



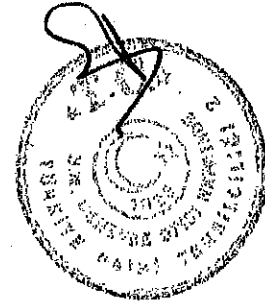
PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

2015/62441669-BMCO DT/7505265

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 Joint Urgent Appeal with the number TUR 1/2015 has the honour to enclose herewith an informative note comprising the reply of the Turkish Government.

The Permanent Mission 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.

Geneva, 19 February 2015



Enc. As stated

Office of the High Commissioner for Human Rights,
Palais des Nations CH-1211
GENEVE 10

Information Note Regarding the Investigation Process initiated by Istanbul Chief Public Prosecutor's Office on December 14

The process subject to the urgent appeal has been launched by the Chief Public Prosecutor of Istanbul upon individual complaints.

In order to make an in-depth investigation of the individual complaints, the Chief Public Prosecutor of Istanbul initiated an investigation procedure on 14 December.

Accordingly, a total of 31 suspects were taken into custody with a view to taking their statements.

Information provided by the chief public prosecutor reveals that these persons were taken into custody on suspicions such as founding, being a member of or supporting a terrorist organization.

They are also suspected of undertaking forgery and carrying out black propaganda by fabricating evidence against a religious community, named "Tahşiye" in Turkey, alleging them being part of a terrorist organization.

They were only being questioned as suspects. After their statements were taken, most of them were released.

One of the detained persons was a journalist. However, the grounds for detention has nothing to do with his journalistic activities.

It is clear that the investigation, detentions, releases and the following court process were all part of a legal process which is explained in details in the annexes to this note. It goes without saying that, in view of the principle of separation of powers, the legislative or executive bodies cannot interfere with the judiciary. It would therefore be completely unjust and wrong if anyone qualifies this process as politically motivated.

Secondly, being a journalist or being a member of a particular professional group does not make anyone immune from prosecution. In fact, like in all democracies, Turkish criminal system requires that all accused are presumed innocent until proven guilty.

It is also sincerely hoped that the judicial process would be completed swiftly.

Thirdly and on a more general note, we, as members of the democratic world, are all aware that freedom of the media is crucial for a democratic society.

With this understanding, Turkey has been implementing comprehensive judicial reforms in recent years to expand the scope of the freedom of expression and the media.

Likewise, Turkey has been cooperating closely with several international institutions and mechanisms, including the United Nations, Council of Europe, OSCE and the EU, on the issue of freedom of expression and media. The reports and recommendations of these institutions are carefully examined. The recent legal process is not against this trend.

Turkey's commitment to strengthening its democratic standards, including freedom of expression and freedom of media remains unchanged. In this regard, imprisonment of the journalists should not be tolerated.

Therefore, viewing the recent decisions of detention by independent Turkish courts as a violation of press freedom would be totally inaccurate and unfair.

An information note prepared by the Turkish Ministry of Justice and the translated documents presenting the grounds for the continuing detention of Mr. Hidayet Karaca are included in the annexes to this document.

Annex-I

INFORMATION NOTE PREPARED WITH REFERENCE TO THE LETTER OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS CONCERNING THE 14 DECEMBER INVESTIGATION

The rule of law, respect for human rights and commitment to democracy constitute the core values of the Republic of Turkey. The duties of the legislative, executive and judicial organs are set out in the Turkish Constitution and the laws; and it is also guaranteed under the Constitution that none of these organs may exercise a power that was not bestowed upon by the Constitution.

The duty to conduct an investigation into an offence committed has been delegated to public prosecutors by the Turkish laws. When discharging this duty, public prosecutors act without receiving any orders or instructions neither from an authority nor an office. In this framework, following a denouncement and complaint made through the internet by Mr. Mehmet Nuri Turan, as plaintiff, to the İstanbul Security Directorate on 16 May 2014, the İstanbul Chief Public Prosecutor's Office initiated the investigation no. 2014/133596 into the matter.

The scope of this investigation is based on the petition by Mr. Mehmet Nuri Turan, Mr. Mehmet Doğan, Mr. Bünyamin Ateş, Mr. Turgut Yıldırım and 66 other victims and plaintiffs. The allegations examined under this investigation are as follows:

- 1- The evidence in the criminal case lodged in the scope of the investigation no. 2009/1016, carried out by the İstanbul Chief Public Prosecutor's Office's relevant unit assigned to examine the matters under Article 250 of the Code of Criminal Procedure, were fabricated.
- 2- These acts and procedures were conducted following the perception manipulation acts performed by the media institutions (apparently affiliated with Mr. Fethullah Gülen), upon Mr. Fethullah Gülen's (the suspect) instruction and request.
- 3- The law enforcement officials of the İstanbul Security Directorate and other security directorates acted under the orders and instructions which were contrary to the laws

and regulations. This resulted in the 66 victims' being unlawfully charged with the offence of being a member of an armed terrorist organization.

In this connection, some of the information about the investigation no. 2009/1016 constituting the subject matter of examination is as the following:

On 29 April 2009 the Intelligence Bureau of the İstanbul Security Directorate sent a letter to the Anti-Terrorism Branch of the İstanbul Security Directorate. According to the letter, Mr. Mehmet Doğan, in contact with al-Qaeda, had established a group/organization named "TAHŞİYE" based on radical religious discourse. This group aimed to overthrow the constitutional order and it supported the jihadist ideology which is based on armed struggle against persons and groups who do not adopt the goals it pursued and it concentrated on structuring an organizational training to that end.

Upon this letter, the İstanbul Chief Public Prosecutor's Office initiated an investigation against 20 of the persons mentioned in the letter, on 5 May 2009. In this scope, the communications of the suspected persons were intercepted/wiretapped and they were monitored under technical audio surveillance. Furthermore, some other persons, who were contacted or met by the persons under the afore-mentioned surveillance, were also included in the investigation for the suspicion of being affiliated with the organizational structure. Eventually, 66 people were included in the investigation.

On 22 January 2010, 30 people were taken into custody following simultaneous operations launched in 7 provinces. Moreover, the police discovered 3 hand grenades, 1 smoke grenade, and several heavy machine gun cartridges of various brands in the house belonging to the deceased brother of Mr. Turgut Yıldırım and claimed to be allocated for the use of the group or the congregation ("Cemaat").

Another criminal case was lodged before the 14th Chamber of the İstanbul Assize Court against 39 persons and several other operations were launched in other provinces. In this connection, 9 persons, including Mr. Mehmet Doğan, the alleged leader of the organization/congregation (*Cemaat*) were detained on remand. A criminal case was filed in 20 May 2010 on the matter. The proceedings regarding these persons are ongoing before the 3rd Chamber of the Bakırköy Assize under the case no. 2014/307.

The allegations of the plaintiffs Mr. Mehmet Nuri Turan and others are as follows:

- 1- Fabricated evidence was produced on the grounds that the religious beliefs and opinions of the plaintiff Mr. Mehmet Doğan and the persons around him differed from those of the suspect Mr. Fethullah Gülen and that Mr. Fethullah Gülen and his group were criticised.
- 2- In a speech broadcasted on the internet, the suspect Mr. Fethullah Gülen pointed at Mr. Mehmet Doğan and his group as a target. An operation was launched following this incident.

As a result of the inquiries and examinations conducted in this regard, the İstanbul Chief Public Prosecutor's Office concluded as follows:

- 1- On 6 April 2009, the suspect Mr. Fethullah Gülen made a speech on his website (herkul.org) in which he mentioned "TAHŞİYECİLER" (which was not called with that name and was not characterized as a terrorist organization until then). He also pointed out that an al-Qaeda-affiliated (possibly armed) group could be established in Turkey and it could be called as "TAHŞİYECİLER" (Annotators), weapons could be placed in their residences and that it could be ensured that they could be characterized and referred as a terrorist organization;
- 2- On 8 April 2009, 10 April 2009 and 15 April 2009, without mentioning its links with terrorist actions, news articles and columns were written about the "TAHŞİYE" organization in Zaman Newspaper, which is understood to operate under the authority and initiative of the suspect Mr. Fethullah Gülen;
- 3- In the wake of these news articles, an episode named "Karanlık Kurul" was broadcasted on 9 April 2009 and 23 April 2009 within the TV series "Tek Türkiye" on Samanyolu TV channel whose broadcasting policy is determined by Mr. Gülen. It was prepared with a different format from the rest of the episodes and featured dialogues concerning current affairs and politics, suggesting that it was planned to have an organization named "TAHŞİYECİLER" established within the borders of the Republic of Turkey with a view to carrying out terrorist actions and have bombs and ammunition placed in the residences of their members.

- 4- Soon after the broadcast in question, on 29 April 2009 the Intelligence Bureau of the Istanbul Security Directorate sent a letter to the Anti-Terrorism Branch of the Istanbul Security Directorate, stating that a group called TAHSİYEÇİLER was formed by the followers of the plaintiff Mr. Mehmet Doğan, who allegedly favoured the Islamic fundamentalist group, al-Qaeda.
- 5- Upon the receipt of the letter, an investigation was initiated into the matter.
- 6- In other words, nearly one month after the suspect Mr. Fethullah Gülen's first speech, upon the media organs' broadcasts, an investigation process was initiated in a way entirely coinciding with the dialogues represented in the TV series in question. Operational actions were taken following this.

Subsequent to these findings of the Istanbul Chief Public Prosecutor's Office, the investigation was deepened.

In the examination it carried out, the Istanbul Chief Public Prosecutor's Office noted the following issues:

- 1- Although the victims and plaintiffs whose telephone conversations were tapped and who were monitored/put under surveillance through other investigation methods, did not conduct any act that would constitute an offence, their conversations and acts were misinterpreted as if their acts involved elements of an offence, and thus, the investigation was prolonged.
- 2- The materials (books, texts etc.) containing religious opinions and interpretations were confiscated from the victims and plaintiffs, and despite the fact that they did not contain any element of an offence and no proscriptive decision was issued, assessments were made as if they contained elements of an offence.
- 3- In the course of the investigation, it was not established that the persons in question committed offensive acts. No concrete evidence to indicate their contact with the terrorist organization al-Qaeda was found.

- 4- It was found that Mr. Turgut Yıldırım, whose place of residence was searched and bombs were found, did not take any action related to the acquisition or possession of ~~the said bombs and military ammunition.~~
- 5- Although the investigation procedures and techniques in relation to this place of residence required monitoring and surveillance, the military ammunition in question were seized without conducting any monitoring and surveillance activities.
- 6- The required inquiry into the fingerprints taken in the house where the bombs and military ammunition were found was not performed.
- 7- No inquiry was made about the information concerning the military ammunition seized.
- 8- While hundreds of machine gun cartridges were seized, no machine gun or rifle was found.
- 9- Although no investigation about Mr. Mehmet Doğan and his acquaintances had been conducted neither by the İstanbul Chief Public Prosecutor's Office nor by other chief public prosecutors' offices in the last 20 years, after Mr. Fethullah Gülen's speech, several investigations were initiated in different provinces.
- 10- In the course of the operations conducted, military ammunition was found in only one of the houses searched.
- 11- It was established that the lifestyles of the victims and plaintiffs differ from those of the members of the al-Qaeda terrorist organization, who previously had been investigated.

Currently, the investigation by the İstanbul Chief Public Prosecutor's Office about the 37 persons including the suspect Mr. Ekrem Dumanlı (the editor-in-chief of the Zaman Newspaper); the suspect Mr. Hidayet Karaca (the Samanyolu Media Group General Manager); the law enforcement officers stationed in the Anti-Terrorism Branch and the Intelligence Bureau at the İstanbul Security Directorate; the scriptwriter, the producer and the director of the TV series "Tek Türkiye", broadcast on the Samanyolu TV; along with those

who took part in the shootings of the said TV series, is still ongoing. Moreover, inquiries about certain persons are ongoing, which were initiated upon the suspicion that they participated in the said offences and actions.

In the context of the investigation, the TV series “Şefkat Tepe” and “Tek Türkiye” broadcast on the Samanyolu Television are taken under scrutiny. It was ascertained that the 64th episode of these TV series, which was called “Karanlık Kurul” and was prepared at a different format from the rest of the episodes, contained dialogues concerning the current affairs and politics, and the format of this episode of 10 to 15 minutes, was completely different from the entirety of the TV series. Furthermore, it was noted that the dialogues contained in this episode, broadcast on 9 April 2009, and the ones in the 66th episode broadcast on 23 April 2009 happened to be exactly the same as those that took place in the course of the investigation no. 2009/1016. The production team and scriptwriters of the TV series Tek Türkiye and people working for the other TV series were asked to give statements. However, upon the statements of the scriptwriters indicating that they had not written the scripts of the episode in question, the said scriptwriters were released from custody.

Additionally, previously another investigation against the President, the Prime Minister, the Ministers and other state officials in critical decision-making positions, was initiated on the ground that they were either members of or connected to another terrorist organization. This issue is also being examined under the investigation no. 2014/1637 by the İstanbul Chief Public Prosecutor’s Office.

The İstanbul Chief Public Prosecutor’s Office, pursuant to the provisions set out in Articles 1 and 7 of the Law no. 3713, has been conducting an investigation about the suspects in connection with the offences of leading and being a member of a terrorist organization on account of the fact that they established an organizational structure with a view to overthrowing the government and that the offences committed under this organization are characterised as terrorist offences.

The suspects Mr. Hidayet Karaca, Mr. Ekrem Dumanlı, Mr. Hüseyin Gülerce, Mr. Ahmet Şahin, Mr. Nuh Gönültaş are being investigated due to the acts they conducted with a view to developing a perception about the plaintiff Mr. Mehmet Doğan and other plaintiffs and victims that they are members of a terrorist organization.

The investigation involves a total of 37 suspects including Mr. Hidayet Karaca and Mr. Ekrem Dumanlı. In this connection, a total of 31 persons including Mr. Ekrem Dumanlı and Mr. Hidayet Karaca were taken into custody. 17 of these suspects were directly released on 14 – 17 December 2014. 16 of the other suspects including Mr. Hidayet Karaca and Mr. Ekrem Dumanlı were sent to court with the request of arrest and judicial control under Article 314 §§ 1 and 2, and Article 267 of the Turkish Criminal Code. 4 persons including Mr. Hidayet Karaca were detained according to the decision of inquiry no. 2014/334 of the 1st Chamber of the İstanbul Criminal Court of Peace on the ground that there was a strong suspicion based on concrete evidence indicating that they committed the offence under Article 314 of the Turkish Criminal Code. A ban on leaving the country was imposed on 7 of the suspects including Mr. Ekrem Dumanlı. Another 5 persons were detained in accordance with the decision of inquiry no. 2014/385 of 27 December 2014 issued by the 5th Chamber of the İstanbul Criminal Court of Peace. Consequently, 8 police officers and Mr. Hidayet Karaca are currently under arrest. Moreover, a judicial control decision was issued for Mr. Ekrem Dumanlı and 6 other suspects.

As laid down in the case-law of the European Court of Human Rights, it is undisputed that free press is one of the most essential safeguards of democracy and open society. In Turkey, freedom of press is being practiced in conformity with the European standards, thus, dozens of columns and articles criticizing the Government and various other state institutions are being published. No interference was done in this regard.

As a result, currently the investigation by the İstanbul Chief Public Prosecutor's Office is underway and the required actions are taken based on the evidence. No interference or influence of the executive organ or any other authority is existent. Moreover, it must be underlined that none of the journalists and press members has been investigated for the actions related to their work.

Annex-II

REPUBLIC OF TURKEY

ISTANBUL

1st CHAMBER OF THE ISTANBUL CRIMINAL COURT OF PEACE

Interrogation no.: 2014/334

Arrest Warrant

The court issuing the arrest warrant : 1st Chamber of the Istanbul Criminal Court of
Peace

Inquiry no. : 2014/334

Chief Public Prosecutor's

Office's investigation no. : 2014/133596

The Suspect's

Republic of Turkey identification no.: 19594713470

Name surname : HİDAYET KARACA

Father's name : Kadir

Mother's name : Feride

Date of birth : 18/08/1963

Place of birth : ÇANKIRI

Details of birth registry

Province : Çankırı

District : Korgun

Quarter : Yolkaya Quarter

Volume no. : 109

Entry no. : 47

Page no. : 63

Residential address :

Suspect sought on charges of : Founding and leading an armed terrorist
organisation

Statutory Basis

Date of Crime : 21/01/2014

Articles

: Article 314 (1) of the Turkish Criminal Code

Grounds for Arrest

: This is an arrest warrant, issued on the grounds explained in the interrogation report via a judicial decision, whereby it has been established that there is concrete evidence which strongly suggests that the suspect Hidayet Karaca leads an organisation by making broadcasts and publishing articles in line with the broadcasting policy of the organisation; that since the amount of punishment prescribed by law for the offence he is charged with is a grave catalog crime, the grounds for his arrest are presumed to be "in accordance with the law"; that similarly in view of the case-law of the European Court of Human Rights and pursuant to Articles 100 et seq. of the Turkish Criminal Code (Law no.) 5271 as amended by Law no. 6352, there is nothing that hinders the arrest of the suspect (such as an arrest prohibition or a trial obstacle); that taking into account the probable sentence to be imposed on the suspect, the probability of his escape is high; that since the investigation has not been completed yet, it is highly probable that the suspect would attempt to destroy or conceal any evidence, and to exert pressure on witnesses and victims; that concluding that pursuant to the principle of "proportionality" enshrined in Article 13 of the Constitution of the Republic of Turkey, applying judicial control measures which are a more lenient type of protection measures at this stage would remain "insufficient" with regard to the offence under investigation and would not serve the purpose of the investigation, given the importance of the situation, the anticipated punishment or the security measure to be applied; that on above-mentioned grounds, the requests of the suspect and his defence counsels for release were REJECTED and the arrest of the suspect was ordered pursuant to Articles 100 et seq. of the Turkish Criminal Code (Law no. 5271), for founding and leading an armed terrorist organisation.

19/12/2014

Clerk 156959

e- signed

Judge 40197

e-signed

HIDAYET KARACA:

~~SILIVRI L-TYPE CLOSED-PENITENTIARY INSTITUTION No.6 - ARRESTED~~

Date of arrest: 19.12.2014

The name of the arrested individual is only included in the UYAP (National Judiciary Informatics System) List.

Name of the Press Institution for which the arrested individual claimed to have been working at / His Position in the Institution: Chairman of the Samanyolu Press Group

Hidayet Karaca was arrested pursuant to Articles 100 et seq. of the Turkish Criminal Code (Law no. 5271), for the offence of founding and leading a terrorist organisation considering that, as stated in the arrest warrant of the 1st Chamber of the Istanbul Criminal Court of Peace, dated 19.12.2014, with the interrogation no. 2014/334, the suspect Hidayet Karaca leads an organisation by making publications that conform to the publication policies of the organisation; that there is concrete evidence which strongly suggests the existence of a crime; that having regard to the amount of punishment prescribed by law for the offence he is charged with which is a grave catalog crime, the grounds for his arrest are presumed to be "in accordance with the law"; that in view of the case-law of the European Court of Human Rights and pursuant to Articles 100 et seq. of the Turkish Criminal Code (Law no. 5271) as amended by Law no. 6352, there is nothing that hinders the arrest of the suspect (such as an arrest prohibition or a trial obstacle); that taking into consideration the probable sentence to be imposed on the suspect, the probability of his escape is high; that since the investigation has not been completed yet, it is highly probably that the suspect would attempt to destroy or conceal any evidence, and to exert pressure on witnesses and victims, applying judicial measures which are a more lenient type of protection measures at this stage would remain "insufficient" with regard to the offence under investigation and would not serve the purpose of the investigation.