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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its ninety-ninth session, 18–27 March 2024****Opinion No. 6/2024 concerning Meryem Tekin (Türkiye)***

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,¹ on 31 October 2023 the Working Group transmitted to the Government of Türkiye a communication concerning Meryem Tekin. The Government replied to the communication on 27 November 2023. 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).

* Miriam Estrada Castillo did not participate in the discussion of the present case.

¹ [A/HRC/36/38](#).

1. Submissions

(a) Communication from the source

4. Meryem Tekin is a Turkish national. She works as a teacher and resides in Bursa, Türkiye.

(i) Arrest and detention

5. According to the source, on 20 September 2018, Ms. Tekin was arrested at her home in the city of Bursa by police authorities. Reportedly, the officers did not present an arrest warrant or a search warrant. Ms. Tekin was not informed about the reasons for her arrest. When they were asked, the police told her that her case concerned a secret investigation, and that they could not disclose anything other than a brief mention that the case was related to the Fethullahist terrorist organization.

6. The source also reports that after her arrest, Ms. Tekin was handcuffed and immediately taken to a police station. There she was questioned, without the presence of a lawyer. During the entire time that she was detained at the police station, Ms. Tekin was not allowed to contact any of her family members.

7. Reportedly, Ms. Tekin was detained at the police station in a small unsanitary underground cell, without any information about why she had been arrested. As she did not know why she had been arrested, neither she nor her lawyer could prepare for the interrogation. Prior to the official interrogation, she was subjected to severe sleep deprivation. When she was finally permitted to meet with her lawyer, the meeting lasted for only one minute and their conversation was recorded and filmed.

8. When Ms. Tekin was brought before the judge, she was not allowed to present any information in her defence. Moreover, Ms. Tekin was not permitted to rely on the legal counsel of her choosing. Reportedly, authorities provided her with a State-appointed attorney, who has reportedly tried to convince her to plead guilty and avoided meetings with her. In the meanwhile, Ms. Tekin's chosen private attorney was deprived of basic information related to his client.

9. Prior to the initial court hearing, Ms. Tekin could meet with her lawyer for only five minutes before the questioning started. During the questioning, the lawyer was not permitted to speak in Ms. Tekin's defence, to correct accusations or to object in any meaningful way, notes the source.

10. Moreover, at the hearing, Ms. Tekin was presented with a number of allegations and questions but was given no evidence against her. The source submits that all the evidence referenced by the authorities was circumstantial and factually incorrect. Reportedly, Ms. Tekin had to sign a document stating that she had been given enough time and the proper environment to meet with her attorney and that she gave her testimony of her free will, without undue pressure or coercion. The source notes that Ms. Tekin was not given enough time to read the document.

11. According to the source, Ms. Tekin was accused of having a bank account at Bank Asya, of sharing or retweeting a social media account related to the Fethullahist terrorist organization, of subscribing to publications by this organization and of working for institutions affiliated with this organization, among other things.

12. Çanakkale Criminal Court ordered pretrial detention on the basis of charges of membership in an armed organization in breach of article 314 of the Penal Code. Ms. Tekin has remained deprived of her liberty, in pretrial detention, for five years in a prison in the city of Bursa.

13. The source reports that during the detention, conversations between Ms. Tekin and the lawyer have been similarly restricted, monitored and recorded. As such, it has been nearly impossible for Ms. Tekin to discuss mistreatment in the prison or any details about her legal case. Lawyers have been subjected to full body searches during their visits and have not been able to bring any legal documents with them. Furthermore, they have not been able to leave any reading material or notes with Ms. Tekin.

(ii) *Analysis of violations*

14. The source submits that Ms. Tekin's arrest and detention are arbitrary and fall under categories I, II, III and V of the Working Group.

15. In relation to category I, the source submits that Ms. Tekin was arrested and detained without any legitimate legal basis, in violation of the Constitution and Turkish penal law, as well as article 9 of the Universal Declaration of Human Rights, and the Covenant.

16. It is further recalled that article 9 (1) of the Covenant explicitly requires that no one be subjected to arbitrary arrest or detention and that no one be deprived of his or her liberty except on such grounds and in accordance with such procedure as established by law. Therefore, the source notes, any deprivation of liberty must be compatible with the substantive and procedural domestic laws. Failure to comply with domestic law entails a breach of the above-mentioned article of the Covenant. The source submits that Ms. Tekin's arrest and detention is not compatible with the domestic law and is contrary to the basic principles of law.

17. The source also recalls the pattern involving alleged arbitrary deprivation of liberty of followers of the Gülen movement. It is argued that Ms. Tekin was arrested and detained without being shown any evidence. Moreover, her detention was ordered without reasonable grounds with respect to the alleged crime.

18. In relation to category II, the source submits that the reasons for the arrest and detention of Ms. Tekin relate to legally permitted activities and her fundamental human rights protected by articles 18, 19, 21, 22, 25, 26 and 27 of the Covenant.

19. In this regard, the source recalls that Ms. Tekin was accused of subscribing to and possessing newspapers, journals and magazines affiliated with the Gülen movement. It is noted that before the attempted coup of 15 July 2016, publications affiliated with the Gülen movement were legal, sold with the permission of the Ministry of Culture and found on the shelves of public libraries. It is further noted that publications that do not promote terrorism or violence cannot be banned and people in possession of these items cannot be accused of membership in terrorist organizations. The source argues that possession of such publications is protected under articles 18 and 19 of the Covenant.

20. Furthermore, the source notes that Ms. Tekin was accused of working for and of getting services from institutions affiliated with the Gülen movement. She was also accused of participating in fundraising activities and of making donations to charity organizations related to the movement. The source explains that after the attempted coup, all institutions related to this movement, such as hospitals, schools and universities, were closed pursuant to Decree No. 667 of 23 July 2016. Accordingly, before that day, all these institutions were officially registered, authorized and legitimate. Therefore, working for and getting services from such institutions was legitimate and protected under articles 18, 19, 21, 22, 25 and 26 of the Covenant. The same applies to fundraising for charities and institutions affiliated with the movement.

21. The source also recalls that Ms. Tekin was further accused of participating in social gatherings and other social activities. It is argued that mere participation in social gatherings or social activities without the promotion of terrorism or violence cannot be banned and is protected under articles 18, 19, 21 and 26 of the Covenant.

22. Ms. Tekin was reportedly also accused of downloading and using a smartphone application that allowed users to communicate via a private, encrypted connection. The source argues that downloading such an application was an entirely legal activity protected under articles 19 to 26 of the Covenant.

23. Finally, Ms. Tekin was accused of having a bank account at Bank Asya. This financial entity reportedly started operating in October 1996, was confiscated by the Government in May 2015 and was dissolved on 22 July 2016. The source argues that having an account at this financial entity was a legal activity protected under articles 21, 25, 26 and 27 of the Covenant.

24. In relation to category III, the source submits that the authorities have committed numerous procedural violations under both international and domestic law.

25. In this regard, the source recalls that the authorities failed to provide Ms. Tekin with a timely explanation of the reason for her arrest and held her without charges. Ms. Tekin was reportedly not informed about her arrest until the interrogation in police custody several days after her arrest.

26. Furthermore, the source argues that Ms. Tekin was not afforded adequate time or an adequate opportunity to prepare her defence and to call and examine witnesses. In particular, Ms. Tekin has never been given time to prepare for interrogations. Instead, she was reportedly physically and psychologically coerced to accept statements drafted by the police. Furthermore, she was reportedly induced by the prosecutor and the judge to accept statements presented by the police.

27. The source submits that Ms. Tekin's right to access to counsel has also been violated, given that her meetings with the legal counsel were recorded and monitored by the prison authorities. The source also recalls that article 3 of Decree Law No. 668 of 25 July 2016 stipulated, inter alia, that detainees could be denied access to a lawyer during the first five days following the arrest, in violation of their right to legal assistance. This provision was reportedly repealed by Decree Law No. 684 of 23 January 2017.

28. The source also argues that the case of Ms. Tekin features violations of the principle of equality of arms, which requires that all parties to the proceedings be given equal opportunity to present their case and to access relevant materials. It is submitted that in the years following the attempted coup, equality of arms has been denied in almost every case with a political dimension, including that of Ms. Tekin. As a consequence, Ms. Tekin was unable to adequately prepare for her defence or to effectively challenge charges against her.

29. The source also notes that Ms. Tekin was deprived of liberty for an extended period of time before appearing in court. Her objection against her arrest and detention was denied by the court, without it having studied the arguments and with insufficient reasoning.

30. Finally, in regard to category V, the source submits that Ms. Tekin was deprived of her liberty for reasons of discrimination, like other individuals charged with being members of the Gülen movement. The source submits that there is a pattern of alleged arbitrary arrests and detentions of people accused of being followers of the Gülen movement, regardless of whether they accept or deny these charges. Their arrests were reportedly motivated solely by their social background and political stance. Ms. Tekin has been reportedly deprived of her liberty on a discriminatory basis as a sympathizer of the Gülen movement.

31. The source concludes by stating that Ms. Tekin's ability to pursue domestic remedies has been limited by significant restrictions on her access to justice. She has reportedly unsuccessfully taken numerous actions before domestic courts since her arrest and detention.

(b) Response from the Government

32. On 31 October 2023, the Working Group transmitted the allegations from the source to the Government of Türkiye under its regular communications procedure. The Working Group requested the Government to provide, by 2 January 2024, detailed information about the current situation of Ms. Tekin and to clarify the legal provisions justifying her continued detention, as well as its compatibility with the obligations of Türkiye under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Türkiye to ensure her physical and mental integrity.

33. On 27 November 2023, the Government submitted its reply, in which it offered no direct mention of Ms. Tekin, her arrest or her ongoing detention. The Government instead referred to a large-scale, brutal and unprecedented coup attempt perpetrated by the Fethullahist terrorist organization, which it describes as a clandestine terrorist organization that infiltrated critical government posts in an attempt to destroy democracy and take over the democratically elected Government on 15 July 2016.

34. It submits that in order to restore democracy and protect the rights and freedoms of Turkish citizens, the Fethullahist terrorist organization needed to be completely rooted out of all branches of government, as well as the military and the judiciary, which thousands of its members had infiltrated over a period of decades. A state of emergency was declared shortly

after the attempted coup. That declaration was endorsed by Parliament on 21 July 2016. The Government contends that, throughout the state of emergency, it acted in line with its international human rights obligations, while maintaining close cooperation and dialogue with international organizations. The state of emergency was terminated on 19 July 2018.

35. The Government states that effective domestic legal remedies are available, including the right to lodge an individual application before the Constitutional Court, which is recognized by the European Court of Human Rights as an effective domestic remedy. In addition to existing domestic remedies, Inquiry Commission on State of Emergency Measures was established with a view to receiving applications regarding administrative acts carried out pursuant to Decree Laws enacted during the State of Emergency. Further remedies are available against the decisions of the Commission. The European Court of Human Rights recognized the Commission as a domestic remedy. Furthermore, an application can be lodged before the European Court of Human Rights after the exhaustion of domestic remedies.

36. According to the Government, even before the attempted coup, the Fethullahist terrorist organization was known to employ complex strategies to advance its agenda. Those strategies included blackmailing politicians and bureaucrats, cheating on a mass scale in public exams in order to place its members in key government posts, practising social engineering, manipulation, indoctrination, and presenting fabricated stories to spark judicial proceedings against its opponents through its extensive network of media outlets, businesses, schools and non-governmental organizations.

37. The Government contends that the Fethullahist terrorist organization is now employing the strategy of presenting itself as the victim of human rights violations to hide its crimes. Its members deliberately try to deceive and manipulate international public opinion by spreading false allegations against Türkiye. These include unfounded claims of arbitrary arrest and detention, torture and even enforced disappearance, while its members go in hiding at the orders of their leader. In fact, it is the organization itself that has perpetrated grave human rights violations in Türkiye, including killing innocent civilians, thus violating the very fundamental right to life of hundreds of Turkish citizens.

38. In line with the explanations provided above, the Government requests the Working Group to dismiss allegations made by the Fethullahist terrorist organization and its members. It reiterates its commitment to upholding human rights and fundamental freedoms and maintaining its cooperation with international organizations.

2. Discussion

39. The Working Group thanks the source and the Government for their submissions, although it finds that the Government's failure to address the personal situation of Ms. Tekin is regrettable. It invites the Government to cooperate with the Working Group in a constructive manner, as it has done in the past.

40. In determining whether the deprivation of liberty of Ms. Tekin is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood the rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.²

41. As a preliminary matter, the Working Group notes that Ms. Tekin's situation falls partially within the scope of the derogations that Türkiye made under the Covenant. On 21 July 2016, the Government of Türkiye informed the Secretary-General that it had declared a state of emergency for three months in response to the severe dangers to public security and order, which amounted to a threat to the life of the nation within the meaning of article 4 of the Covenant.

42. While acknowledging the notification concerning the derogations, the Working Group emphasizes that, in the discharge of its mandate, it is empowered under paragraph 7 of its methods of work to refer to the relevant international standards set forth in the Universal

² [A/HRC/19/57](#), para. 68.

Declaration of Human Rights and to customary international law. Moreover, in the present case, articles 9 and 14 of the Covenant are the provisions that are relevant to the alleged arbitrary detention of Ms. Tekin. As the Human Rights Committee has stated, States parties derogating from articles 9 and 14 must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.³ The Working Group reaffirms its welcoming of the lifting of the state of emergency on 19 July 2018 and the subsequent revocation of derogations by Türkiye.

43. Furthermore, the Working Group, addressing the Government's request to the special procedures not to allow the Fethullahist terrorist organization and its members to abuse those mechanisms, and to dismiss their allegations, wishes to recall that the Human Rights Council has mandated it to receive and consider allegations of arbitrary detention from anyone around the world. The Working Group thus makes no distinction as to who can or cannot bring an allegation to its attention. The Working Group is also required to act impartially and independently. It therefore treats all submissions made to it equally and accepts them as allegations, inviting the Government concerned to respond. The onus is therefore on the Government to engage with the Working Group constructively by addressing the specific allegations made to assist the Working Group in reaching a conclusion in each communication brought to its attention.

44. The source has argued that Ms. Tekin's detention is arbitrary and falls under categories I, II, III and V. The Government denies all the allegations and submits that the arrest and detention of Ms. Tekin were carried out in accordance with all international human rights obligations assumed by Türkiye, and that she could apply to the Constitutional Court, which has been recognized to be an effective remedy in Türkiye by the European Court of Human Rights. The Working Group recalls in this respect that it has already considered this issue, noting that its methods of work contain the rules of procedure governing the examination of communications on alleged cases of arbitrary detention. No provision in the methods of work prevents the Working Group from considering cases where domestic remedies have not been exhausted. Consequently, complainants are not required to exhaust domestic remedies in order for a communication to be considered admissible.⁴ The Working Group will thus proceed to examine the submissions under each of the categories in turn.

(a) Category I

45. According to the information provided by the source, during the arrest, Ms. Tekin was not informed about the reasons for her arrest and nor did the authorities present an arrest warrant.

46. The Working Group recalls that article 9 (2) of the Covenant provides that anyone who is arrested is to be informed, at the time of arrest, of the reasons for the arrest and is to be promptly informed of any charges. The Working Group has previously stated that in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant or arrest order (or equivalent document).⁵ The reasons for the arrest must be provided immediately upon arrest⁶ and must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity

³ See the Committee's general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 4. See also the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 6; general comment No. 34 (2011) on the freedoms of opinion and expression, para. 5; and general comment No. 35 (2014) on liberty and security of person, paras. 65 and 66; and *Özçelik et al. v. Turkey* (CCPR/C/125/D/2980/2017), para. 8.8).

⁴ E/CN.4/1993/24, pp. 10 and 11, paras. 3–8. See also opinions No. 78/2018, No. 44/2018, No. 43/2018, No. 42/2018, No. 11/2018, No. 41/2017, No. 38/2017, No. 19/2013 and No. 11/2000.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 23. See also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39; and art. 14 (1) of the Arab Charter on Human Rights.

⁶ Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

of an alleged victim.⁷ The Working Group notes that Ms. Tekin was not arrested in flagrante delicto, when the opportunity to obtain a warrant would typically not be available.

47. In its response, the Government did not attempt to explain how Ms. Tekin's arrest without a warrant was strictly required by the exigencies of the security situation, other than asserting that, throughout its two-year state of emergency, it acted in accordance with its own code of criminal procedure and international human rights obligations and maintained its close cooperation and dialogue with international organizations. The Working Group must emphasize that Ms. Tekin's arrest occurred on 20 September 2018, approximately two months after the state of emergency was lifted on 19 July 2018. Thus, the Government's assertion that the state of emergency creates specific exigencies pertinent enough to justify such an arrest is not only legally perfunctory but temporally dubious.

48. The Working Group therefore concludes that Ms. Tekin's arrest and subsequent detention were arbitrary under category I. The finding is not altered by the derogation discussed above. The Working Group considers that the guarantees of the right to liberty and security of person would be meaningless if it were accepted that people could be arrested and placed in pretrial detention without any respect for the procedure established by law. The Working Group thus finds that Ms. Tekin's deprivation of liberty was not only disproportionate to the strict exigencies of the situation, but that the exigencies that the Government proposes do not apply to Ms. Tekin's case because the state of emergency had already been lifted.

(b) Category II

49. The source submits that Ms. Tekin was arrested and detained on the basis of her alleged alliance with the Fethullahist terrorist organization, in breach of articles 18, 19, 21, 22, 25, 26 and 27 of the Covenant. In the present case, as in many others, the Working Group observes that the essence of the allegations against Ms. Tekin is her alleged alliance with the Fethullahist terrorist organization, which, according to the Government, is known to employ complex strategies to advance its agenda. However, the Working Group notes that the Government has failed to explain what kind of activities Ms. Tekin was alleged to have committed and how any of these alleged activities amount to a criminal act. Nothing in the materials before it allows the Working Group to conclude that these activities can be regarded as capable of generating a reasonable suspicion that she committed the alleged criminal offences.

50. From the source's submission, the Working Group finds that Ms. Tekin was accused of having a bank account at Bank Asya, sharing material posted from Fethullahist-related social media accounts, subscribing to Fethullahist-affiliated media and working for Fethullahist-affiliated institutions. Again, no evidence was presented to corroborate these allegations and the Government made no such attempt in its response to the submission.

51. Moreover, the Working Group recalls that this is not the first time that it has examined a case involving the arrest and prosecution of a Turkish national for the alleged use of ByLock⁸ as one of the key manifestations of an alleged criminal activity.⁹ In those other instances, the Working Group concluded that, in the absence of a specific explanation as to how the alleged mere use of ByLock constituted a criminal activity by the individual concerned, the detention was arbitrary.

52. The Working Group recalls the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his visit to Türkiye in November 2016, in which he noted that there had been several cases of arrests based merely on the existence of the ByLock application on a person's computer and that the evidence

⁷ Opinion No. 85/2021, para. 69.

⁸ See, for example, [A/HRC/35/22/Add.3](#), para. 54. ByLock is an encrypted messaging application. The authorities have linked ByLock to the Fethullahist terrorist organization, claiming that it is a secret communication tool for this organization. The National Intelligence Organization reportedly obtained a list of global ByLock users, which has been used to track and detain persons. Tens of thousands of civil servants have reportedly been dismissed or arrested for using the application.

⁹ See, for example, opinions No. 42/2018, No. 29/2020, No. 30/2020 and No. 29/2023.

presented was often ambiguous.¹⁰ Additionally, the Working Group has found that, in and of itself, the use of ByLock is protected under article 19 of the Covenant, constituting the right to freedom of expression and opinion.¹¹ The Working Group regrets that its views on those opinions have not been respected by the Turkish authorities and that the present case follows the same pattern. The Working Group continues to welcome the Government of Türkiye to offer an argument elaborating on its claim.

53. The Working Group is thus of the view that the Government has failed to demonstrate that any of the permitted restrictions on freedom of expression found in article 19 (3) and on freedom of assembly found in article 21 of the Covenant applied in Ms. Tekin's case. It finds no elements to support the allegation that Ms. Tekin's activities did not remain within the limits of freedom of speech and freedom of association, insofar as they cannot be construed as a call for violence.

54. The Working Group has found a pattern that it has observed over the past seven years concerning the arrest and detention in Türkiye and abroad of individuals with alleged links to the Gülen movement.¹² In all those cases, the Government has alleged criminal activity by individuals on the basis of their engagement in regular activities without any specification as to how such activities amounted to criminal acts. The Working Group finds that the present case follows the same pattern. No evidence has been presented to the Working Group that the activities of the petitioner, described above, could have been equated with being engaged in any terrorism-related activity.

55. The Working Group therefore finds that Ms. Tekin's deprivation of liberty was arbitrary, falling within category II, as it resulted from her exercise of the rights and freedoms guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant.

56. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

(c) Category III

57. According to the source's submission, Ms. Tekin has remained in continuous detention since her arrest on 20 September 2018 without an official indictment. The Working Group notes that because her deprivation of liberty was deemed arbitrary under category II, no trial should take place. Nevertheless, the trial is to take place, and the source has alleged that violations against Ms. Tekin's right to due process under articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant should amount to a deprivation of liberty that qualifies under category III.

58. The source's first claim that the arresting authorities failed to provide Ms. Tekin with a timely explanation for her arrest has already been assessed above, however further claims must be evaluated. Turning to the allegations that since her arrest in 2018 Ms. Tekin has remained in pretrial detention, the Working Group observes that, in principle, a delay between the moment of arrest and the time of trial is not automatically a breach of article 14 (3) (c) of the Covenant, as there can be legitimate reasons justifying such a delay. In the present case, however, the Working Group notes that Ms. Tekin's detention has been indefinite, with no official charge against her or set trial date. Additionally, she was arrested and placed in pretrial detention purely for exercising her rights as protected by the Covenant. The Government has offered no justification for the delay. The Working Group therefore finds that the indefinite delay between the arrest and the trial of Ms. Tekin constitutes a breach of article 14 (3) of the Covenant.

¹⁰ A/HRC/35/22/Add.3, para. 54.

¹¹ Human Rights Committee, general comment No. 34 (2011), para. 2.

¹² See, for example, opinions No. 1/2017, No. 38/2017, No. 41/2017, No. 11/2018, No. 42/2018, No. 43/2018, No. 44/2018, No. 78/2018, No. 84/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020, No. 51/2020, No. 66/2020, No. 74/2020, No. 8/2022, No. 3/2023 and No. 29/2023.

59. Furthermore, the source recalls that the equality of arms principle requires that all parties to the proceedings be guaranteed the right to present their full case and to have access to all material related to the detention or presented to the court by State authorities. Allegedly, Ms. Tekin, like many political prisoners, has been denied access to her case file and was therefore unable to prepare her defence adequately or to disprove the charges against her, in violation of the principle of equality of arms. Although this right is not absolute, and the disclosure of information may be restricted if such a restriction is necessary and proportionate in pursuing a legitimate aim, such as protecting national security, it is up to the State to demonstrate that less restrictive measures would be unable to achieve the same result.¹³

60. In the present case, the Government has failed to explain how the justification for restricting the defence's access under article 153 of the Code of Criminal Procedure – namely that the investigation would have been jeopardized had Ms. Tekin been given such access – applied in the present case. This is a serious violation of the principle of full equality to a fair and public hearing by an independent and impartial tribunal and of the right to have adequate time and facilities for the preparation of defence stipulated under article 10 of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) of the Covenant.¹⁴

61. The source also alleges that Ms. Tekin's right to have access to counsel was violated. Subparagraph (a) in the first provision of article 3 of Decree Law No. 668 stipulated that the period of detention would be 30 days at most, and subparagraph (m) stipulated that detainees would be denied access to lawyers for the first five days. The lawyer ban was lifted with Decree Law No. 684 of 23 January 2017, over a year and a half before Ms. Tekin's arrest. Nonetheless, Ms. Tekin's right to legal assistance was violated for the first six months of her detention.

62. The Working Group recalls principle 9 and guideline 8 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, according to which persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after the moment of apprehension, and such access is to be provided without delay. The Working Group finds that the absence of a lawyer at a critical stage of criminal proceedings exposed Ms. Tekin to a risk of coercion.

63. The Working Group is further concerned that when Ms. Tekin was finally able to meet with her chosen counsel, their conversations were recorded and monitored by prison officers. It reiterates that respect for lawyer-client confidentiality is an important part of the defence rights. The right of a defendant to have private discussions with their legal counsel, without surveillance, constitutes one of the fundamental aspects of a fair trial. If a lawyer is incapable of conferring with his or her client and obtaining confidential instructions, the legal assistance is significantly losing its purpose. In this respect, the Human Rights Committee has stressed that counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications, and furthermore, lawyers should be able to advise persons charged with a criminal offence, without restrictions, influence, pressure or undue interference from any quarter.¹⁵ The Working Group thus concludes that Ms. Tekin's right guaranteed by article 14 (3) (b) of the Covenant was violated.

64. Accordingly, the Working Group finds that the violations of Ms. Tekin's right to due process were of such gravity as to give her detention an arbitrary character. Her deprivation of liberty thus falls under category III.

(d) Category V

65. The present case joins a series of cases concerning individuals with alleged links to the Gülen movement that has come before the Working Group in the past few years. The Government submits that the Fethullahist terrorist organization is now employing the strategy

¹³ Opinion No. 85/2021, para. 84.

¹⁴ See, for example, opinions No. 18/2018, para. 53; No. 89/2017, para. 56; No. 50/2014, para. 77; and No. 19/2005.

¹⁵ Human Rights Committee, general comment No. 32 (2007), para. 34.

of presenting itself as the victim of human rights violations to hide its crimes. However, in all the cases referred to, the Working Group has found that the detention of the individuals concerned was arbitrary. A pattern is emerging whereby those with alleged links to the movement are being targeted on the basis of their political or other opinion, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. Accordingly, the Working Group finds that the Government detained Ms. Tekin based on prohibited grounds of discrimination, and that her detention was thus arbitrary, falling under category V. In addition, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

(e) Concluding remarks

66. The Working Group also notes the source's un rebutted allegations concerning the state of Ms. Tekin's health. The Working Group takes this opportunity to remind the Government of its obligation under article 10 (1) of the Covenant to ensure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person.¹⁶

67. Furthermore, in the past seven years, the Working Group has noted a significant increase in the number of cases brought to it concerning arbitrary detention in Türkiye.¹⁷ It expresses grave concern about the pattern that all these cases follow and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute crimes against humanity.¹⁸

68. The Working Group once again reiterates that it would welcome the opportunity to conduct a country visit to Türkiye. Given that a significant period has passed since its last visit to Türkiye, in October 2006, and noting the standing invitation by Türkiye to all special procedures, the Working Group considers that it is an appropriate time to conduct another visit in accordance with its methods of work.

3. Disposition

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

The deprivation of liberty of Meryem Tekin, being in contravention of articles 2, 7, 9, 10, 19 and 20 of the Universal Declaration of Human Rights and articles 2, 9, 10, 14, 19, 21 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.

70. The Working Group requests the Government of Türkiye to take the steps necessary to remedy the situation of Ms. Tekin 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.

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

72. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Ms. Tekin and to take all appropriate measures against those responsible for the violation of her rights.

73. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights

¹⁶ See, for example, opinions No. 46/2020, para. 64; and No. 66/2020, para. 66.

¹⁷ See, for example, opinions No. 1/2017, No. 38/2017, No. 41/2017, No. 11/2018, No. 42/2018, No. 43/2018, No. 44/2018, No. 78/2018, No. 84/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020, No. 47/2020, No. 51/2020, No. 66/2020, No. 74/2020, No. 8/2022, No. 3/2023 and No. 29/2023.

¹⁸ See, for example, opinion No. 47/2012, para. 22.

and fundamental freedoms while countering terrorism, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, for appropriate action.

74. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

4. Follow-up procedure

75. 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 Ms. Tekin has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Tekin;
- (c) Whether an investigation has been conducted into the violation of Ms. Tekin'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 Türkiye with its international obligations in line with the present opinion;
- (e) Whether Ms. Tekin's health status can be improved and confirmed by independent health experts;
- (f) Whether any other action has been taken to implement the present opinion.

76. 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.

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

78. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has 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.¹⁹

[Adopted on 19 March 2024]

¹⁹ Human Rights Council resolution 51/8, paras. 6 and 9.