



TURKISH REPUBLIC OF NORTHERN CYPRUS
OFFICE OF THE PRESIDENT

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Ms Irene KHAN,
Special Rapporteur on the promotion and protection
of the right to freedom of opinion and expression.
UN Office of the High Commissioner of Human Rights
Palais des Nations,
1211 Geneva 10,
Switzerland.
(via email: ohchr-registry@un.org)

Ref.: AL OTH 1/2024

The Office of the President is in receipt of your above-referenced letter addressed to the President of the Turkish Republic of Northern Cyprus, H.E. Mr Ersin Tatar. The letter raises issues concerning the “*alleged judicial harassment, intimidation and censorship of journalist Mr. Ali Kişmir.*” The aim of this communication is to provide the information at the disposal of the authorities of the Turkish Republic of Northern Cyprus (TRNC) on certain matters raised therein.

On 15 August 2020, Ali Kişmir published an article on his Facebook page, with the heading “the brothel”, which had insulting and ridiculing content targeting the Turkish Cypriot Forces Commandership. Following the investigation conducted, the Attorney-General’s Office decided to commence a criminal case against Mr Ali Kişmir, action number 2148/2023, before the competent court in the TRNC. Mr Kişmir is charged with offences under sections 2 and 26 of Law No. 29/1983, for denigrating and insulting the legal personality of the Turkish Cypriot Forces Commandership. The trial will continue on 17 April 2024.

The conclusive assessment of the Attorney-General’s Office, the independence of which is guaranteed under Article 158 of the Constitution of the Turkish Republic of Northern Cyprus (TRNC), is that the legal framework guaranteed under Article 24 of the TRNC Constitution on freedom of opinion and expression, is in line with Article 19 of the Universal Declaration of Human Rights, as well as Article 10 of the European Convention on Human Rights.





In the TRNC, freedom of thought, speech and expression are guaranteed under Article 24 of the TRNC Constitution. Article 24(2) states that “[e]very Person has the right to express and publish their thoughts and opinions by themselves or collectively”. The exercise of the freedom of speech and of expression may be only “subject to such formalities, conditions, restrictions or penalties as are necessary and prescribed by the law, only in the interest of national security or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.”

Furthermore, in the TRNC, provisions of international conventions which have been incorporated into domestic law by way of ratification have precedence over domestic law and their constitutionality cannot be challenged in the courts under Article 90 of the TRNC Constitution. In this context, the European Convention on Human Rights is binding on the Turkish Republic of Northern Cyprus, as it has been incorporated into domestic law by virtue of Ratification Law No. 39/1962. In addition, in the Declaration of Independence of the TRNC, adopted on 15 November 1983, it was declared that the contents of the Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, as well as International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights were recognised and accepted by the Turkish Cypriot People.

In the proceedings before them, TRNC courts often review the compliance of domestic legislation and practice with international human rights standards with reference to the above-mentioned relevant international treaties. For instance, in a judgment of the TRNC Supreme Court, on appeal from criminal court, the Court reviewed whether freedom of expression was protected with reference to the European Convention on Human Rights:

“Article 10 of the European Convention on Human Rights is largely similar to Article 24 of the TRNC Constitution, which regulates freedom of thought, speech and expression. Freedom of thought and expression is protected in the relevant Article 10, and in addition to the cases specified in Article 24 of our Constitution, it is stated that these rights can be limited “if necessary in a democratic society”. The European Convention on Human Rights is accepted within the scope of national legislation in our country, and although we are not a member party, the principles and decisions of the European Court of Human Rights are implemented as long as they do not conflict with our legislation.”¹

¹ TRNC Supreme Court, on appeal from criminal court, Case No. 45/2019.



TRNC judiciary also protects freedom of expression as is exemplified in this quotation from a TRNC Supreme Court judgment “*A journalist has the right to write his or her opinions about events in his or her country or the world, and to praise and criticize; Neither state officials nor any individual is exempt from criticism, and in addition, in terms of the use of fundamental rights and freedoms, writers expressing their opinions by writing in a newspaper constitutes the basis of freedom of expression.*”² In the same judgment, the Supreme Court further expressed that “[d]iscussing the expressed ideas and examining their truth or falsity is one of the main purposes of freedom of expression. In a democratic society, freedom of expression is not the freedom to say things that will please the administrator or public authorities, but the freedom to express all kinds of thoughts freely. The *Lingens case*, which was particularly touched upon by the Court of First Instance, is very important in this regard. The ECHR, in the *Castells v. Spain (1992)* case, went further and said that the authorities of a democratic state should tolerate criticism, even if it is considered provocative.” The Supreme Court also expressed that “[i]n order for restrictions on freedom of expression not to violate the Convention on Human Rights, three conditions are generally required a) There must be an intervention that is necessary in a democratic society b) The limitation must be determined by law and c) The intervention must have a legitimate aim.”

The legal framework set out above provides for the protection of the freedom of expression, including of dissenting voices and critics, enabling them to operate in a safe and enabling environment free from fear of threats, intimidation, prosecution, criminalization and deprivation of liberty. This is the framework within which the relevant TRNC court will make a ruling on the charges brought against Mr Ali Kışmir as well, independent from internal and external control, as protected under Article 136 of the Constitution.

With respect to the remaining issues raised in the above-referred letter that relates to our authorities, please be advised that there are no official complaints lodged with the TRNC authorities concerning allegations on censorship of Mr Kışmir by the relevant Turkish Cypriots.

Furthermore, we strongly refute any allegation on the suggested interference by the Office of the President in relation to Mr Ali Kışmir’s resignation from an online channel, which is now purported to be forced. This Office is not aware of any official complaints being lodged to any TRNC authority for such an alleged interference either, such interference being prohibited under Article 26 of the Constitution which states that “[t]he freedom of the press and publications is guaranteed for all citizens and shall not be subjected to censorship” and more importantly “[t]he State shall take

² TRNC Supreme Court, on appeal from criminal court, Case No. 28-29/2010.



the necessary measures to ensure the freedom of the press, publication and of receiving information”.

I hope that this information provides you with the necessary clarification on the issues you have raised and that it will be duly taken into account and reflected accordingly.

In accordance with the instructions I received from the President, I respectfully submit the above for your information.


Okan DONANGIL
Undersecretary