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

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

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)  
TUR 6/2012

9 August 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/16, 16/4, 15/21, 17/2, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged detention and trial of **Mr. Cemal Bektas**, president of Yakay-der. Yakay-der is an organization which works to clarify the circumstances of enforced disappearances and extrajudicial executions in Turkey. It is a member of the Euro-Mediterranean Federation Against Enforced Disappearances (FEMED), a network of organizations working to denounce and seek justice for cases of enforced disappearances in the region and offering support to family members of the disappeared.

An urgent appeal was transmitted to your Excellency's Government on 28 October 2011, by the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders, concerning the arrest of Mr. Bektas and other individuals working on enforced disappearances in Turkey. A reply was received from your Excellency's Government dated 13 December 2011.

According to the new information received:

From 2 to 13 July, a trial was reportedly held concerning 205 individuals, including Mr. Bektas, in relation to the Koma Civaken Kurdistan (KCK – Union of Communities in Kurdistan). During the trial, Mr. Bektas was allegedly accused of belonging to an armed organization under article 314/2 of the Turkish Criminal Code. He is also reportedly accused of illegal activities within the context of the inquiry against the KCK. The trial was reportedly closed to the public and took place in a specifically constructed building inside the Silivri penal complex. The defense lawyers were allegedly searched and had their mobile telephones taken from them on entering the trial, and were reportedly only allowed to present their case from 1:30 p.m. until 5:00 p.m. on the last day of the trial. Requests made by the accused to be represented in their native language and have interpreters were reportedly refused. Furthermore, the court reportedly refused to transcribe testimony given by the defendants concerning their identity into the court records, and instead used information concerning their identity from prison records.

Following the trial, a number of individuals were allegedly released, including another member of Yakay-der. However, from 1 to 9 October 2012, another hearing is allegedly scheduled to take place for the remaining individuals, including Mr. Bektas, all of whom reportedly remain in detention.

Concern is expressed that the reported detention and trial of Mr. Cemal Bektas may be directly related to his peaceful and legitimate human rights work in relation to victims of enforced disappearance. Furthermore, concern is expressed about the alleged lack of procedural safeguards, in particular the lack of time given to defense lawyers and the refusal to allow the accused to be represented in their native language or to have interpreters present during the trial.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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 (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would like to recall that, in its resolution 10/10, the Human Rights Council urged Governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

Further, in the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, it is stated that States must take steps to ensure that persons involved in investigations of cases of disappearance, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or

reprisal.

We also wish to refer your Excellency's Government to article 14(1) of the ICCPR, which states: “[...] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

Moreover, article 14(3) of the ICCPR states that: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;” and “(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

In this context, we would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, and in particular principle 16, which states: “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 17, which states: “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”; and principle 18, which states: “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”

We would also like to refer to article 19 of the ICCPR, which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Similarly, we would like to refer to article 22 of the ICCPR, which provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

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".

Finally, we would like to bring to the attention of your Excellency's Government article 12 paragraphs 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.

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 Mr. Cemal Bektas in compliance with the above 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 above summary of this case accurate?
2. Please provide information concerning the legal grounds for the charges against Mr. Cemal Bektas, and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Declaration on Human Rights Defenders.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Cemal Bektas 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.

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

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

Olivier de Frouville  
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Frank La Rue  
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