

**Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest  
attainable standard of physical and mental health**

REFERENCE: AL Health (2002-7)  
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolution 24/6.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning **a draft health law "concerning the organization and duties of the Ministry of Health and its attached units and amendments in some laws" (the Bill)**.

According to the information received:

It is reported that, following debates at the Parliamentary Commission on Family, Labour and Social Affairs in June 2013, the Turkish Parliament is now considering the Bill, which would allegedly criminalize the provision of independent emergency health care in Turkey. In particular, the latest revision of the article 33 of the Bill reportedly states that:

*"All practices and procedures related to the delivery of health services shall be under the scrutiny of the Ministry of Health. With the exception of health services in emergency situations by authorized and competent persons until the arrival of formal health services, those who deliver or commission others to deliver health services without proper license shall be subject to imprisonment from one to three years and administrative fine equivalent to that of twenty thousand days."*

It is alleged that the Bill would criminalize the provision of independent medical care, including emergency care, by qualified practitioners throughout Turkey and provide the Ministry of Health with unprecedented control over healthcare practices in the country. The presence of state ambulances at a protest will allegedly be considered as sufficient grounds not only to prevent emergency

medical care by independent clinicians, but also to prosecute emergency medical responders acting under the World Medical Association's International Code of Medical Ethics to provide care to persons in need. It is therefore alleged that the draft law aims to target medical practitioners who provide care voluntarily during demonstrations, despite the fact that in times of urgency the international standards for emergency medical care are based on the medical need rather than the accessibility of medical care.

It is also alleged that the Bill does not comply with articles 97 and 98 of the Turkish Penal Code, which make it a crime for medical personnel to refuse to provide emergency assistance when needed. It is further alleged that the Bill also entails provisions that undermine patient privacy and medical professional ethics to act in the interest of the patient and without discrimination.

In view of the allegations, grave concern is expressed regarding the Bill's alleged criminalization of the provision of independent medical care, especially in emergency situations, and its deleterious effect on health providers and persons in need of such medical care. Further concern is expressed regarding the Bill's alleged negative impact on the availability of healthcare services, the ethical duty of health workers to provide medical care in emergencies to those in need, and the ability of health workers to carry out their professional responsibilities without interference or fear of reprisal.

While at this stage I do not wish to prejudge the accuracy of these allegations, I would appreciate information from your Excellency's Government on steps taken by competent authorities to ensure the enjoyment of the right of everyone to the highest attainable standard of health. This right is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which was ratified by Turkey on 23 December 2003. This includes an obligation on the part of all States parties to ensure that quality health facilities, goods and services are available, accessible and acceptable on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population. It also requires States to create conditions which would assure to all medical service and medical attention in the event of sickness (article 12.2(d)).

I would like to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which specifies obligations of States parties to respect the right to health by, *inter alia*, refraining from interfering directly or indirectly with the enjoyment of the right to health (para.33) and from denying or limiting equal access for all persons to preventative, curative and palliative health services (para.34). According to the Committee, violations of the obligation to respect include those State actions, policies or laws that contravene the standards set out in article 12 of the ICESCR and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. The Committee referred to the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of

the right to health as examples of the violation of the State's obligation to respect the right to health (para.50).

Furthermore, States have core obligations that are minimum essential levels of the right to health from which the State cannot derogate (General Comment No.14, paras.43 and 47). Accordingly, States should ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups (para.43(a)). As with all other rights in the ICESCR, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible (para.32). Moreover, acceptability of health services includes respect for medical ethics and confidentiality of patients, as well as improvement of the health status of those concerned (para.12(c)). In this context, I wish to refer your Excellency's Government to the International Code of Medical Ethics adopted of the World Medical Association, according to which it is a physician's duty, *inter alia*, to give emergency care as a humanitarian duty unless he/she is assured that others are willing and able to give such care and to respect a patient's right to confidentiality.

I would also like to draw the attention of your Excellency's Government to my report on the right to health and conflict situations (A/68/297), presented to the United Nations General Assembly in October 2013. The report notes that provisions that require medical personnel to report persons opposing the State prevent access to health facilities and services by patients, who are involved in conflict, as they may avoid seeking health services for fear of being suspected of their involvement in violence (A/68/297, para.22). Furthermore, policies requiring reporting of medical personnel for acting within their professional duty or providing health care may deter health workers from providing health services due to fear of prosecution (para.21). The report recommends that States should refrain from interfering with the duty of health professionals to provide health services in an impartial manner and from formulating laws and policies that criminalize provision of health services by health workers to persons involved in conflict (para.70 (c)).

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide details of steps taken, if any, to ensure the availability and accessibility of health services, including emergency healthcare services, to all persons in Turkey, without discrimination.
3. Please provide details of steps taken, if any, to ensure the Bill complies with the State's international obligations regarding the right to health, is not retrogressive and is in line with international medical ethics.

I would appreciate a response by your Excellency's Government within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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

Anand Grover  
Special Rapporteur on the right of everyone to the enjoyment of the  
highest attainable standard of physical and mental health