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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 Chair-Rapporteur of the Working Group on Arbitrary Detention; Independent Expert on minority issues; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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**

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) Minorities (2005-4) Terrorism (2005-4)  
TUR 6/2011

17 November 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Independent Expert on minority issues; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/6, 17/2, 15/15, 16/4 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 **arrest, detention and launching of criminal proceedings against various human rights defenders and lawyers in the context of anti-terrorism operations.**

According to the information received:

1) On 28 October 2011, Mr. **Ragip Zarakolu** and Ms. **Büsra Ersanli** were arrested with approximately 50 other persons in Istanbul by the Turkish police. Mr. Zarakolu is a well-known human rights defender, writer and academic, Honorary Board Member and Founder of the Human Rights Association (IHD), Director of the Belge Publishing House and Chair of the Publishers Association's Freedom to Publish Committee of Turkey. Ms. Ersanli is a lecturer at the Marmara University Faculty of Political Science and International Relations in Istanbul. It is reported that their arrests formed part of the broader operation intended to dismantle an alleged terrorist network called the "Union of Kurdistan Communities" (KCK). It is alleged that the operation targeted peaceful activists,

mostly Kurdish political activists and members of the Peace and Democracy Party (BDP) reportedly having no involvement in any terrorist activities.

On 1 November 2011, Mr. Zarakolu and Ms. Ersanli were charged by the Istanbul Heavy Penal Court No. 14 with “membership in an illegal organization – ‘Koma Ciwaken Kurdistan – Kurdistan Communities League/Assembly of Turkey’ (KCK/TM)”, a body connected with the leadership of the banned “Kurdistan Workers Party” (PKK). The charges were brought under Article 314 of the Turkish Penal Code (TPC) in conjunction with the Anti-Terrorism Act. It is reported that in the course of interrogations, the police did not question Mr. Zarakolu about his alleged affiliation to the KCK but rather to the books he authored and edited as well as his participation in public meetings.

We have been informed that Mr. Zarakolu is currently being held in detention at the Metris high-security prison while Ms. Ersanli is detained at the Bakirköy closed prison for women. Reportedly, they both have access to lawyers and their family.

Mr. Zarakolu has been a well-known human rights activist since the 1970s. He has published extensively on freedom of expression and minority rights in Turkey. In the days prior to his arrest, Mr. Zarakolu was campaigning for the release of his son, Mr. Deniz Zarakolu, who had been arrested in early October after having given a lecture on political philosophy at the BDP Academy of Political Science. Ms. Ersanli has been actively involved in the promotion and protection of political rights of women in Turkey.

2) It is further reported that, on 6 October 2011, the trial against Ms. **Filiz Kalayci**, lawyer and İHD Executive Committee member, and Messrs. **Hasan Anlar**, İHD Deputy Secretary General, **Halil İbrahim Vargün** and **Murat Vargün**, who are İHD lawyers and members, resumed before the 11th Heavy Penal Court of Ankara. The hearing was held in the absence of both Ms. Kalayci, who obtained authorization to travel abroad in January 2011 and went to Austria, and Mr. Vargün, who obtained authorization to travel to Germany for family reasons. The other two accused were present during the 6 October hearing.

The lawyers and human rights defenders are reportedly charged with “membership in an illegal organization” under Article 314 of the TPC, a charge which carries a sentence of between six and 15 years of imprisonment. During the hearing the Public Prosecutor allegedly called for the sentencing of the four lawyers. The next hearing, during which the defence team is to present its case, is scheduled for 2 December 2011. It is reported that the charges against the four Ankara Bar lawyers are mainly based on contacts they had with their clients, who are suspected members of organizations considered as illegal in Turkey. It is further reported that some witnesses allegedly withdrew their statements before the court stating that their initial accusatory statements were made under pressure.

The arrest and detention of Ms. Filiz Kalayci and Messrs. Hasan Anlar, Halil İbrahim Vargün and Murat Vargün were the subject of a communication sent by

the Chair-Rapporteur of the Working Group on Arbitrary Detention, 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, and the Special Rapporteur on the situation of human rights defenders on 15 May 2009. We thank your Excellency's Government for its response to this communication by way of letter dated 16 July 2009.

3) Another lawyer who has been subjected to criminal proceedings is Ms. **Zeynep Ceren Bozpotrak**, a 24-year-old lawyer of the Ankara Bar. Ms. Bozpotrak is accused of "propaganda for an illegal organization" and was arrested on 18 May 2010, in Ankara. She was reportedly transferred to Askaray where she spent four days in custody before being transferred to Adana prison after a decision on her detention taken by the Askaray Court on 22 May 2010. Ms. Bozpotrak was tried before the Adana Heavy Special Penal Court and was provisionally released on 22 October 2010. The Prosecution requested a guilty verdict. Her trial is still ongoing and the next hearing was scheduled for 16 November 2011. Ms. Bozpotrak may face a sentence of five years of imprisonment.

The charges against Ms. Bozpotrak are allegedly mainly based on proposals of law amendments she drafted in the framework of her work for a human rights association as well as on the advice to remain silent she gave to one of her clients, which is a right guaranteed to any accused or suspect by the Turkish Constitution (article 38) and the Criminal Procedure Code (article 147.1(e)).

Concern is expressed at the allegations that Mr. Zarakolu and Ms. Ersanli's detention is solely linked to their activities in the promotion of human rights and the peaceful exercise of their rights to freedom of opinion and expression. Further concern is expressed that the arrests, subsequent charges and criminal proceedings brought against Ms. Filiz Kalayci and Messrs. Hasan Anlar, Halil İbrahim Vargün and Murat Vargün as well as against Ms. Bozpotrak may be mainly linked to the contacts the lawyers had with their clients within the scope of their professional duties, the legitimate exercise of their profession and their peaceful work in defence of human rights.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned individuals is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their 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 Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

With respect to the arrest, detention and launching of criminal proceedings against the above-mentioned lawyers, we would 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. In particular:

- Principle 16. 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. "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

- Principle 20. "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".

- Principle 22. "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential".

- Principle 23. "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights...".

As far as the allegations of "membership in an illegal organization" and "propaganda for 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 dated 18 October 2011 sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders, as well as to the report on his mission to Turkey of the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26/Add.2), in which it was stated that the Turkish "Anti-Terror Act is drafted in a way that allows for an overly broad application of the term terrorism." (ibid., para. 14). This observation also relates to the definition of a "terrorist offender" (ibid., at para. 15). As stated by the former Special Rapporteur in his letter following up on his country mission addressed to your Excellency's Government on 27 June 2011, to which a reply has unfortunately not been received as yet, "[t]he designation as terrorist organization and the appeal procedure against such designation remain unclear, thereby also rendering the notion of membership in a terrorist organization lack distinctive force."

We would like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments, such as article 15 of the ICCPR, and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which

would broaden the scope of the proscribed conduct. In our view, at the national level, the specificity of terrorist crimes is usually defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or to compel the government or an international organization to doing or refraining from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist.

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 connection to the allegations indicating that the situation of the aforementioned human rights defenders is linked to their activities in defense of human rights, 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".

More specifically, 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.

Furthermore, the Special Representative of the Secretary General on human rights defenders in relation to her visit to Turkey in 2004, called on the Government to continue reviewing its laws to ensure full compliance with international human rights standards and, in particular, she encouraged the authorities to "(r)evise its interpretation of national

security to exclude all activities in the defence of human rights” (E/CN.4/2005/101/Add.3, para. 11(b), page 23)

We wish to additionally draw the attention of your Excellency’s Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 4.1 of the Declaration establishes that: “States shall take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.”

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Zarakolu, Ms. Ersanli, Ms. Filiz Kalayci, Ms. Boztoprak and Messrs. Hasan Anlar, Halil İbrahim Vargün and Murat Vargün 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 persons 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 the cases accurate?
2. Has a complaint been lodged by or on behalf of Mr. Zarakolu and Ms. Ersanli?
3. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned individuals and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. Please indicate how the arrest, detention and launching of criminal prosecution against lawyers is compatible with the above-mentioned standards, notably the need not to identify lawyers with their clients as a result of discharging their functions and the guarantee that lawyers shall not suffer from, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with their professional duties.

5. Please indicate the measures taken to ensure that human rights defenders can carry out their legitimate work of promotion and protection of human rights and fundamental freedoms in a free and safe environment.
6. Please indicate whether and how the requirements of the principle of legality have been observed in relation to the definition of the crime of terrorism that has reportedly formed the basis for the arrests, detention and launching of criminal proceedings against the above-mentioned individuals.
7. How does your Excellency's Government qualify an organization as terrorist and illegal? Are there any procedures in place to appeal such a designation?

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.

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

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