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**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 Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the 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 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) Terrorism (2005-4)  
TUR 4/2013

14 August 2013

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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Human Rights Council resolutions 15/18, 16/4, 16/5, 17/2, and 22/8.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **alleged attacks against the independence of the legal profession, namely the arrest, detention and launching of criminal proceedings against lawyers in the context of alleged antiterrorism operations.**

Similar concerns were expressed in two previous urgent appeals. The first one was sent on 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 (TUR 6/2011). We thank your Excellency's Government for its reply dated 9 February 2012. The second urgent appeal was sent on 2 February 2012 by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Independent Expert on minority issues; and the Special Rapporteur on the

promotion and protection of human rights and fundamental freedoms while countering terrorism sent an urgent appeal (TUR 1/2012). We thank your Excellency's Government for its reply dated 25 July 2012.

According to the new information received:

In November 2011, 47 lawyers, three law office employees, and one journalist were allegedly arrested in Turkey in the scope of an operation aimed at dismantling a supposed terrorist network known as the "Kurdish Communities Union" (KCK) - an organization believed to be the "urban branch" of the "Kurdistan Workers Party" (PKK). Among those arrested are reported to be defence lawyers who were engaged in the main KCK trial before the Diyarbakir Heavy Special Penal Court No. 6 and almost all of the arrested lawyers had reportedly participated in the legal representation of imprisoned PKK leader Abdullah Öcalan. The mass trial of these individuals has supposedly been ongoing since 16 July 2012.

The lawyers were reportedly taken into custody in Istanbul for allegedly being "members" or "executives" of the "illegal organization" KCK and for acting as "messengers" for the elaboration of the organization's strategies.

According to the information received, on 20 June 2013, the Istanbul Heavy Penal Court No. 6 held the fifth hearing in the long running mass trial of lawyers. Several of the accused were reportedly heard and seven of the lawyers were released. The prosecution of another lawyer, Mr. Bekir Kaya, was supposedly joined to this case.

Allegedly, defence lawyers pointed numerous irregularities in the act of indictment. Of those arrested and charged, the following have purportedly been denied release and remain in prison awaiting trial: lawyers Mr. Cengiz Çiçek, Mr. Dogan Erbas, Mr. Emran Emekçi, Ms. Hatice Korkut, Mr. Ibrahim Bilmez, Mr. Ömer Günes, Mr. Faik Özgür Erol, Mr. Mehmet Sani Kizilkaya, Ms. Asya Ülker, Mr. Mehdi Öztüzün, Mr. Muharrem Sahin, Mr. Mehmet Bayraktar, Mr. Sebahattin Kaya, Mr. Bedri Kuran, Mr. Fuat Çosacak, and the journalist Mr. Cengiz Kapmaz.

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.

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 arbitrarily deprived of their liberty and their right to a fair trial 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.

We wish to draw your Excellency's attention to General Assembly Resolution 66/171 and Human Rights Council Resolution 19/19, whose paragraphs 1 reaffirms "that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law."

In this context, we would once again 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 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 18 which states: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.";

- Principle 20 which states: "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."; and

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

As far as the allegations of "membership in" 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 aforesaid joint urgent appeal dated 2 February 2012, as well as to the report on the mission to Turkey of the Special Rapporteur on the independence of judges and lawyers (A/HRC/20/19/Add.3), in which concern was expressed on the increased "number of cases of arrest, detention and prosecution under terrorism - related charges of lawyers defending individuals accused of terrorism - related crimes" and on the "far from uncommon" investigations "initiated against lawyers on grounds of an alleged link to, or the provision of support for, their clients' alleged criminal activities" (ibid., para. 65).

As far as the allegations of "membership in an illegal organization" and "acting as messengers" for the elaboration of an illegal organization's strategies against the

abovementioned individuals are concerned, we would like to draw your Excellency's Government's attention to the recommendation of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26/Add.2, para. 90 (f) ) that "only full clarity with regard to the definition of acts that constitute terrorist crimes can ensure that the crimes of membership, aiding and abetting and what certain authorities referred to as "crimes of opinion" are not abused for purposes other than fighting terrorism."

We would also like to refer your Excellency's Government to article 14 of the International Covenant on Civil and Political Rights, which states: "(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law" and "(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (c) To be tried without undue delay."

We wish to additionally call the attention of your Excellency's Government to article 9(3) of the International Covenant on Civil and Political Rights, which states: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment." Furthermore, article 9(4) of the Covenant stipulates that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone 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."

In this connection, we would 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 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 refer your Excellency’s Government to resolution 22/6 adopted by the Human Rights Council on 21 March 2013 and co-sponsored by Turkey. In particular, we wish to underline its operative paragraph 10 (c), which calls upon States to ensure that measures to combat terrorism and preserve national security “[p]rohibit and do not provide for, or have the effect of, subjecting persons to arbitrary detention, such as detention without due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, or the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, nor the unlawful deprivation of the right to life or the trial of suspects without fundamental judicial guarantees”.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the abovementioned persons 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 and journalist in compliance with the international instruments indicated above.

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 description of the case accurate?
2. Please indicate the legal basis for the continued pre-trial detention of the above mentioned lawyers and the journalist. Explain how such continued detention complies with the international obligations of Turkey, in particular those explicitly mentioned in the ICCPR.
3. Please indicate how the arrest, detention and launching of criminal prosecution against the aforementioned lawyers is compatible with the aforementioned international human rights standards, including the UN Basic Principles on the Role of Lawyers.
4. Please also indicate the measures taken to ensure that lawyers can carry out their legitimate professional duties and represent their clients in a free and safe environment.

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.

In light of the potentially serious implications of this case, we are considering to publicly express our concern in the near future.

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

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Frank La Rue  
Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression

Margaret Sekaggya  
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