



PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

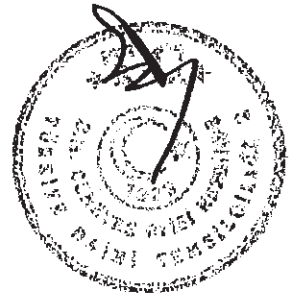
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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the letter by Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders, dated 31 March 2016, concerning the judicial process about a number of Turkish academicians, has the honour to enclose herewith an information note compiled by relevant Turkish authorities.

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

Geneva, 17 May 2016

Encl.: as stated



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

Information Note on the Joint Urgent Appeal of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders dated 31 March 2016

(REFERENCE:UA, TUR 3/2016)

1. The Government would like to submit below the information regarding the questions raised in the Joint Urgent Appeal of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders dated 31 March 2016.

2. In aftermath of 11 September 2001, while many democratic states have started to act more favourably towards security considerations when freedom and security balance is in question, Turkey made strenuous efforts to broaden the area of freedom with the reform packages. Many restrictions on political rights and freedoms were lifted through the democratization process. In 2009, the “National Unity and Brotherhood Project” was launched with a view to end the terror fomented by PKK, the illegal terrorist organization. In addition, civil society was effectively integrated into the process with the initiative of the “Committee of Wise Men”. The process gained a legal ground with the “Law on the Elimination of Terrorism and Strengthening of Social Integration” which entered into force on 15 July 2014. However, the Government’s goodwill initiative was abused by PKK. Seeing the process as an opportunity for tactical gains, PKK carried on with its illegal activities such as transferring weapons and ammunition from rural areas to store them in city centres, digging tunnels, and planting mines on the roads in order to set up “rebel zones” in cities. As a consequence of the PKK activities to undermine the process, it was finally disrupted on 22 July 2015 when two police officers were murdered in Ceylanpınar district of Şanlıurfa.

3. In the aftermath of the incident, acting in line with the state’s responsibility to protect the public order and to provide security for its citizens in the face of terrorist threats, Turkey started counter-terrorism operations against PKK. In the meantime, the PKK continued to attack many police stations and military vehicles and murdered civilians. Besides, the terrorist organization declared so-called “self-governance” in some districts of Hakkari, Muş, Van, Diyarbakır, Ağrı, Bitlis and Batman. In these provinces, students’ and teachers’ access to their schools as well as public officials’ access to their work were hindered due to deteriorating security situation and people were forced to migrate. Also, suicide attacks ending up in massive civilian casualties were perpetrated by PKK in Ankara and İstanbul.

In this context, extensive counter-terrorism operations were carried out for the safety of civilian population. In İdil district of Şırnak, 192 barricades that were set up by the PKK were removed, 71 ditches were closed, 482 handmade explosives were disposed of and also 249 weapons, 4,731 ammunitions and 451 kilograms of materials used for handmade explosives were seized as of 9 March 2016. Similarly, in Sur district of Diyarbakır, 206 barricades that were set up by the PKK were removed, 7 ditches were closed, 365 handmade explosives were disposed of and also 504 weapons, 48,048 ammunitions and 3,740 kilograms of materials used for handmade explosives were seized as of 10 March 2016.

4. While the security forces continued these counter-terrorism operations, one of the leaders of PKK/KCK made a call on 22 December 2015 demanding the intellectuals’ support to the PKK’s so-called “self-governance units”.

Not long after, on 11 January 2016, 1128 academics signed and published a declaration (“the Declaration”) which was titled as “We won’t be a party to this crime”. The Declaration was published in a period that security forces were fighting against terrorists and twenty days after the above-mentioned call. The declaration openly labeled the state forces’ counter-terrorism operations as “illegitimate” and levelled unfounded accusations against the security forces such as committing “deliberate and planned massacres”. Accordingly, authorized public prosecutors launched investigations against signatories to the Declaration pursuant to Articles 301 and 216 of the Turkish Criminal Code and Article 7 of the Counter-Terrorism Law.

With a letter dated 13 January 2016 which was circulated to higher education institutions, the Council of Higher Education requested information on the academics who signed the Declaration as well as the measures that were taken.

6. The Declaration was drafted and published in İstanbul. Subsequently, in accordance with the relevant rules of Turkish law, multiple investigations that have legal and factual connections were combined and conducted by İstanbul Public Prosecutor’s Office on the grounds that it would be more appropriate for effective examination and investigation process in view of a large number of suspects that were residing in various provinces.

7. During the investigation process, Mr. Muzaffer Kaya, Ms. Esra Mungan Gürsoy and Mr. Kıvanç Ersoy issued another statement on 10 March 2016 to the effect that they were standing behind the Declaration. Subsequently, their statements were taken and on 15 March 2016, they were referred to the Criminal Magistrates’ Office on duty with a request for detention on the grounds of continuing to make propaganda of a terrorist organization insistently. In the reasoning of the Magistrates’ Office decision, it was taken into account that they have made another statement which was considered as a support to the call of one of the leaders of the terrorist organization, with the purpose of defying the Republic of Turkey. It was underlined that despite ample evidence indicating the responsibility of PKK throughout all these incidents, the academics in question persistently avoided from putting forward any criticism against PKK terrorist organization and its heinous attacks on civilians.

Consequently, İstanbul Criminal Magistrates’ Office have decided for pre-trial detention of the above mentioned three academics on the grounds of making propaganda of the terrorist organization. On 4 April 2016, İstanbul Public Prosecutor’s Office filed an indictment and requested that Mr. Muzaffer Kaya, Ms. Esra Mungan Gürsoy and Mr. Kıvanç Ersoy to be sentenced according to Article 7/2 of the Counter-Terrorism Law. Mr. Kaya, Ms. Gürsoy and Mr. Ersoy were released pending trial by the İstanbul 13th Assize Court on 22 April 2016. Judicial process is ongoing.

8. Legal provisions that are similar to the Article 301 of the Turkish Criminal Code exist in many other countries’, including European ones, criminal law systems as well. As a result of the previous difficulties faced in legal practice and criticism in this regard, Article 301 was amended in 2008. According to the amendment, the word “Turkishness” in the previous version was replaced with “Turkish Nation”. Moreover, a new rule was introduced that prosecutions under Article 301 could be initiated only with the permission of the Minister of Justice. The new rule stipulating the permission of the Minister of Justice as a precondition for prosecution provided a substantial decrease in number of cases. In this context:

- 1.894 prosecutions were initiated between 2003-2007 according to Article 301 and Article 159/1 of the former Turkish Criminal Code. 744 of them resulted with conviction and 1.142 of them resulted with acquittal.
- After the 2008 amendment, 955 cases were submitted to the Ministry of Justice from 8 May 2008 through 30 September 2009 seeking authorization for criminal investigation under Article 301. Ministry of Justice refused to grant permission in 878 of these cases. Permissions were granted in 77 cases.
- 357 cases were submitted to the Ministry of Justice from 1 January 2014 through 31 December 2014 and 92 cases were transferred from the previous year. Ministry of Justice refused to grant permission in 273 of them. Permissions were granted in 72 cases. 85 cases were transferred to the following year and 19 cases were closed without an action. Permissions were granted for 20.87 percent of the total 345 cases.
- 585 cases were submitted to the Ministry of Justice from 1 January 2015 through 31 December 2015. 85 cases were transferred from the previous year and therefore the total number reached at 670. The Ministry of Justice refused to grant permission in 379 of them. Permissions were granted in 153 cases. 117 cases were transferred to the next year and 21 cases were closed without an action. Permissions were granted for 28.76 percent of the total 532 such cases.

Offence of making propaganda for the terrorist organisation that was defined in Article 7/2 of the Counter-Terrorism Law was amended with the Fourth Judicial Package. The amendment, brought a more precise definition of making propaganda for a terrorist organization by its new emphasis on the precondition of “legitimizing, praising or encouraging the methods involving use of force, violence and threat”. In this respect, the substance of the said article was brought in line with the European Convention on Human Rights (“ECHR”) and other conventions that Turkey is a party to.

9. Turkey considers the freedom of expression as one of the main pillars of a functioning democratic society. Article 90/5 of the Constitution constitutes reference for the application of provisions of the international agreements that are related with fundamental rights and freedoms. The said article stipulates that the provisions of international agreements supersedes over domestic law in cases of contravention and thus provides safeguard for international standards for fundamental rights and freedoms including freedom of expression. In addition, pursuant to Law No. 6126, individual application can be lodged before the Constitutional Court.

Studies for further strengthening the principle of the freedom of expression continue unabated. For example, between 2012 and 2014, a project on development of freedom of expression was carried out by the Ministry of Justice in cooperation with the Council of Europe and Department for the Execution of the Judgments of the ECtHR. In addition, "EU-CoE Joint Project on Strengthening the Capacity of the Turkish Judiciary on Freedom of Expression" has been launched on 2 September 2014 and the project is still ongoing. The Constitutional Court, the Court of Cassation, the Council of State, the High Council for Judges and Prosecutors and the Ministry of Justice contribute to the Project as the partners. The main objective of the Project is to improve the application of human rights standards in the field of freedom of expression and media in the daily work of the judiciary through the interpretation and implementation of the legislation in force in line with the European standards.

In addition to the aforementioned projects, the Human Rights and Equality Institution, the Ombudsman Institution, the Human Rights Commission of the Turkish Grand National

Assembly are responsible for investigating and reporting regarding human rights issues, drafting advisory opinions, as well as awareness raising about human rights.

10. Exercising of the rights stipulated in Article 19 of the ICCPR are subject to certain limitations including “the protection of national security or of public order, or public health or morals.” Similarly, Article 10 of the ECHR provides that freedom of expression may be subject to certain restrictions. However, interference with the freedom of expression should be (i) prescribed by law; (ii) pursue a legitimate aim and (iii) be necessary in a democratic society. The intervention to the freedom of expression for the protection of the national security has to be considered according to how it is implemented, whether it fulfils any need and whether the need in question is valid at the time of intervention. On the other hand, sensitive nature of countering terrorism, necessity of the meticulous struggle against actions which promotes and approves violence and limited margin of appreciation of the State regarding necessity for the intervention to the freedom of expression in a democratic society are the facts that needs to be taken into the consideration, as well. The Government of Turkey would like to emphasize that in the implementation of normative rules and regulations, the domestic judicial authorities are in a much more advantageous position in comparison with the institutions relying on the flow of information from distant sources.

The Government also wishes to underline that any Turkish citizen who is of the opinion that his/her rights have been violated by means of Article 301 or through any other way related with the Turkish legislation or the practices of the authorities of Turkey, he/she has the right and freedom to resort to the safeguards of the main international human rights conventions that Turkey is a party, through the above-mentioned Article 90/5 of the Turkish Constitution.