



PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

2012/BMCO/2323761

Geneva, 22 October 2012

Dear Mr. Sow, Mr. De Frouville, Mr. La Rue, Mr. Kiai, Ms. Knaul and Ms. Sekaggya

With reference to your joint urgent appeal dated 9 August 2012, I have the pleasure to enclose herewith a non-paper which contains information received from the Ministry of Justice of the Republic of Turkey.

Please accept the assurances of my high consideration.


Oguz DEMİRALP
Ambassador
Permanent Representative

Encl: As stated

Mr. El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Mr. Olivier de Frouville
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mr. Frank La Rue
Special Rapporteur on the promotion and protection of
the right to freedom of opinion and expression

Mr. Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ms. Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Ms. Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

OHCHR REGISTRY

25 OCT 2012

Recipients :..... STD (Encl).....
.....
.....

The information provided by the Ministry of Justice of the Republic of Turkey in reply to the joint urgent appeal letter of the UN Special Rapporteurs dated 9 August 2012 as regards Cemal Bektaş, the president of Yakay-der, is submitted as follows:

According to the records provided by Istanbul Public Prosecutor's Office, within the context of the trial in question, all defense lawyers were enabled to attend the hearings at the dates mentioned. However, some of these lawyers did not attend the hearings on their own initiatives on account of the safety precautions according to which audio and video recorders (including the cell phones) cannot be admitted to the hearing room and that "their clients were not given the right to defend themselves in their native languages". On the other hand, the hearings were held open to the public, while merely some of the hearings were held in closed sessions in order to maintain the discipline and order.

- The domestic court sought to establish the suspects' identities by asking them in person; however some of the suspects rejected to give statement in Turkish and prevented the establishment of their identities. Therefore the Court, in its interim decision of 13 July 2012, ruled that the identity documents of the detained suspects, who did not give statement in Turkish regarding their identities, be brought from the prison and their identities be verified by the examination of these documents.

The domestic court, in its interim measure of 2 July 2012, rejected the suspects' and their representatives' request to defend themselves in Kurdish stating that it would be more appropriate for the suspects to make their defenses in Turkish without an interpreter, in accordance with the procedural rules and so as to ensure a reliable trial, since they were known to speak Turkish, and could easily express themselves in Turkish according to the investigation file.

- Furthermore in the said interim decision, the domestic court ruled that Article 202 of the Code of Criminal Procedure, which indicates that the statements of the suspects who cannot speak Turkish can be taken by the assistance of an interpreter, shall not be applied in this case for the reasons stated above. The court referred to the judgment of "K - France (10210/82), 7 December 1983" of the European Commission of Human Rights which states that "the right to be provided the assistance of an interpreter free of charge under the Article 6 § 3-e of the European Convention on Human Rights shall only be available for suspects who cannot speak or express themselves in the official language of the country; and not for those who live or study in and speak the official language of the country where they are prosecuted".

- There is no factual information or tangible evidence supporting the allegation that Mr. Bektaş's detention on remand continue due to his works on forcible and involuntary disappearances.

- Mr. Bektaş is being tried before İstanbul 15th Assize Court with the charge of "being a member of armed terrorist organization" (File No 2012/48). The legal grounds of his prosecution are clearly indicated in detail in the indictment. Besides, Article 138 of the Turkish Constitution reads as follows:

"Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming with the law."

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions."

- At this stage, in line with the principle of independence of the courts, it is considered inappropriate to make any speculation on the legal grounds of a criminal case pending before a national court, as well as the compliance of those grounds with international agreements.