

Mandates of 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

REFERENCE: UA
TUR 3/2016:

31 March 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government allegations we have received concerning **the detention and investigation of a significant number of members of the academic community in Turkey, including Mr. Kivanc Ersoy, Mr. Muzaffer Kaya and Ms. Esra Mungan.**

According to the information received:

On 11 January 2016, more than 1400 academics in Turkey and abroad published a statement led by *Academics for Peace* entitled "*We will not be a Party to this crime*". The statement expressed concern for the curfews that have been declared in several cities in South East Turkey, and calls for the Government to put an end to the violence and prepare for dialogue.

Since 11 January 2016, at the instructions of the Higher Educational Council, many university administrations have reportedly taken disciplinary actions against many of the signatories, some of whom have subsequently been dismissed from their employments. Many academics have had their offices and homes searched, and some have been detained.

The Government has allegedly stated that the petition signed by the academics was "*in parallel*" with a statement previously made by one of the leaders of the PKK/KCK, demanding intellectuals and democrats to support "*the self-governance*". On the same day, more than 1000 academics in Turkey were subject

to an anti-terrorism police operation for having signed the above-mentioned statement. Of these, 20 persons were detained and investigated by the Istanbul prosecutor's office under laws prohibiting "*making propaganda for a terrorist organization*" and the "*denigration of the Turkish nation*". The charges fall under article 7 of the Anti-Terror Law and article 301 of the Penal Code. Criminal investigations have reportedly been launched into 1128 signatories of the statement.

It has been alleged that the Minister of Justice ordered to transfer the cases of 395 Ankara-based signatories to the jurisdiction of the Istanbul prosecutor's office to be investigated under anti-terrorism laws. The Ankara prosecutor's office had allegedly previously determined that there was no basis for pursuing terrorism related charges against them.

Some of the detained academics were released but may still face the above-mentioned charges. It is also alleged that several of the academics have received threats via social media and telephone. It is also reported that a number of scholars have been suspended or forced to resign from their positions within Turkish universities.

The Government has allegedly responded to the recent attack in Ankara by proposing to redefine Turkish anti-terrorism laws and criminal law to include the activities of academics, journalists and NGO advocates, and any activity supportive of Kurdish rights.

The detention of Mr. Kivanc Ersoy, Mr. Muzaffer Kaya and Ms. Esra Mungan

On 15 March 2016, a court in Istanbul approved the prosecutor's demand to arrest three academics: Mr. Ersoy, Mr. Kaya, Ms. Mungan, following a press conference they had organized on 10 March 2016. It is reported that the indictment of these three academics are separate from the case of the 1128 petitioners and that the prosecutors according to the indictment are asking for 7 years and 6 months of imprisonment. The arrest demand was allegedly based on making propaganda in support of PKK/KCK. The decision allegedly states that the three academics among the signatories of the petition have, through organising a press conference, "*openly made propaganda of the terrorist organisation under the guise of demanding peace*".

Serious concern is expressed at the allegations of the detention and investigation of a significant number of members of the academic community, including Mr. Ersoy, Mr. Kaya and Ms. Mungan, resulting from their legitimate exercise of the right to freedom of expression, as enshrined in article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003.

In particular, concern is expressed at the allegation that the Government is conflating critical expression and opinion on political and public affairs with the spreading of terrorism and terrorist propaganda. Serious concern is also expressed at the disciplinary actions against a considerable number of the signatories, resulting in the termination or suspension of their employment. We would like to remind your Excellency's Government that any restrictions to the right to freedom of expression shall be provided by law; may only be imposed for one of the grounds set out in article 19(3) and must conform to the strict tests of necessity and proportionality. We recall that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Extreme care must be taken by States to ensure that provisions relating to national security are crafted and applied in a manner that conforms to the strict requirements of article 19 of the ICCPR and must be clearly defined in order to be compatible with international human rights law to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression (See CCPR/C/GC/34).

Further concern is expressed that the allegation of proposed changes to Turkish criminal law seeking to redefine and broaden provisions on terrorism to include any activity supportive of Kurdish rights. We recall that freedom of expression plays a central role in the effective functioning of a vibrant democratic political system, and that States have the responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated. We urge States to remove any regulation of or restriction upon political speech and expression, outside of restrictions that fall within well-recognized understandings of the permissible limitations on freedom of expression as recognized in international human rights law (See A/HRC/27/30).

In addition, we are concerned about the deterrent effect these actions may have on human rights defenders in Turkey in general. We would like to recall 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 above-mentioned persons in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide information concerning the legal grounds and justifications for the criminal proceedings and arrests of the academic signatories of the statement, indicating how these measures comply with international human rights norms and standards. In particular, please explain how the enforcement of the restrictions placed on the rights to freedom of expression contained in article 301 of the Penal Code and article 7 of the Anti-Terror Law are compatible with international human rights norms and standards, including article 19 of the ICCPR.

3. Please provide information concerning the legal grounds and justifications for the arrest and detention of Mr. Ersoy, Mr. Kaya and Ms. Mungan, indicating how the indictment against them complies with international human rights norms and standards. In particular, please explain how the use of national security as a ground for limitation to the right to freedom of expression in this case is applied in a manner that conforms to the strict requirements imposed under article 19(3) of the ICCPR.

4. Please provide information regarding the legal grounds for the order by the Minister of Justice to transfer the cases of Ankara-based signatories from the Ankara prosecutor's office to the Istanbul prosecutor's office. In particular, please provide information on the measures taken to provide all the guarantee of a fair and impartial judicial procedure, as provided by international human rights norms and standards.

5. Please provide detailed information concerning the allegations about the dismissal or suspension of academic signatories from their universities. In particular, please provide information upon the legal grounds upon which such dismissals are founded and about the legal grounds upon which the instruction of the Higher Education Council was made and the conformity of these decisions with abovementioned international norms and standards.

6. Please provide information on the alleged plans to amend the criminal code, and indicate how this complies with Turkey's obligations under international human rights law.

7. Please provide information about measures taken or to be taken to ensure that expression related to public and political affairs, including critical and dissenting expression, can take place without the threat of harassment, civil sanctions or criminal prosecution.

8. Please indicate what measures have been taken to ensure that human rights defenders, including academics, working to promote and protect fundamental rights, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatisation or criminalization of any kind.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we would like to appeal to your Excellency's Government to repeal the indictment against Mr. Ersoy, Mr. Kaya and Ms. Mungan and ensure that they are provided with all the guarantee of a fair and impartial judicial procedure, as provided by international human rights norms and standards. We also call your Excellency's Government to halt the alleged violations, to prevent their re-occurrence and to revise the application of article 301 of the Penal Code and article 7 of the Anti-Terror Law to ensure its conformity with international human rights standards.

We would like to inform your Excellency's Government that we may intend to publicly express our concerns in the future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention.

We look forward to having the opportunity to further exchange information with your Excellency's Government about the right to freedom of expression and the independence of the academic community in Turkey during my coming official visit to the country, agreed for November 2016.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders