

**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 Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (53-24)  
ITA 3/2013

17 December 2013

Excellency,

We have the honour to address you in our capacities 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 16/4, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding allegations of the arbitrary detention in Italy of Mr. **Bahar Kimyongür**, a journalist and activist, at risk of an imminent extradition to Turkey.

According to the information received:

Mr. Bahar Kimyongür, a dual citizen of Belgium and Turkey, is a journalist and activist. Over a number of years he has been involved with Turkish opposition groups, and in particular, advocating for the protection of the rights of political prisoners in Turkey. He has also reportedly been critical of the Turkish Government's alleged involvement in the current Syrian conflict.

On 21 November 2013, Italian authorities arrested Mr. Kimyongür, at the Orio al Serio (Bergamo) airport, Italy. The arrest was made pursuant to a 2006 red notice issued by Interpol on request of the Turkish Government. Prior to the issuance of the red notice was an arrest warrant issued in absentia by the Ankara 2 State Security Court in 2004.

It is reported that this warrant was issued after Mr. Kimyongür and his wife had participated in a demonstration organised to denounce the practice of torture of political opponents in Turkey. The demonstration took place on 28 November 2000, in Brussels, during a visit by the then Turkish Minister of Foreign Affairs who was scheduled to address the European Parliament's Foreign Affairs Committee. At the time, Mr. Kimyongür also wrote a letter of protest to the Ambassador of Turkey in Belgium. Following these incidents, Mr. Kimyongür was accused by the Turkish authorities of being a member of, and committing activities on behalf of, the DHKP/C, an alleged terrorist organization, including threatening and attacking the Turkish Minister. Since then, on the basis of the international warrant of arrest and extradition issued, Mr. Kimyongür and his family have allegedly been repeatedly harassed.

On the basis of the same Interpol red notice, Mr. Kimyongür was, in 2006, arrested and detained for several months in the Netherlands, where he was subjected to extradition proceedings. The Court of The Hague, Criminal Law Division, Extradition chamber, denied the extradition request on the basis that Mr. Kimyongür had exercised his right to freedom of expression at the 28 November 2000 demonstration and found no evidence to conclude that he is part of a criminal organization.

Equally, after a four-year trial in Belgium, Mr. Kimyongür was acquitted in 2009 of the charge of membership in DHKP/C.

On 17 June 2013, Mr. Kimyongür was arrested and detained on the basis of the same Interpol red notice in Spain, where he was holidaying with his family. He was released on bail on 20 June 2013. A verdict on the extradition proceedings is yet to be rendered in this case.

It is reported that on 2 December 2013, the Brescia Court of Appeal ordered Mr. Kimyongür's release from the prison of Bergame, where he had been detained since the date of his arrest. He is currently under house arrest, whilst the Appeal Court of Brescia examines the Turkish government's extradition order.

Concern is expressed that Mr. Bahar Kimyongür is currently being detained on the basis of an arrest warrant which has been examined by the respective judiciaries of several jurisdictions and has resulted in a determination that insufficient evidence exists to continue his detention under the international arrest warrant.

Furthermore, concern is expressed that Mr. Bahar Kimyongür may be deported to Turkey, where he could be arbitrarily deprived of his freedom, and where his physical and psychological integrity may be at risk. It is reported that persons accused of offences under anti-terrorism laws in Turkey, and particularly alleged members of DHKP/C, are at

a greater risk of torture and ill treatment while in detention, including pre-trial detention. Concern has also been raised about violations of the right to a fair trial for suspects in anti-terrorism cases.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Bahar Kimyongür. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Furthermore, without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Bahar Kimyongür 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 their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR, and articles 9 and 14 of the ICCPR.

According to its revised methods of work, in dealing with situations of arbitrary deprivation of liberty, the Working Group on Arbitrary Detention shall refer inter alia to situations "when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II)".

The Working Group on Arbitrary Detention, in its Deliberation no. 1, considers that "[...] house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave. In all other situations, it will devolve on the Working Group to decide, on a case-by-case basis, whether the case in question constitutes a form of detention, and if so, whether it has an arbitrary character."

The Working Group would like to request your Excellency's Government to halt the judicial consideration of Mr. Bahar Kimyongür's possible extradition in the light of the allegations of arbitrary deprivation of his liberty, and risk to his physical and psychological integrity in Turkey.

In addition, in relation to the concern according to which there are reasonable grounds to believe that Mr. Bahar Kimyongür's may be subjected to torture and other forms of ill-treatment if extradited to Turkey, we would like to draw your Government's

attention to article 3 of the Convention against Torture, which provides that no State party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, in paragraph 9 of General Comment 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the Human Rights Committee stated that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement”.

Furthermore, paragraph 6d of Human Rights Council Resolution 8/8 urges States not to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture and; the Council recognizes in this respect that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Bahar Kimyongür's are respected and, in the event that your investigations support or suggest the above allegations to be correct, we would like to request your Excellency's Government to adopt effective measures to prevent Mr. Bahar Kimyongür's extradition.

We would further 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 ICCPR, 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 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. Bahar Kimyongür's 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 summary of the case accurate?

2. Has a complaint been lodged by or on behalf of Mr. Bahar Kimyongür?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case.
4. In continuing to detain Mr. Bahar Kimyongür under house arrest, has the court considered that several judicial decisions have already been rendered finding insufficient evidence to continue to his detention pursuant to the international arrest warrant?
5. In deliberating on the possible extradition to Turkey, has the court assessed the possibility that Mr. Bahar Kimyongür might be tortured in Turkey or receive an unfair trial? In this respect, please provide details on whether any risk assessment of Mr. Bahar Kimyongür possible extradition to Turkey has been carried out.

We undertake to ensure that your Excellency's Government's response will be available 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 the above mentioned person 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.

Out of courtesy, a copy of this Urgent Appeal will be transmitted to the Government of Belgium, owing to Mr. Kimyongür's status as a Belgian citizen.

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

Mads Andenas  
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment