



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

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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the communication and letter sent by Mr. Setondji Roland Adjovi, Chair-Rapporteur of the Working Group on Arbitrary Detention, dated 12 January 2017 (Reference: 2017/TUR/Case), has the honour to enclose herewith an information note comprising the response of the Government of the Republic of Turkey.

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



Encl: As stated

Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10

INFORMATION NOTE IN REPLY TO THE LETTER OF THE WORKING GROUP ON ARBITRARY DETENTION DATED 12 JANUARY 2017

(Reference: 2017/TUR/Case)

1. With reference to the letter of the Working Group on Arbitrary Detention dated 12 January 2017 which transmitted claims on Rebi Metin Görgeç and Dilek Görgeç, the Government would like to submit its observations in the foregoing paragraphs.
2. At the outset, the Government wishes to provide an overview of the terrorism threat faced by Turkey, the coup attempt of 15 July and the measures taken. In this context, the Government would like to submit background information especially with regard to Fetullahist Terrorist Organization/Parallel State Structure ("FETÖ/PDY") as well as the measures taken against it along with other terrorist organizations.

A. THE COUP ATTEMPT OF 15 JULY, THE STRUCTURE AND FUNCTIONING OF THE TERRORIST ORGANIZATION FETÖ/PDY

3. FETÖ/PDY is an armed terrorist organization established by Fetullah Gülen which aims to suppress, debilitate and direct all the Constitutional institutions, to overthrow the elected President and Government of the Republic of Turkey and by dismantling the constitutional order to establish an oppressive and totalitarian system through resorting to force, violence, threat, blackmailing and other unlawful means. On the night of 15 July, upon the instruction of the founder and leader of the FETÖ/PDY, Fetullah Gülen, and in line with the plan approved by him, "a group of terrorists in uniforms" within the Turkish Armed Forces attempted an armed terrorist coup against the Turkish democracy for the purpose of overthrowing the elected president, Parliament and Government together with the Constitutional order. The Presidential Compound, the hotel where Mr. President was staying at, the Grand National Assembly of Turkey ("GNAT"), the Police Special Operations Centre and the security units, the premises of the National Intelligence Organization and various military units were attacked with bombs and arms.
4. The Turkish Parliament building, reflecting the public's will and the heart of the democracy, was bombed for the first time in the history of the Republic of Turkey. Fighter jets (F-16) carried out bomb attacks in the course of the extraordinary meeting of the Plenary Session against the coup attempt. During the attack, Parliament officials, some civilians and many police officers were injured, and extensive damage was inflicted to the Parliament building.
5. On the night of 15 July, tanks ran over the civilians who took the streets to defend their democracy with bare hands, some of whom were killed and injured as a result of being trapped under the tanks. Fighter jets made low altitude flights over the cities by breaking through the sound barrier and in a manner which would lead to fear and panic in the public. The GNAT and people were shot randomly by the coup plotters, snipers directly targeted people from strategic points, the crowds were bombed and shot from fighter jets and helicopters. In brief, the civilians, who defended the democratic regime at the cost of their lives, were massacred by coup plotters. In the course of the coup attempt, 249 persons were killed and 2194 were injured.

6. The terrorists seized the state-run television ("TRT"). Raids were made to the headquarters of private TV organizations, and the printed media. The coup plotters also attacked the satellite control stations and wanted to cut off internet and all television broadcastings, except for the state-run TV channel which was captured by plotters.
7. The democratic resolve of Turkish people has saved the democratic order against this terrorist campaign. The Turkish people from all walks of life and regardless of their political affiliations united on the streets on the night of 15th July. Putting all the political and ideological differences aside, they peacefully gathered and jointly defended common democratic values and bravely stood against tanks, helicopters and fighter jets with only national flags in their hands in an exemplary unity for the democracy.
8. At that night, the Turkish nation came together under the democratic values irrespective of their political views and stances and resisted the coup attempt altogether. In all public squares in Turkey, the people were on democracy vigil for approximately one month. With this stand, the Turkish nation has declared its loyalty to the democratic institutions and the rule of law. On 16th July 2016, all political parties represented at the Parliament signed a joint statement against the coup attempt. Representatives of the media, academia, business circles and all other segments of Turkish society uniformly condemned the coup attempt.
9. The fact that the FETÖ/PDY is an armed terrorist organization had been established with the decision rendered by the Erzincan Assize Court prior to 15 July. Furthermore, numerous cases brought against the organization in question and its members are still pending. By the decision of the National Security Council ("NSC"), the FETÖ/PDY has been included in the list of terrorist organizations; and this decision was presented to the public and appeared in various media bodies. Moreover, all the public institutions along with the public have been informed of this issue as the Recommendations of the NSC have been submitted to the Council of Ministers.
10. Before the terrorist coup attempt, a parallel structure was established by the FETÖ/PDY within all public institutions and organizations of the State, notably the judiciary, security directorates, civil administration and armed forces. To attain its goals, the FETÖ/PDY used different methods; such as, unlawfully obtaining the questions of important official exams (the Public Personnel Selection Exam and the University Student Placement Exam etc.) and making its members pass in these exams by way of cheating ; placing its members in public institutions and also in prominent schools and universities abroad, dismissing the non-members by fabricating false documents and evidence to initiate judicial and administrative investigations against them; replacing its members to these cadres.
11. They formed structures in the public institutions by creating cells. The FETÖ/PDY established the intra-organizational communication among its members through confidential and encrypted means. Investigations revealed that an encrypted smart phone application "By lock" was used for the intra-organizational communication.
12. As to the financial structure and operation of the FETÖ/PDY, through its "imams", the terrorist organization has imposed a community tax under the name "himmet" on all

its members and a significant section of the society. Members of the FETÖ/PDY are under the obligation to pay "himmət" continuously, widely and systematically. In fact, "himmət" is an imitation of the tithe, which is basically the contribution of one tenth of a member's income for the clergy. Terrorist leader Gülen and his organization have collected money for the financing of the organization under the name "himmət", which is combined by Islamic practices such as zakat.

13. FETÖ/PDY has begun its activities in the education sector and focused on press and media, health and finance sectors along with it. These sectors do not require large capital, allow to make easy profit, have much influence on the public and enable hiding and transferring funds easily when needed. They preferred the "service sector", which is more suitable for exploiting people, evading taxes, taking in black money and avoiding its detection, which provides less employment and which does not require large amounts of capital. Moreover, the organization has attached importance to domestic purchases and sales rather than foreign trade and has subsequently established the Asya Katılım Bankası ("Bank Asya") in order to finance its members' investments in the education, media, trade, health, transportation, textile and food sectors.
14. On Fethullah Gülen's orders, the organization established the Confederation of Turkish Industrialists and Businessmen ("TUSKON") in 2005 to unite its member businesspersons and rise as a separate force. TUSKON used to operate along with seven federations and 211 affiliated associations. The number of businessperson and investor members was around 55,000 in 2014. Among these members were corporations with enormous turnovers such as Boydak and Koza-İpek holdings, as well as small workplaces in districts such as hardware stores and pharmacies.
15. FETÖ/PDY took a number of measures in respect of the legal persons under its management. The person who actually managed a member company was not the person who was shown under the trade register. Companies were not run by whoever was legally competent but by those empowered by the organization. For example, although A.B. was shown as the official manager of Bank Asya, the bank was actually managed by A.Ç., under the instructions of terrorist leader Gülen.
16. The terrorist coup attempt of 15 July was carried out by the FETÖ/PDY and the evidence obtained so far explicitly reveals that the coup attempt had been made with Fetullah Gülen's orders and instructions. In the aftermath of the coup attempt, there are ongoing investigations and pending trials against the members of the FETÖ/PDY in particular according to Articles 312 (attempt to overthrow the Government of Republic of Turkey by way of coercion and violation) and 314 (being member of the armed terrorist organization) of the Turkish Criminal Code ("TCC") and also other unlawful actions within the context of the TCC.
17. The Government would like to emphasize that the terrorist coup plotters attempted to overthrow the democratic constitutional order and thus threatened rights and fundamental freedoms of people. Therefore, the Turkish state has assumed its legitimate right and the duty to take all the necessary measures to completely eliminate this severe threat and danger posed against the survival of the nation and the state in accordance with its constitution and legislation, as permitted by international norms and obligations.

B. DECLARATIONS OF STATE OF EMERGENCY AND DEROGATION

18. Following the attempted coup of July 15, in order to restore public order, to reinstate democratic institutions and to eliminate promptly the threat faced with and to fight effectively against the FETÖ/PDY in line with the recommendation of the NSC and in conformity with the Constitutional and legal framework, a State of Emergency has been declared throughout the country for 90 days by the Decree Law of the Council of Ministers dated 20 July 2016, as from 01.00 a.m. on 21 July 2016 under Article 120 of the Constitution and Article 3 § 1 (b) of the Law no. 2935 on State of Emergency and this decision was upheld by the decision of the General Assembly of the GNAT dated 21 July 2016 and numbered 1116.
19. Over the years, FETÖ/PDY members have infiltrated state institutions and spread into educational, health and media sectors and academic institutions. Thus, 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, as well as the rights and freedoms of the citizens, extension of the emergency rule has become an exigency. Consequently, the Council of Ministers decided to extend the State of Emergency for a period of 90 days as from 19 October 2016, later for another 90 days as from 19 January 2017 and lastly for another 90 days as from 19 April 2017.
20. Following the declaration of State of Emergency, Turkey resorted to the right of derogation from the obligations in the European Convention on Human Rights ("ECHR") and International Covenant on Civil and Political Rights ("ICCPR"). Notifications of derogation from Convention obligations were submitted to the Council of Europe in accordance with Article 15 of the ECHR and to the Secretariat of the United Nations in accordance with Article 4 of the ICCPR, concerning the rights permitted by the Conventions.
21. In line with Article 4 of the ICCPR, the Decree-Laws are issued and measures are taken to the extent strictly required by the exigencies of the situation and proportionate to the current crisis faced. All measures were needed to be taken to eliminate the influence of terrorist organizations within the State.
22. Unlike other terrorist organizations such as PKK or DAESH, FETÖ/PDY is an atypical armed terrorist organization. In this perspective, the required measures are taken with a view to averting the organization's strength within the state. The scope of the Decree Laws issued in this respect has been limited to the terrorist organizations in order not to interfere with the rights and freedoms of others.
23. The measures taken under the emergency rule have not made any changes in daily life. No restrictions have been brought to the exercise of fundamental rights and freedoms so as to affect the daily lives of the people. The measures taken remained limited to issues made necessary by the State of Emergency. The decision to declare a State of Emergency was not taken to restrict individual rights and freedoms but rather to allow a prompt response by the State in its fight against terrorist organizations, against

FETO/PDY in particular. With a view to protecting democracy and the will of the people, it is a natural right by the State to use this legal power.

B.1. Constitutional and Legal Framework for State of Emergency and Derogation

24. Emergency rule procedures have been laid down in Articles 119 to 122 of the Constitution. Moreover in Article 15, it has been stated that “the exercise of fundamental rights and freedoms may be partially or entirely derogated [...] to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.”
25. In addition to Constitutional provisions, the legal framework governing State of Emergency has been circumscribed by the Law on State of Emergency (no. 2935). Moreover, under emergency rule, the Council of Ministers, headed by the President, has been empowered to issue Decree Laws relating to matters necessitated by the State of Emergency, under Article 121 of the Constitution. No other law is required for the exercise of this power.
26. As can be seen above, Articles 121 and 15 of the Constitution are in similar wording with Articles 4 of the ICCPR and 15 of the ECHR. Thus the national protection and legal review in this respect is similar to those at the international level.
27. A Decree with Force of Law (“Decree Law”) is a legal measure permissible in the context of 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 present situation that the administrative authorities are faced with, to the extent necessitated by the situation and in pursuit of a legitimate aim which is national security.
28. With the adoption of Decree Laws 682, 683, 684, 685 dated 23 January 2017, certain measures envisaged in the previous Decree Laws were amended. Pursuant to the Decree Law no. 685, the Inquiry Commission on the State of Emergency Measures (“the Commission”) was established in order to carry out an assessment of, and render a decision on, applications related to certain measures directly conducted by virtue of the Decree Laws on account of having membership, affiliation or connection with terrorist organizations. The Commission shall have the authority to conduct an examination as to the measures concerning the dismissal or discharge from public service, profession or organization in which the persons held office, the dismissal from studentship, the closure of institutions and organizations and the revocation of the ranks of retired personnel. Applications to the Commission may be lodged within sixty days as from the date on which the Commission starts to receive applications. Moreover, parties having legal interest shall be entitled to file annulment actions against the decisions of the Commission with the Ankara administrative courts which will be determined by the High Council of Judges and Prosecutors (“HCJP”).
29. The fact that a judicial remedy has been introduced against the decisions of the Commission is to provide the persons dismissed or discharged from public service, profession or organization in which they held office or closed institutions and organizations with the opportunity to raise their requests before the independent

judiciary. In addition to appeal, individual application to the Constitutional Court is also applicable.

30. Since the measures are based on Decrees which have the force of law, the principle of legality has been satisfied. Moreover, these measures are envisaged solely during the State of Emergency, thus are temporary. Besides, legal remedies are available. Fair trial and defense rights have been respected.

C.ASSESSMENT OF THE PRESENT CASE

C.1. ADMISSIBILITY

C.1.a. PRELIMINARY OBJECTION BASED ON DEROGATION

i. Background

31. As mentioned above, a State of Emergency has been declared following the FETÖ/PDY coup attempt of July 15, in conformity with the Constitution and international law. In this context, a notification of derogation was communicated to the UN Secretary-General, under Article 4 of the International Covenant on Civil and Political Rights ("ICCPR"). In the notification, the articles which are derogated from are stated clearly. Therefore, a duly made notification of derogation is in effect, which is applicable in the present case.
32. A similar notification has been made to the Secretary General of the Council of Europe on 21 July 2016 under Article 15 of the European Convention. The extensions of the State of Emergency were regularly notified to the UN Secretary General and the Secretary General of the Council of Europe.
33. The procedure to be followed by the State has been laid down clearly in both Article 15 of the Constitution and Article 15 of the ECHR and Article 4 of the ICCPR.
34. It is undisputed that the complaints regarding Rebi Metin Görgeç and Dilek Görgeç fall within the scope of the notification of derogation. Therefore, the examination should be made in conjunction with Article 4 of the ICCPR. The purpose of the notification of derogation, its legal value and impact on the present case should be considered.

ii. The purpose and nature of the derogation

35. The derogation procedure has a very important function both in the ECHR and ICCPR. It enables the State to unilaterally derogate from a number of obligations in certain exceptional circumstances, which are applicable during normal periods. In this context, not restricting certain Convention obligations by a State facing an extraordinary crisis may become intolerable for that State. Under such circumstances, the legitimate reason for restricting the rights which can be derogated from is that if the State fails to take such effective measures, a greater threat might arise to the independence and freedom of the people, the fundamental rights and freedoms, particularly the right to life, and directly to the life of the nation. In other words, the purpose of notification of derogations is taking the necessary measures for the

protection of democracy and fundamental rights and freedoms, and securing the life of the nation.

36. Derogation by a State from its regular obligations emanating from the ECHR and ICCPR is the *raison d'être* of Articles 15 of the ECHR and 4 of the ICCPR. Because, under such circumstances, a general threat against the existence of the nation and an attempt to revoke the rule of law, democracy and the institutions of the State is present. Therefore, for the elimination of the threat and for the restoration of public order, public interests, which are both vital for the society and the State shall take precedence over individual interests. Accordingly, when the right to derogations is exercised on account of threats aiming at abolishing the free and democratic order established by the Constitution and the fundamental rights and freedoms, the necessary measures can be taken to maintain public safety and order.
37. Therefore, an examination to be made following a notification of derogation should take into account the purposes of the derogation and the conditions under which it was declared. It is of vital importance that an assessment of the conditions during the emergency period should not be based on the principles and approach prevalent during normal periods. In this context, the examination of any claims made subject to a notice of derogation should take account of the conditions in the emergency period and be limited to international obligations and whether the interference in the present case was proportionate to the threat faced. In other words, when a derogation is in force, the level of protection would not be equivalent to that granted during normal times. Claiming the opposite would be incompatible with the purpose and meaning of the derogation principles. Moreover, such an approach would render the application of the said articles of the conventions impossible.

iii. The approach by the European Court of Human Rights

38. The case-law and practical application of the European Court of Human Rights ("ECtHR") regarding Article 15 of the Convention should be mentioned so as to shed light on the present issue.
39. The ECtHR has emphasized, *inter alia*, that "it falls to each Contracting State, with its responsibility for "the life of [its] nation", to determine whether that life is threatened by a "public emergency" and, if so, how far it is necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle better placed than the international judge to decide both on the presence of such an emergency and on the nature and scope of the derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation should be left to the national authorities" (*A. and Others v. the United Kingdom*, no. 3455/05, 19 February 2009 and *Aksoy v. Turkey*, no. 21987/93, 18 December 1996).
40. In another judgment, the Court acknowledged that following a notice of derogation by the UK Government with respect to IRA activities in Northern Ireland, normal legislation offered insufficient resources for the campaign against the massive wave of

violence and intimidation by the IRA and that recourse to measures outside the scope of the ordinary law proved necessary. In this context, the European Court did *not* find it established that derogations from paragraphs 1 to 4 of Article 5 (extrajudicial deprivation of liberty in breach of Art. 5 § 1 and deprivation of liberty in breach of Art. 5 § 4) exceeded the extent strictly required by the exigencies of the situation, for coping with the public emergency (*Ireland v. the United Kingdom*, no. 5310/71, 18 January 1971).

41. Another judgment by the Court in an application against the United Kingdom is even more striking. The UK Government gave notice of derogation on 23 December 1988. By a declaration addressed to the Secretary General of the Council of Europe, they informed that the powers conferred by the 1984 Act could be incompatible with Article 5 of the ECHR. The two applicants, suspected of IRA membership, were arrested and taken into custody by the police in Northern Ireland. While the first applicant was detained for a total of six days, fourteen hours and thirty minutes, the second was held for four days, six hours and twenty-five minutes. Both complained that they were not brought promptly before a judge. The Court, "recalling its case-law in *Lawless v. Ireland* [...] and *Ireland v. the United Kingdom* [...] and making its own assessment, in the light of all the material before it as to the extent and impact of terrorist violence in Northern Ireland and elsewhere in the United Kingdom [...], the Court [considered] there can be no doubt that such a public emergency existed at the relevant time." For the Court, "the central issue in the present case [was] not the existence of the power to detain suspected terrorists for up to seven days [...] but rather the exercise of this power without judicial intervention."
42. Therefore, "the power of extended detention without such judicial control and the derogation of 23 December 1988 being clearly linked to the persistence of the emergency situation", Articles 5 and 13 were not breached in conjunction with Article 15 (*Brannigan and McBride v. the United Kingdom*, no. 14553/89; 14554/89, 25 May 1993).
43. Lastly, the Government would like to stress that, as a party to the ECHR, Turkey naturally continues to be subject to the supervision of the ECtHR. Thus, the measures resorted to by Turkey shall be in line with the principle of proportionality laid down in the ECtHR case-law and compatible with its adherence to the rule of law.

C.2. Certain aspects of the particular circumstances of the present case

44. Dilek Görgeç remained in police custody for 7 days between 16-22 August 2016 and Rebi Metin Görgeç remained in police custody for 8 days between 16-24 August 2016. Therefore, although the maximum length of police custody was set to 30 days by a Decree Law, a shorter period was imposed having regard to the particular circumstances of the case. On the other hand, despite having the right to challenge their detention in police custody before a judge, they had not done so. Thus, taking into account the large number of the accused mostly from FETÖ/PDY related charges, the large number of those taken into custody within the scope of the same investigation, the extent of the investigation, the gravity and complexity of the charges, and the financial aspect of the events, the Government is of the opinion that the length of police custody was proportionate and in line with international conventions.

45. Furthermore, Rebi Metin and Dilek Görgeç were informed of the charges in detail and gave their depositions in the presence of their lawyers. Thereby, their right to defense and access to a lawyer during police custody were respected.
46. Dilek Görgeç was released from custody by a decision which also banned her to travel abroad. However Rebi Metin Görgeç was arrested. He was released on 23 November 2016. In this process, decisions of continued detention were rendered by judges. In addition, these decisions had been subject to appeal.
47. In this context, all arrest and detention orders in respect of Rebi Metin and Dilek Görgeç were taken by independent judges and through reasoned decisions. In other words, these orders are not arbitrary and do not contain noticeable errors of judgment. Besides, they had the right to challenge decisions ordering detention on remand or an extension of it.
48. Moreover, Rebi Metin and Dilek Görgeç could avail themselves of the effective remedies at the national level regarding the damage they allegedly suffered during this process. Indeed, taking into consideration the magnitude of the threat and the legal safeguards available, it can be observed that the preventive measures in respect of the said persons were in line with international obligations and not contrary to the principle of proportionality.
49. In the light of the foregoing, as the complaints and allegations raised in the present case fall within the scope of the derogation, it is considered that the Working Group should dismiss them.

C.3. NATIONAL DOMESTIC REMEDIES

C.3.a. Right of Objection Stipulated in Article 91 of the Code of Criminal Procedure

50. No objection has been made against the decisions of arrest, detention or extending the detention period given regarding Rebi Metin Görgeç or his lawyer, alleging that the arrest and the ongoing process was illegal or arbitrary. However, Paragraph 5 of Article 91 of the Code of Criminal Procedure No 5271 is as follows;

"...(5) The arrested person or his lawyer or legal representative or his spouse or a blood relative of the first or second degree may apply to the judge of criminal court of peace against the written order by the public prosecutor regarding arrest, detention or extension of the detention period in order to obtain immediate release from custody. The judge shall immediately examine the file and decide on the request within 24 hours. If he considers that the arrest, detention or extension of the detention period is appropriate, the request shall be dismissed or it shall be decided that the person arrested is to be brought before the public prosecutor immediately together with the investigation documents..."

C.3.b. Action For Compensation in Accordance with Article 141 and Subsequent Articles of the Code of Criminal Procedure

51. The complaints relating to alleged arbitrary custody and detention and to the non-communication of the reasons for arrest can be reviewed in domestic law by first

instance courts. Article 141 of the Code of Criminal Procedure ("CCP") entitled "Claim for Compensation" is as follows:

"Article 141 - (1) Persons who suffer damage during the investigation or prosecution of offences may request from the State compensation for material and non-material damages incurred, if:

a) they were unlawfully arrested or detained or their period of detention was unlawfully extended,

b) they were not brought before a judge within the statutory custody period,

c) they were detained without being informed of their statutory rights or after they were informed of their rights their request to exercise those rights was not met,

d) notwithstanding that they were lawfully detained, they were not brought before the trial court within a reasonable time and did not receive a judgment within a reasonable time,

e) after they were lawfully arrested or detained it was decided not to prosecute them or they were acquitted,

...

g) they were not informed of the grounds for their arrest or detention and of the charges against them either in writing or, if this was not immediately possible, orally,

h) their relatives were not informed of their arrest or detention,

i) the search warrant was implemented in a disproportionate manner,

j) their belongings or other property were confiscated in the absence of the required conditions, or the necessary measures were not taken for their protection, or their belongings and other property were used for reasons outside the purpose or if they were not returned on time.

k) (Addition: Article 11/4/2013-6459/17) they were not allowed to enjoy the opportunity of application enshrined in Law against the procedure of arrest or detention,

..."

52. However, no action for compensation has been initiated by the above mentioned individuals under Article 141 et seq. of the CCP based on their claims.
53. The ECtHR, in its *A.Ş v. Turkey (no. 58271/10)* judgment of 13 September 2016, approved the Government's objection of inadmissibility that the applicant who submitted complaints regarding the prolonged detention should have primarily filed an action for compensation in accordance with Article 141 of the Code of Criminal Procedure. The ECtHR held that the domestic courts' and Court of Cassation's approach in accordance with Article 141 and subsequent articles of the Court of Criminal Procedure are convincing in terms of the effectiveness of this remedy.

C.3.c. Individual Application to the Constitutional Court

54. In line with the principle of subsidiarity of the European Court, individual applications to the Constitutional Court, which can be regarded as a milestone in the protection and promotion of human rights in Turkey, was introduced on 24 September 2012 by the promulgation of the Law no. 6216 on the Establishment and Trial Procedures of the Constitutional Court.
55. Under the said Law, those claiming that their rights and freedoms enshrined in the Constitution of the Republic of Turkey or in the ECHR and its protocols to which Turkey is a party have been violated, may apply to the Constitutional Court.
56. In many recent judgments, including those claiming that their rights and freedoms have been violated on account of the legal procedures following the attempted coup of July 15, the ECtHR has noted that individual application to the Constitutional Court is an effective remedy that should be exhausted before the case can be taken to the ECtHR (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).
57. Yet, no individual application was lodged with the Constitutional Court on any allegations and complaints, including allegations of arbitrary custody, inconvenient conditions of custody and ill-treatment.

C.4. NON-EXHAUSTION OF DOMESTIC REMEDIES

58. The complaints with respect to Rebi Metin and Dilek Görgeç were not raised at the national level and brought directly before the Working Group.
59. It should be noted that international mechanisms for the protection of human rights are in principle subsidiary remedies. The reason is that, examination of a human rights violation by an international organization or court would not be convenient when such violations can be best identified and redressed during the domestic proceedings of the contracting states.
60. In this context, no objections were raised before the magistrates as regards the orders of arrest, detention or continued detention in custody, claiming that the arrest or the proceedings regarding Rebi Metin and Dilek Görgeç were unlawful or arbitrary.
61. In addition, no complaints were lodged with the prosecutor's office or any other authority in connection with the baseless allegation submitted to the Working Group about two persons who contacted Dilek Görgeç and asked for 100.000,00 TL bribe in exchange for having Rebi Metin Görgeç released.
62. No action for compensation had been filed under Articles 141 *et seq.* of the Code of Criminal Procedure ("CCP") regarding the lawfulness of police or remand custody or the conditions of police custody.
63. Finally, no individual application was lodged with the Constitutional Court as regards all complaints submitted to the Working Group.

64. Therefore, in the light of the subsidiarity of the Convention, the allegations, which have not been raised at the national level, or which were raised at the national level and whose examination has not been completed, should be rejected as per Article 41 § 1.c of the ICCPR for failure to exhaust domestic remedies.

D. THE MERITS OF THE APPLICATION

D.1. Concerning the allegation of being denied to access to a lawyer while in police custody and court interrogation

65. Rebi Metin Görgeç and Dilek Görgeç did not raise any objections during their interrogation before the Criminal Magistrate's Office regarding the allegation that they were forced to sign their statements without having been given the opportunity to read them.
66. Their lawyers were present and actively accompanied in the course of their statements to the law enforcement and the Magistrate. Moreover, during their interview before the Magistrate, they and their lawyers confirmed their statements before the police and clearly stated that these were correct.
67. On the other hand; as can be seen from the relevant minutes of the Criminal Magistrate's Office, the allegations that Rebi Metin and Dilek Görgeç were not questioned by the Magistrate and forced to sign their statements without the opportunity to read them are manifestly ill-founded and lack good faith.

D.2. Concerning the allegation of not being informed of the charges.

68. It has been alleged that Rebi Metin and Dilek Görgeç had not been informed of the charges against them during stages of police, prosecution and court interrogation. Yet, as mentioned above, it is evident from the arrest records that they were informed of the charges, reminded of their legal rights as they were taken into custody. Their relatives were also informed of the situation. Written record of the situation was signed by them without adding an annotation of objection. Also, during their statement to the Magistrate they declared that they did not have any objection in this matter.
69. In addition, the facts which had constituted the grounds for their arrest were shown in detail in forms of tables and diagrams and questions addressed in this respect.
70. Lastly, accusations which were attributed to Rebi Metin and Dilek Görgeç were described in legal terms on the written request of the public prosecutor. Accusations were also explained and they were asked to submit their defense during their interrogation before the Magistrate.

D.3. Concerning the allegations of arbitrary detention

71. It is alleged that Rebi Metin Görgeç and Dilek Görgeç were taken into custody and detained on remand in an unlawful and arbitrary manner.

72. As mentioned above, on the night of July 15, an armed coup attempt aimed at ousting the elected President and overthrowing the Parliament and Government by suspending the Constitution was made by "terrorists in uniforms", members of the FETO/PDY within the Turkish Armed Forces, who called themselves the Council for Peace at Home.
73. In the course of the investigations conducted into the attempted coup, it has been understood from the statements by a number of soldiers and public officials that the attempt was made after the leader of the terrorist organization Gülen's orders and in his knowledge and that the organization led by him was responsible for the material and moral damage caused, particularly the killing of civilians and public officials. As the investigations are pending, new evidence emerges day after day which indicate the structure of the organization.
74. In fact, the prosecution of those who carried out this attempt alone would not be sufficient for the fight against the FETO/PDY and to ensure that those responsible for the attempt are identified and be held accountable before the law. In this fight, it is crucial to investigate the funding sources of the terrorist organization and to expose and punish those who provide financial support.
75. In this context; Dilek Görgeç was taken into custody due to the large amount of remittance she made to one of the account holders who were subjects of the analysis under the scope of the investigation, in which she was also implicated. Yet, she was released with a decision of judicial control which was rendered on the grounds of her statement -which was indicating that she made that remittance under the direction of her spouse, to the person whom she had known as a friend of her spouse- and the fact that she had no commercial position in Akfa Holding and its subsidiaries.
76. Rebi Metin Görgeç was taken into custody and arrested due to his partnership to the company affiliated with Akfa Holding and due to the large amounts of remittances his company acquired from persons who were subjects of the analysis within the scope of this investigation and from Fatih Aktaş, the Chairman of Akfa Holding, whose interview records appeared on the internet of which he was trying to counterbalance the amount of 300,000,000.00 TL for Bank Asya.
77. Dilek Görgeç was arrested and taken into custody on 16 August 2016. She gave her statement to the law enforcement officers on 19 August 2016 in presence of her lawyer. On 22 August 2016 she was brought before the Criminal Magistrate's Office for an arrest warrant. However, she was released on the same day with judicial control. Therefore, Dilek Görgeç remained in custody for only 7 days under the conditions of State of Emergency.
78. Rebi Metin Görgeç was arrested and taken into custody on 16 August 2016. He gave his statement to the law enforcement officers on 21 August 2016 in presence of his lawyer. On 23 August 2016 he was brought before the Criminal Magistrate's Office for an arrest warrant. Considering the possibility that the nature of the charges may change, he was released on 24 November 2016 with judicial control. Therefore, Rebi

Metin Görgeç remained in detention for approximately three (3) months under the conditions of State of Emergency.

79. As is known, according to judgments by the European Court, the existence of reasonable suspicion or plausible reasons that the person(s) concerned committed the offense in question is a necessary condition for deprivation of liberty. This is a *sine qua non* requirement in terms of pre-trial detention. This condition must be present at every stage of detention and the suspect must be released upon the dissipation of the reasonable suspicion.
80. The existence of reasonable suspicion, along with the evidence obtained and the particular circumstances of the case, should be sufficient to convince an objective observer with a detached view. If the evidence obtained, when presented to an objective observer, is sufficient to form an opinion in the observer that the suspect or defendant might have committed the offense, then it can be concluded that reasonable suspicion exists in a given case. In other words, "having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence." (see. *Fox, Campbell and Hartley v. the United Kingdom*, no. 12244/86, 12245/86, 12383/86, 30 August 1990, par. 32; *O'Hara v. the United Kingdom*, no. 37555/97, par. 34.)
81. Moreover, according to the ECtHR, the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether a genuine public interest continues to justify the deprivation of liberty.
82. In the present case, it is observed that in the context of the investigation mentioned above in detail, the commercial transactions of Rebi Metin and Dilek Görgeç caused reasonable suspicion. Moreover, the judicial authorities provided a reasoned decision on their detention in police custody and on remand. They were able to object to these orders. They had access to the assistance of a lawyer. Their right to defense was respected.
83. What's more, when the extent of the investigation, the number of suspects and the conditions of State of Emergency are considered together, the length of custody and detention on remand should be regarded reasonable.
84. In the light of the considerations above, and taking into account the notice of derogation, the proceedings involving the taking into custody and detention on remand of Rebi Metin and Dilek Görgeç should not be seen as ill-founded or arbitrary.

D.4. Concerning allegations that restrictions were imposed on the right to access to lawyer in the penitentiary, that during their visits to the detainees, lawyers were subjected to full body search and that they could not bring or leave reading materials to Rebi Metin Görgeç.

85. At the institution, interviews between the detainees who are the members of a terrorist organization and their lawyers were carried out with respect to the measures taken

within the scope of the State of Emergency and in accordance with the criteria indicated in the 667 numbered Decree Law.

86. In addition, the search procedures and principles for the lawyers have been explicitly stated in the 3rd paragraph of Article 86 of the Law No. 5275 on the Execution of Sentences and Security Measures, and implemented accordingly. Thus, the allegations made in this regard are baseless.
87. Although it is alleged that the detainee was not allowed to keep any personal belongings; due to the searches made, it was determined that the belongings of the detainee, which were recorded in the body search report (carried out on the date of the detainee's admission to the institution, on 24/08/2016) were delivered to him within the framework of "*The Regulation on the Goods and Materials to be Available in Penitentiary Institutions*".

D.5. Concerning the allegation that Rebi Metin Görgeç's glasses had been confiscated:

88. According to the item delivery record dated 14/10/2016, the glasses were given to the detainee.

D.6. Concerning the allegation regarding the conditions of the Penitentiary Institution.

89. With respect to the judgment No. 2016/180, dated 24/08/2016 of Istanbul Anatolian 5th Criminal Magistrate's Office, Rebi Metin Görgeç was taken to the Silivri No.5 L Type Closed Penitentiary Institution and placed in the C-Block C-1 dormitory with regard to the Administration and Observation Board Decision, between the dates of 24/08/2016 - 24/11/2016.
90. The official capacity of the Penitentiary Institution is 1677 persons and the capacity of the institution on the date, when Rebi Metin Görgeç was taken to the institution, was 1276 persons. The capacity of the C-1 dormitory, where the forenamed was placed in, was 28 persons, he was held at the same dormitory during his stay in the institution and there was no overcrowding at the dormitory. Therefore, it is seen that there was no overcrowding beyond the general or dormitory capacity during the stay of the detainee.
91. With regard to the physical aspects of the L-Type Closed Penitentiary Institutions, the individual rooms are 12.45 m², the open courtyards are 65.19 m², the communal living unit is 56.59 m², one unit, where 7 people stay together, is 208.93 m² in total. There are double-glazed and transparent glass windows, which are 100x125 cm in size and get light, in the rooms of convicts and detainees.
92. Regarding the claim that "he was only allowed to go out to the exercise yard twice", communal living unit are areas with direct link to open courtyards and these courtyards are opened with morning count and are provided for the use of all convicts and detainees until the last evening light. In the dormitory where convicts and detainees are located, the inmates' access to the communal living area or to open

courtyards is not restricted as long as there is no obstacle in terms of security and public order.

93. The convicts and detainees, staying in Silivri No.5 L-Type Closed Penitentiary Institution, have sufficient facilities to fulfill the demands for accommodation, health, education and all kinds of improvement. In the communal living area of each section, there is a TV antenna inlet, a multi-channel central radio, a small kitchen (to make tea and wash the dishes or fruits and vegetables), a socket for electric heater, one call button for calling of the personnel in case of emergency.

D.7. Concerning the allegation that one of the convicts/detainees committed suicide by strangling himself with a towel.

94. It was determined that there has not been any suicide case between the dates of 24/08/2016 - 24/11/2016 in the C-1 dormitory of the institution and that there has not been any single suicide case occurred in the institution since 2014.

D.8. Concerning the allegation that Rebi Metin Görgeç had been denied access to his medication.

95. As a result of the examination of the infirmary records of the institution it was determined that, the first medical examination of the detainee, who was taken into the institution on 24/08/2016, was carried out by the family physician of the institution and that the medical conditions and the medicine used were recorded by the family physician after the first examination. According to the records, he was examined 41 (forty one) times between the dates 26/08/2016 and 06/10/2016, and the drugs he used had been regularly and continuously delivered to him against signature by the institutional officials from the day he came to the institution. All the necessary examinations and treatments related to his health problems were carried out without interruption and his right to health was respected. Consequently, the allegation that he had been denied access to medical treatment is manifestly ill-founded.

D.9. Concerning the allegation that visits to Rebi Metin Görgeç were restricted

96. On 18 August 2016, the Decree-Law no. 667 entered into force, which, *inter alia*, amended the "Regulation on Visiting the Convicts and Detainees". Thus, the weekly closed visits, monthly open visits and phone calls by the detainee was governed, from the day he was placed in the penitentiary, by Article 6/1-e of the Decree-Law during the State of Emergency in respect of the offenses defined in the Second book of the Turkish Penal Code No. 5237, Fourth, Fifth, Sixth and the Seventh Chapters of the Section Four together with the crimes within the scope of Anti-Terror Law No. 3713 and the crimes committed collectively. Accordingly, as evident in the institution records, the detainee was able to receive visitors and make telephone calls regularly.

D.10. Concerning the allegations of torture and ill-treatment

97. The Government would like to state that none of the measures taken within the framework of the State of Emergency decriminalizes torture and ill-treatment nor do they provide impunity for possible perpetrators. As required by the "zero tolerance policy against torture", the judicial and administrative authorities continue to duly

examine each and every allegation of torture and ill-treatment and take the necessary actions in respect of those responsible.

98. With the Decree-Law no. 682, the disciplinary provisions as regards the personnel serving in the Security General Directorate, the Gendarmerie General Command and the Coast Guard Command have been incorporated into an overarching disciplinary legislation. With the amendment of the Decree- Law no. 682, it has been introduced into the legal system that the personnel who inflict torture shall be dismissed from public service.
99. As required by the Article 92 of CCP and Article 26 of the Regulation on Arrest, Custody and Statement-taking, the custody centers, including, if any, the rooms where interviews are conducted, the material conditions of custody, the grounds for being taken into custody and for the custody periods, as well as all the written material and interactions related to being taken into custody shall be inspected by the chief public prosecutors or public prosecutors appointed by them in the course of their judicial duties.
100. Aside from the chief public prosecutors or public prosecutors in charge of overseeing prisons; prisons are also overseen by inspectors from the Ministry of Justice, controllers and other officials from the General Directorate of Prisons and Detention Centers.
101. In addition to these, various monitoring mechanisms exist at national level in order to prevent torture and ill-treatment. These mechanisms include but not limited to, the monitoring boards of penitentiary institutions and prisons; the Ombudsman Institution; the Human Rights and Equality Institution of Turkey; the Human Rights Inquiry Committee of the GNAT; and the newly established Law-Enforcement Monitoring Commission that will ensure further efficiency and transparency for the law enforcement complaint system with a central recording system.
102. With "the Law on the Establishment of the Law Enforcement Monitoring Commission" an independent authority tasked with investigating complaints against law enforcement officers that is independent of the police hierarchy has been established.
103. The Law aims at rendering the functioning of law enforcement complaint system more effective and swift, as well as enhancing its transparency and credibility. With the Law Enforcement Monitoring Commission, allegations of crimes that have been committed by law enforcement officers or any act, attitude or behavior which call for administrative disciplinary measure with respect to those officers shall be documented into a central registry system and be duly followed up.
104. As to parliamentary supervision, the chair and members of the Human Rights Inquiry Commission and other inquiry commissions of the GNAT can visit prisons and carry out inquiry and oversight activities.
105. As to NGO supervision, provincial and district human rights boards consisting of civil society representatives in the provinces and districts can visit and oversee prison establishments as well.

106. Furthermore, the Human Rights and Equality Institution of Turkey, which has also been designated as the "National Preventive Mechanism" on 28 January 2014, performs tasks under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and take effective action against torture, and other cruel, inhuman or degrading treatment or punishment.
107. Moreover, the Government continues to install video surveillance in all areas of custody facilities where detainees may be present. Currently, detention places in the 1.203 Police Stations countrywide (out of 1.268) as well as a total of 303 detention places linked to the Public Security Branch Offices at the 81 provinces have surveillance camera and imaging systems. Instalment of surveillance camera systems has been completed in 1.946 out of 2.012 detention places within the jurisdiction of Gendarmerie-General Command.
108. Monitoring boards continue their activities within prisons and detention centers. New appointments have been made to these boards, so the boards continue their "monitoring" activities within prisons and detention centers.
109. In addition to all the existing monitoring mechanisms, a unit has been established within the Ministry of Justice to specifically follow up the allegations raised in the media with regard to torture and ill-treatment in detention houses and prisons pursuant to the terrorist coup attempt of 15th July. The said unit shall meticulously follow up all kinds of news and comments raised in the media, refer them to the competent authorities to ensure them to be swiftly examined and share the results of the examinations with the public.
110. Proudly being party to 15 of the 18 UN Human Rights Conventions and Protocols and being among the 159 parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since August 1988 and being among 82 parties to OPCAT since September 2011, the Government clearly conducts its struggle against terrorism in accordance with national legislation, international conventions to which Turkey is a party and in cooperation with relevant international mechanisms.
111. Lastly, the Government would like to underline that the allegations of torture and ill treatment which have never been raised at the national level by Rebi Metin and Dilek Gorgeç are inconsistent with the medical examination reports.

E. CONCLUSION

112. In the light of the explanations stated above, the present application should be rejected on procedural grounds. As to the merits of the application, it is considered that the ICCPR has not been violated in the present application.