



PERMANENT MISSION OF TURKEY  
TO THE UNITED NATIONS  
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 joint urgent appeal sent by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Mr. Seong-Phil Hong, Chair-Rapporteur of the Working Group on Arbitrary Detention, dated 4 September 2015 and Reference: UA, TUR 3/2015, has the honour to enclose herewith an information note comprising the response of the Turkish Government to the aforementioned appeal.

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.

Geneva, 8 October 2015



Encl: As stated

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

**OHCHR REGISTRY**

**13 OCT 2015**

Recipients: SPB.....

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**Information Note on the Urgent Appeal of the Chair Rapporteur of the Working Group  
on Arbitrary Detention and the Special Rapporteur on the promotion and protection of  
the right to freedom of opinion and expression dated 4 September 2015  
(REFERENCE:UA, TUR 3/2015)**

- I. *The Government would like to submit its observations including the response to the first and second questions raised by the Chair Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression concerning the arrest and detention of the said journalists.*

Jake Hanrahan and Philip Pendlebury were taken into custody on 28 August 2015 together with Mohammed İsmael Rasool and Abdurrahman Direkçi with the charge of “aiding willfully a terrorist organization”, following an investigation initiated by the Diyarbakır Chief Public Prosecutor’s Office upon the denouncement reached to the relevant authorities concerning a possible armed and bombing terrorist act to be committed.

On 31 August 2015 upon the request of their detention, the above-mentioned 4 persons appeared before the Diyarbakır Magistrate Judge’s Office in order to be heard. They were heard individually before the court in the presence of their lawyer and an interpreter.

As a result of the examination, Abdurrahman Direkçi was released on the condition that he was banned from international travelling and that he would be under the obligation to sign an official document three times in a week for the purposes of judicial control, as stipulated by the Code of Criminal procedure, Law No: 5271.

On account of the fact that the information and document stored in the hard disk, which had been seized, was excessive and that some hard disks could not be fully examined due to their encoding system, Mohammed İsmael Rasool, Jake Hanrahan and Philip Pendlebury were detained under Article 220/7 of the Turkish Criminal Code (Law No. 5237). The relevant article does not govern the hierarchical structure within a terrorist organization, but requires the punishment of those aiding such organizations knowingly and willingly.

In the decision ruling on these persons’ detention, the principle of proportionality specified by the Constitutional Court in its decisions in accordance with the international law and the principle pertaining to the non-requirement of direct evidence for detention, which was indicated by the European Court of Human Rights (ECtHR) in its judgment regarding the case of *Fox Campbell Hartley v. the United Kingdom*, no. 12244/86, were referred to. Furthermore, the concrete evidence demonstrating the existence of a strong suspicion that the suspects committed the imputed crime was accessed.

The decision of detention in question was a measure and it did not mean that the relevant persons had been convicted for the imputed offences. The investigation was still continuing, and these persons had the right to file an objection with the Diyarbakır Magistrate Judge’s Office within one week by submitting the request of being released. Upon appealing, with the decision of relevant court, Jake Hanrahan and Philip Pendlebury

were released on 3 September 2015. Mohammed İsmael Rasool is still detained on remand and the investigation concerning him is pending.

Furthermore, whether a criminal case will be initiated against these persons will be decided on as a result of the ongoing investigation. It must be taken into consideration that the relevant journalists were not detained on account of their journalistic activities, but on the charges that they aid a terrorist organization.

It should be recalled that all judicial remedies exist at the national level in Turkey including the right to individual application to the Constitutional Court. Article 148 § 3 of the Turkish Constitution, as amended on 13 May 2010, gives jurisdiction to the Constitutional Court to examine individual applications concerning the fundamental rights and freedoms protected by the Turkish Constitution and the European Convention on Human Rights (ECHR), after the exhaustion of domestic remedies.

In this context, having recognized the right to individual application to the ECtHR in 1987 and the compulsory jurisdiction of this Court in 1990, in Turkey there exist also the right to individual application to the ECtHR. If it is considered that a judgment delivered by the Constitutional Court consequent to individual application did not put an end to violation of a right, one can apply to the ECtHR after the delivery of the Constitutional Court's judgment.

As is known, Turkey is party to all relevant international conventions and is also engaged in strong cooperation with treaty and non-treaty international monitoring bodies in the field of human rights. Among them, Turkey, being the founder of the Council of Europe and party to the ECHR, undertakes its reform process to further fundamental rights and freedoms inter alia in line with the case-law of the ECtHR.

*II. In response to the third and fourth questions raised in the Urgent Appeal, the Government would like to convey the information regarding the safeguards provided to journalists in respect of the performance of their duties and also the measures taken to ensure that the right to freedom of opinion and expression are respected in Turkey.*

Following the explanations above, it should be emphasized that the Republic of Turkey is a state governed by the rule of law. Respect for human rights and adherence to democracy are our essential principles. The duties and functions of legislative, executive and judicial bodies have been set forth in the Constitution and other laws. It has also been laid down in the Constitution that no public body can use the powers which have not been delegated by the Constitution.

Freedom of the press, which is an absolute guaranty of democracy and open society, is protected by the Turkish Constitution and also implemented in accordance with the international standards.

Journalists gather information which is considered important for the target audience and use these as news. They impart information and prompt the society to think. According to the Code on the Press Labour (Law No: 5953), for a person to be regarded as a journalist, he or she must work in a workplace run by a newspaper, news or photojournalism agency

and must perform literary or artistic work in such a workplace. As per Article 4 of the said Law, it is also required that this work is to be based on a written work contract. Journalists are granted “press card”’s in accordance with the Press Card Regulation.

It should be mentioned that like in any other advanced democracy news in criticizing the Government or various state bodies regularly appear with no interference. However, it should also be noted that persons holding journalist status can also be investigated and detained if necessary by court decision for the crimes they have committed. The fact that they are journalists does not make them immune from prosecution.

Freedom of expression and the press is among the building blocks of democracy. In this respect, substantial reforms have been made in Turkey in the recent years concerning the freedom of expression.

Steps have been taken for the revision of the relevant legal framework in line with the standards provided by the ECHR. On the other hand, the legislation including provisions which are related to the freedom of expression were rectified in the 3<sup>rd</sup> and 4<sup>th</sup> judicial amendment and democratization packages in accordance with the standards set forth in the case-law of the ECtHR.

The judgments and decisions by judicial bodies, particularly by the high judiciary, which have been delivered in accordance with the standards set forth by the case-law of the ECtHR, are also indicative of the improvements.

- 3<sup>rd</sup> Judicial Package:

The “Law on the Amendment of Certain Laws for Raising the Effectiveness of Judicial Services and on the Suspension of Proceedings and Sentences In Respect of Offences Committed Through the Media”, widely known as the “3<sup>rd</sup> Judicial Package”, was enacted on 2 July 2012.

It has been stipulated in the 3<sup>rd</sup> judicial package that orders for seizure, bans, prevention from sale and distribution given in respect of published material become automatically null and void, provided that no decision has been taken by the courts to maintain such bans. Article 6 § 5 of the Anti-Terror Law was repealed. Therefore, the risk of future bans in respect of periodicals have been eliminated.

- 4<sup>th</sup> Judicial Package:

The “Law on the Amendment of Certain Laws in the Context of Human Rights and Freedom of Expression”, widely known as the “4<sup>th</sup> Judicial Package”, came into force on 30 April 2013 and revised many provisions.

The offense of praising crime and criminals has been reformulated. By an amendment to Article 215 of the Criminal Code, it has been laid down that expression of opinion would only constitute the said offense if an open and imminent danger to public order has arisen.

The constituent elements of the offense under Article 6 of the Anti-terror Law (no. 3713) was reformulated by the 4<sup>th</sup> judicial package. According to its previous wording,

any public statement by a terrorist organization constituted an offense, regardless of its content. According to the amendment, the printing and publishing of declarations and statements which justify, praise or encourage resorting to the coercive, violent or threatening methods of terrorist organizations shall be culpable. Thus, the elements of the offense have become more concrete and compatible with ECHR standards in the field of freedom of expression. Article 7 of the same Law (making propaganda of terrorist organizations) was also amended to meet the same standards. Moreover, by an additional paragraph to Article 7 of the Law, those who have committed certain crimes on behalf of terrorist organizations without being a member (such as printing leaflets or statements, making propaganda, attending illegal assemblies or demonstration marches) are saved from further punishment for being a member of a terrorist organization. By this amendment, it is ensured that freedom of expression is protected in respect of those who express their opinion through several means despite not having organic ties with terrorist organizations.

The maximum duration of assemblies and demonstration marches have been prolonged and the scope of the right has been broadened.

Lastly, it should also be added that many training activities and projects have long been organized to ensure that judges and prosecutors take into account the case-law and comments of the ECtHR as regards the rights and freedoms enshrined in the ECHR during legal proceedings. By this way, forming further awareness of the judgments of the ECtHR among the authorities regarding the problematic areas and implementation has been sought. The projects are aimed at the implementation of provisions on freedom of expression, in compliance with the ECHR and the case-law of the ECtHR.

In this context, training activities and projects have been conducted by various departments of the Ministry of Justice, the Supreme Council of Judges and Prosecutors and the Turkish Justice Academy, ensuring that judges and prosecutors approach the issue of freedom of expression in line with relevant case-law norms at the international level. In this framework, the Human Rights Department of the Ministry of Justice has organized the project of Freedom of Expression and the Media in Turkey. The project is aimed at the elimination of obstacles before freedom of expression and the media in Turkey in accordance with the standards set out in the case-law of the ECtHR. Working visits were made in this respect to the United Kingdom, Germany and Spain, and round-table meetings were held in four cities in Turkey. Moreover, the Turkish Justice Academy has prepared the projects "Raising Awareness among the Judiciary on the Freedom of Expression" (*MATRA*) and "Strengthening Respect for Freedom of Expression in the Judiciary". The EU-CoE Joint Project on Strengthening the Capacity of the Turkish Judiciary on Freedom of Expression is currently in implementation. In addition, the Supreme Council of Judges and Prosecutors has prepared the project "Raising the Awareness of Judges and Prosecutors on the Judgments of the European Court of Human Rights".