

**NATIONS UNIES  
HAUT COMMISSARIAT DES NATIONS UNIES  
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Independent Expert on minority issues; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE: UA G/SO 218/2 G/SO 214 (107-9) G/SO 214 (3-3-16) Minorities (2005-4) Terrorism (2005-4)  
TUR 1/2012

2 February 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Independent Expert on minority issues; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/5, 17/2, 16/6 and 15/15.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **the arrest, detention and launching of criminal proceedings against lawyers in the context of alleged anti-terrorism operations.**

Similar concerns were expressed in an urgent appeal dated 17 November 2011, by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Independent Expert on minority issues; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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. No response to this communication has been received so far.

According to new information received:

On 22 November 2011, 39 lawyers and one legal worker belonging to the Kurdish minority were allegedly arrested in the scope of an operation aiming at dismantling an alleged terrorist network known as the "Kurdish Communities Union" (KCK) - an organisation believed to be the "urban branch" of the armed

“Kurdistan Workers Party” (PKK). Among those arrested are reported to be defence lawyers who are engaged in the main KCK trial before the Diyarbakır Heavy Special Penal Court No. 6. All of them had been allegedly involved at some stage in the legal representation of imprisoned PKK leader Abdullah Öcalan and have been accused of ‘passing order of Abdullah Öcalan’. On 5 December 2011, another lawyer was allegedly remanded into custody in the same criminal case.

The lawyers were reportedly taken into custody in Istanbul for their alleged membership to KCK under charges of “membership of an illegal organisation” and “directing an illegal organization”. The police had reportedly raided their offices and houses, searched and confiscated their files and made copies of their hard drives.

According to the information received, among those remanded into custody and detained in Metris prison were Messrs. **Asya Ülker, Aydın Oruç, Bedri Kuran, Cemal Demir, Cemo Tüysüz, Davut Uzunköprü, Doğan Erbaş, Fuat Çoşacak, Hüseyin Çalışçı, Mehmet Bayraktar, Mehmet Deniz Büyük, Mehmet Nuri Deniz, Mehmet Sani Kızılkaya, Mensur Işık, Mizgin Irgat, Muharrem Şahin, Mehdi Öztüzün, Mustafa Eraslan, Osman Çelik, Sebahattin Kaya, Serkan Akbaş, Servet Demir, Şakir Demir, Şaize Önder, Veysel Vesek, Yaşar Kaya, Cengiz Çiçek, Faik Özgür Erol, Hatice Korkut, İbrahim Bilmez, Ömer Güneş, Emran Emekçi, Mehmet Sabir Tas, Mahmut Alınak, Fırat Aydınkaya, Mehmet Ayata, Nevzat Anuk, Nezahat Paşa Bayraktar, Yalçın Sarıtaş, Ümit Sisligün and Sebahat Zeynep Arat**, who is the secretary of the “Century’s Law Bureau” (*Asrın Hukuk Bürosu*).

According to the information received, the lawyers took a stance as a matter of principle against the ban of providing a defence in the Kurdish language before the Diyarbakır courts and stated that they would not be able to defend their clients. Both the lawyers and the Diyarbakır Bar Association were reportedly warned several times by the court and the prosecutors about “committing a crime”.

Concern is expressed that the arrests, charges and criminal proceedings brought against the lawyers are mainly linked to the contacts they had with their clients within the scope of their professional duties and the legitimate exercise of their profession. Concern is also reiterated about the broad definition and interpretation of the crime of terrorism, notably the notion of “membership in an illegal organization”, and its impact on fundamental rights such as the right to liberty and the right to freedom of expression.

Without expressing at this stage an opinion on the facts of the case and on whether or not the detention of the abovementioned persons is arbitrary, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an

independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

In this context, we once again would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana, Cuba, from 27 August to 7 September 1990. In particular:

- Principle 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

- Principle 18. "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

- Principle 20. "Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority".

- Principle 23. "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly [...]".

As far as the allegations of "membership in an illegal organization" and "directing an illegal organization" against the abovementioned individuals are concerned, we would like to draw your Excellency's Government's attention to previous joint communications by Special Procedures mandate holders, the most recent one being the abovementioned joint urgent appeal dated 17 November 2011, as well as to the report on his mission to Turkey of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26/Add.2), in which it was stated that the Turkish "Anti-Terror Act is drafted in a way that allows for an overly broad application of the term terrorism." (ibid., para. 14). This observation also relates to the definition of a "terrorist offender" (ibid., at para. 15).

While we would like to thank your Excellency's Government for its reply dated 6 January 2012, to the letter of 27 June 2011, of the former Special Rapporteur following up on his country mission in which he, inter alia, observed that "[t]he designation as terrorist organization and the appeal procedure against such designation remain unclear, thereby also rendering the notion of membership in a terrorist organization lack distinctive force", we regret that your Excellency's Government has informed that at present, no work is carried out in respect of making amendments to the Anti-Terror Law in relation to the definition of terrorism. We further regret that we have not received information as to how your Excellency's Government qualifies an organization as terrorist and illegal and whether there are procedures in place to appeal such a designation.

We would once again like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments, such as article 15 of the ICCPR, and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. In our view, at the national level, the specificity of terrorist crimes is usually defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or to compel the government or an international organization to doing or refraining from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist.

In this connection, we would also like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice."

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
- article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as

acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We wish to additionally draw the attention of your Excellency's Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 4.1 of the Declaration establishes that: "States shall take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned lawyers are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the aforementioned lawyers in compliance with the aforementioned international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?
2. What is the current situation of the lawyers deprived of liberty on 22 November 2011?
3. Please provide information concerning the legal grounds for the arrest, detention and launching of criminal prosecution against the aforementioned lawyers. Please also indicate how the arrest, detention and launching of criminal prosecution against them is compatible with the international standards, including the Basic Principles on the Role of Lawyers.
4. Please indicate the measures taken to ensure that human rights defenders can carry out their legitimate work of promotion and protection of human rights and fundamental freedoms in a free and safe environment.
5. How does your Excellency's Government qualify an organization as terrorist and illegal? Are there any procedures in place to appeal such a designation?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul  
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