular from the National Police, people who are believed not to be supporters of the political party currently in power.

57. According to the source, the Government has not presented or discussed any specific evidence that Mr. Çevik has been a member of any organization or any evidence that he participated in the failed coup. It should be noted that he has never at any point been accused of participating in the coup. That fact alone should lead to the purpose of his prolonged detention being questioned. The source further notes that the allegations put forward against Mr. Çevik are unsubstantiated and at best circumstantial.

58. According to the Government, a DataTraveler USB drive containing videos of Fethullah Gülen was found during a search of his house. However, the source reports that this element does not appear in the indictment against Mr. Çevik and it was not presented as evidence at his trial when it opened on 14 April 2017.

59. With regard to the allegation that Mr. Çevik was a user of encrypted messaging software, the source reports that he has consistently denied the allegation, as he denied it orally when questioned on the first day of his trial on 14 April. The source notes that publicly available knowledge of the use and access to that software is that it has been unavailable for download on the Apple platform since July 2014. Mr. Çevik purchased his phone in the summer of 2015, so it would have been impossible for him to download it. The source notes with concern that his trial has been postponed until 4 July 2017 as the judge is believed to be awaiting further evidence that Mr. Çevik and his co-accused have used the software. In this respect, the source is concerned that such evidence may be fabricated.

60. The Government has mentioned that Mr. Çevik hired a lawyer to represent him who is believed to have represented Gülenists in other matters before the attempted coup. However, the source submits that Mr. Çevik is a separate legal person from the lawyer and from the other alleged clients of that lawyer. Presenting this as an accusation is as if to say that one should not hire a lawyer because they have represented criminals before, even



though that is the basis of the legal profession. The source submits that whatever allegations exist against the lawyer should have no bearing on the legal proceedings against Mr. Çevik.

61. According to the Government, Mr. Çevik was being considered for disciplinary measures by his employer at the time of his arrest. The source reiterates its submission that Mr. Çevik had been harassed at work ever since the corruption scandal that hit the family and friends of then Prime Minister Erdoğan in December 2013. Moreover, Mr. Çevik was suspended from duty and placed under investigation on 18 July 2017, three days after the failed coup and two days before his arrest. The source notes that something similar happened to several thousand other police officers and over 100,000 civil servants in a matter of days after the failed coup. The source claims that the elliptic way in which the Government presents these disciplinary actions in its response distorts the fact that no sanction had been pronounced and does not explain when, how or why an investigation had been initiated, which discredits the seriousness of the allegations. Finally, the source submits that issues of disciplinary proceedings in which no criminal issues have been raised should not have a bearing on a completely distinct allegation of a criminal nature.

62. The Government has indicated that Mr. Çevik attended a British university on a government scholarship at a time when the entity running the scholarship programme was infiltrated by Gülenists. The source emphasizes that this scholarship programme ran successfully within the Turkish National Police long before and long after Mr. Çevik won his scholarship. Should the Government have any suspicion that it is infiltrated by an outside organization, it could have addressed the matter directly with the persons running the programme and not retroactively accused a person benefiting from a scholarship. Moreover, the source underlines that Mr. Çevik was awarded a PhD in 2013 and the distinction was formally recognized by the Turkish National Police in 2014.

63. Finally, the source refers to the allegation by the Government that Mr. Çevik has yet to appeal to the Constitutional Court against his arrest and detention and that he has not yet exhausted national remedies. The source notes that this argument is inconsistent, considering that the Working Group does not require domestic remedies to be exhausted in order for a communication to be declared admissible. In addition, the source emphasizes that this element must be considered in the context of fear in which the justice system now operates in Turkey, particularly when bar associations have actively discouraged their members from representing political detainees, such as Mr. Çevik, and where lawyers who do accept such cases restrict their actions to the minimum possible.

64. In the present case, Mr. Çevik's lawyer has, until today, maintained that he has appealed to the domestic courts and to the Constitutional Court. According to the source, he has requested and received payment for making such applications to the relevant courts. The source notes that if the allegations of the Government that such proceedings have not been initiated are true, it is highly probable that the lawyer fears for his safety if he files such applications. That is an extra element to be taken into consideration in the evaluation of whether or not Mr. Çevik can be tried in conditions that guarantee a fair trial.

65. The source reports that the proceedings opened at the assize court in Mardin on 14 April 2017, but Mr. Çevik and his co-accused were not present in court but appeared on a videoconference link. This means that lawyers representing the accused had no access to them as they were not in the courtroom. Considering the limits that have been placed on the work of lawyers, including the suppression of the confidentiality of exchanges between lawyers and their clients, according to the source it is unlikely that a fair trial can be guaranteed. Since his initial appearance before a judge on 30 July 2016, Mr. Çevik has reportedly not left his place of detention and has not been brought before a judge; any review of his detention by a judge in the Mardin jurisdiction has been made on the basis of a file rather than as the result of a hearing.

66. The source reports that in February 2017, Mr. Çevik broke his ankle but has received minimal treatment for his injury: an X-ray of his ankle revealed the fracture but the physician who examined him offered no treatment. As of 7 April 2017, there were 24 detainees in a cell for 10 persons in the prison in Urfa where he is being held.

## Discussion

### *Preliminary issues*

67. The Working Group thanks the source and the Government for their comprehensive replies and submissions which have raised relevant issues in the case. That has allowed the Working Group to consider the case with a full understanding of the matter in dispute between the parties. The Working Group would like to stress that the procedural rules to handle communications from sources and responses of Governments are contained in its methods of work (A/HRC/33/66) and in no other international instrument that the parties might consider applicable. In that regard, the Working Group would like to clarify that in its methods of work there is no rule applicable that impedes the consideration of communications due to the lack of exhaustion of domestic remedies in the country concerned. Sources have no obligation therefore to exhaust domestic remedies before sending a communication to the Working Group.<sup>1</sup>

68. Furthermore, the Working Group would like to emphasize that in the discharge of its mandate, it refers to the relevant international standards set forth in the Universal Declaration on Human Rights and to the relevant instruments ratified by the State concerned, including the Covenant.

69. With respect to the request of the Government of Turkey to the Working Group not to address the present case for the sole reason that it has some links to the law on the state of emergency in Turkey adopted in 2016, the Working Group would like to stress that in conformity with its methods of work, there is no rule that impedes the treatment of any communication related to an arbitrary detention submitted by a source when a state of emergency has been declared. The Working Group considers that on some occasions, owing to the security concerns of a given country and to the judicial system being overwhelmed through the receipt of large amounts of cases derived from such an emergency situation, the communications procedure of the Working Group is one of the few international mechanisms of redress for people who are held under any form of arbitrary deprivation of liberty. In that respect, the Working Group wishes to emphasize that it has a universal mandate to promote and protect the right of every individual not to be arbitrarily detained.

70. Furthermore, the Working Group would like to remind the Government of Turkey that in accordance with the international law applicable to situations of emergency, the domestic legislative framework should not allow for any restriction on the safeguards of persons deprived of their liberty concerning the right to bring proceedings before a court,<sup>2</sup> including the right to be informed of the reasons for arrest, the right to be informed of the legal basis and of the judicial order for detention and the right to legal counsel. In addition, persons deprived of their liberty must have sufficient time to prepare their defence.

### *Facts*

71. The Working Group notes that in the present case, Mr. Çevik had booked plane tickets for himself and his two children to fly on the morning of 16 July 2016 from Ankara to Paris, where he was due to spend holidays with his wife and her family. Before his departure, Mr. Çevik's holiday request was reportedly cancelled, so he drove back to Mardin (1,700 km). He was subsequently suspended from duty and placed under administrative investigation on 19 July 2016.

72. Mr. Çevik was arrested, together with 15 of his colleagues, on 21 July 2016 by the police. He is allegedly suspected of membership of a terrorist organization (FETÖ/PDY). The Working Group also notes that Mr. Çevik hired a lawyer to represent him, who was reportedly also classified as a member of the same alleged criminal organization.

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<sup>1</sup> See, for example, opinions No. 19/2013 and No. 11/2000.

<sup>2</sup> See 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, principles 4 and 16 and guidelines 3 and 17.

*Category I*

73. Mr. Çevik was detained for eight days in police custody at the police general headquarters in Mardin where he remained until 29 July 2016. In late August 2016, he was subsequently transferred to Urfa prison where he is currently being held. The Working Group is aware that the indictment against Mr. Çevik was only presented to the court on 30 January 2017, namely six months after his arrest.

74. The Working Group recalls that under international law, including article 9 (2) of the Covenant, anyone who is arrested shall be informed of the reasons for arrest and promptly informed of any charges against him or her. The right to be promptly informed of charges concerns notice of criminal charges in ordinary criminal prosecutions.<sup>3</sup> In the present case, Mr. Çevik was kept in detention for over six months without any formal charges.

75. The Working Group has not received convincing information that Mr. Çevik was in fact informed of the charges against him after his arrest, nor was he informed promptly after the judicial order that justified his detention was issued. The argument by the Government that Mr. Çevik was “reminded of the suspected offence” has not persuaded the Working Group that the right to be informed of the legal reasons for his detention or the criminal charges levelled against him have been respected.

76. In view of the fact that the authorities failed to formally invoke any legal basis justifying the detention of Mr. Çevik, the Working Group considers that his detention is arbitrary, falling within category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

*Category III*

77. The Working Group notes that the Mr. Çevik’s legal counsel has not been able to contact his client frequently and in private and that the investigation against him is being carried out under certain limitations in terms of access to the file by his legal counsel.

78. The Working Group is also aware that Mr. Çevik only met four times with his lawyers during the nine months of his deprivation of liberty and that both he and the lawyer have had limited access to the case files to obtain samples from it, in accordance with the rules of procedure applicable in Turkey. The Working Group further notes with concern that a lawyer hired by Mr. Çevik was accused of being a Gülen follower and disbarred.

79. The Working Group is not convinced that the restriction on the disclosure of information to Mr. Çevik in order to prepare his legal defence was proportionate, or that the non-disclosure of the file to the lawyer and Mr. Çevik protected the legitimate aim of national security.<sup>4</sup>

80. In view of the foregoing, the Working Group is convinced that the right of Mr. Çevik to have effective legal representation, adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing has not been respected by the Government of Turkey, in violation of article 14 (3) (b) of the Covenant and principle 17.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

81. The Working Group further recalls that according to 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, legal counsel shall be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment. The Working Group will refer the present case to the Special Rapporteur on the independence of judges and lawyers for further consideration.

<sup>3</sup> See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 29.

<sup>4</sup> See United Nations Basic Principles and Guidelines, guideline 13.

82. The Working Group notes that Mr. Çevik reportedly appealed to the Constitutional Court in September 2016 and that the Court has not yet ruled on the case. The Working Group considers that such a delay in addressing the matter by the State violates the relevant rules of international law, in particular the right to bring proceedings before a court without delay to challenge the lawfulness of the deprivation of liberty (article 9 (4) of the Covenant). In addition, the Working Group would like to recall that no substantial waiting period, de jure or de facto, shall exist before a detainee can bring a first challenge to the arbitrariness and lawfulness of the detention.<sup>5</sup>

83. Furthermore, the Working Group wishes to recall that 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.<sup>6</sup> That right, which constitutes a peremptory norm of international law, applies to all forms of deprivation of liberty, to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention and detention under counter-terrorism measures.<sup>7</sup> Moreover, it also applies irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.<sup>8</sup>

84. The Working Group is mindful of the state of emergency declared in Turkey. While the National Security Council of Turkey designated FETÖ/PDY as a terrorist organization in 2015, the fact that this organization was ready to use violence had not become apparent to Turkish society at large until the attempted coup 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 organisations 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.”<sup>9</sup>

85. In the light of this, the Commissioner pointed out that there was therefore a need “when criminalising membership and support of this organisation, to distinguish between persons who engaged in illegal activities and those who were sympathisers or supporters of, or members of legally established entities affiliated with the movement, without being aware of its readiness to engage in violence.”<sup>10</sup>

86. The Working Group wishes to reiterate the position of the 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”.<sup>11</sup>

87. 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 ratified by Turkey, is of such gravity as

<sup>5</sup> Ibid., principle 7.

<sup>6</sup> Ibid., paras. 2 and 3.

<sup>7</sup> Ibid., para. 11 and guideline 1, para 47 (a).

<sup>8</sup> Ibid., para 47 (b).

<sup>9</sup> See Council of Europe Commissioner for Human Rights, “Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey” (7 October 2016), para. 20.

<sup>10</sup> Ibid., para. 21.

<sup>11</sup> Ibid., para. 50.

to give the deprivation of liberty of Mr. Çevik an arbitrary character and falls within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

88. The Working Group is aware that a large number of individuals were arrested following the attempted coup in July 2016. With reference to the joint urgent appeal of 19 August 2016 by the Working Group and a number of other special procedure mandate holders and the subsequent press release issued on the same date,<sup>12</sup> 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 state of emergency. In this respect, the Working Group wishes to reiterate its request for a country visit.

### **Disposition**

89. In the light of the foregoing, the Working Group renders the following opinion:

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

90. The Working Group requests the Government of Turkey to take the steps necessary to remedy the situation of Kursat Çevik 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.

91. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Kursat Çevik immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

92. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

### **Follow-up procedure**

93. 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 Mr. Çevik has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Çevik;
- (c) Whether an investigation has been conducted into the violation of Mr. Çevik's rights and, if so, the outcome of the investigation;
- (d) 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;
- (e) Whether any other action has been taken to implement the present opinion.

94. 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.

95. 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

<sup>12</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394&LangID=E).

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.

96. 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.<sup>13</sup>

[Adopted on 28 April 2017]

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<sup>13</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.