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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 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 situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)
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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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, and 17/2.

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 conviction of twenty human rights lawyers**, on charges related to alleged links to terrorist organisations.

The allegations concern the following human rights lawyers:

- Members of Insan Haklari Dernegi (Human Rights Association, IHD), a prominent non-governmental organisation founded in 1986 with branches throughout the country. It reportedly works on issues such as prisoners' rights, alleged instances of torture, the promotion of a peaceful solution to the Kurdish issue and general human rights education.

- Ms. **Filiz Kalayci**, former Chairperson;
- Mr. **Hasan Anlar**, General Executive Board Member;
- Mr. **Halil Ibrahim Vargün**, Chairperson;
- Mr. **Murat Vargün**, member;
- Mr. **Tugay Bek**, Executive Board Member;
- Ms. **Sevil Araci Bek**, lawyer;

- Members of Çağdas Hukukçular Derneği (Progressive Lawyers' Association, ÇHD), a non-profit organisation founded in 1974, which provides legal assistance to victims of alleged human rights violations.

- Mr. **Selçuk Kozagaçlı**, Chairperson;
- Mr. **Taylan Tanay**, Chairman of the Istanbul branch;
- Mr. **Efkan Bolaç**, member and former Istanbul branch president;
- Mr. **Güçlü Sevimli**, member of the Istanbul branch;
- Mr. **Güray Dag**, member;
- Ms. **Gulvin Aydın**, member of the Istanbul branch;
- Mr. **Serhan Arıkanoglu**, former Istanbul branch president;
- Mr. **Zeki Rüzgar**, member;
- Ms. **Ebru Timtik**, member;
- Ms. **Barkin Timtik**, member;
- Mr. **Naciye Demir**, member;
- Mr. **Günay Dag**, member;
- Ms. **Sükriye Erden**, member;
- Ms. **Nazan Betül Vangölü Kozagaçlı**, member of the Ankara branch.

According to the information received:

Members of the IHD association have regularly been arrested and often charged for membership of an armed organisation, in reference to the illegal organisation Koma Ciwaken Kurdistan (Union of Kurdistan Communities), with whom the IHD reportedly has been in contact in the context of its human rights activities and research.

One such instance allegedly took place in the wake of IHD's publication of a report on human rights violations in Turkish prisons, published on 6 February 2009. IHD members had allegedly been in contact with Kurdish detainees convicted of terrorism-related charges to research this publication, which led to a number of arrests of IHD members and a trial against Ms. Filiz Kalayci on charges of aiding illegal organisations.

On 11 December 2012, Mr. Tugay Bek and Ms. Sevil Araci Bek were sentenced to 3 years, 1 month and 13 days of imprisonment on charges of "committing offences on behalf of an organisation, although not a member", under article 220/6 of the Penal Code, allegedly despite the Prosecutor having requested an acquittal.

It has further been alleged that this conviction relates to various election activities in which the two human rights lawyers participated in the run-up to the general elections of 12 June 2011.

On 24 January 2013, Ankara Heavy Penal Court No. 11 allegedly sentenced Ms. Filiz Kalayci to 7 years and 6 months imprisonment for membership of an "armed, illegal organisation" (article 314 of the Penal Code), while other IHD members and human rights lawyers Mr. Hasan Anlar, Mr. Murat Vargün and Mr.

Halil Ibrahim Vargün were sentenced to 6 years and 3 months of imprisonment each on the same charges.

With reference to the organisation ÇHD, sources inform that a raid was carried out on the homes and offices of members of ÇHD around 4 am on 18 January 2013 in Istanbul, Izmir, Ankara, Antalya, Hatay, Bursa and Kocaeli, allegedly resulting in the seizure and copying of confidential documents by the police as well as the arrest and detention of thirteen human rights lawyers working with ÇHD.

The search of office premises allegedly took place in the absence of the Prosecutor in charge or a representative of the Bar Association, both in violation of the provisions stated in article 130/1 of the Turkish Criminal Code of Procedure (CCP).

Following the mentioned police operation, a provisional detention order justifying the arrest of the thirteen lawyers was issued on 20 January 2013 and published the following day. It is reported that nine of these human rights lawyers, namely Mr. Selçuk Kozagaçli, Mr. Taylan Tanay, Mr. Güçlü Sevimli, Mr. Naciye Demir, Ms. Nazan Betül Vangölü Kozagaçli, Mr. Günay Dag, Ms. Ebru Timtik, Ms. Barkin Timtik and Ms. Sükriye Erden were accused of being “members or leading members of an illegal organisation” under article 7 of the Anti-Terrorism Laws for “transmitting instructions from imprisoned leaders of illegal organisations”, and currently remain in detention.

Reportedly, Mr. Selçuk Kozagaçli was arrested on 21 January 2013 upon his arrival at Istanbul airport as he had been travelling when the arrests of the other ÇHD members had been carried out.

The remaining human rights lawyers, to wit Mr. Efkan Bolaç, Mr. Güray Dag, Ms. Gulvin Aydin, Mr. Serhan Arikanoglu and Mr. Zeki Rüzgar, have reportedly been released since the operation of 18 January 2013 mentioned above.

This operation was allegedly targeted at the illegal organisation Revolutionary People’s Liberation Party-Front (DHKP-C). It is reported that ÇHD members have received messages and requests from detained members of the DHKP-C as they were providing them with legal assistance.

Sources further report that the investigation file against the ÇHD members who remain in detention has been classified as confidential, under the provision of Law no. 3713 (article 10(d)), an anti-terrorism law. As such, their lawyers are not permitted to know the precise basis of the ÇHD members’ detention or the nature of the evidence in the case until an indictment is submitted to the Court.

It has been reported, nonetheless, that questions posed by the prosecutors focused on the lawyers’ professional activities with ÇHD as well as their participation in peaceful demonstrations without indications that they had committed acts of violence.

Serious concern is expressed at the allegations that counter-terrorism legislation such as Law no. 3713 is systematically being interpreted in an overly broad manner with the result that human rights organisations and human rights defenders who are believed to simply have received messages from persons suspected or convicted of terrorist activities become the subject of detention and criminal investigations. Furthermore, concern is expressed at the allegations that human rights lawyers are being targeted for maintaining contact with their clients in cases where those clients are suspected or convicted of terrorist activities. It is noted with concern that such actions on the part of law-enforcement agencies and the judiciary may create a chilling climate in which lawyers may eventually refuse to represent clients connected to politically sensitive issues out of fear of becoming the target of judicial harassment or criminal charges, thus severely compromising the universal right to legal representation.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons 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 (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

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 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 addition, we would 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, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 23, which states: "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 and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that "Everyone 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 connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to...associate freely, online as well as offline, including in the context of elections, and 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...association are in accordance with their obligations under international human rights law.” We wish to recall that restrictions should not be applied in a manner which would otherwise negatively affect the effective enjoyment of the rights contained in the ICCPR. The Human Rights Committee has reiterated this position on a number of occasions, including in General Comment 27 where it stipulates that “States should always be guided by the principle that the restrictions must not impair the essence of the right ...the relation between right and restriction, between norm and exception, must not be reversed”.

Regarding the allegations received indicating that the situation of the aforementioned lawyers is directly linked to their human rights activities, 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 the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and

fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

In this connection, we would also like to refer Your Excellency's Government to principle 18 of the Basic Principles on the Role of Lawyers, which states: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions." Principle 14 further establishes that: "Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession."

Regarding the situation of the lawyers who have been arrested and are currently detained, we would also like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

Article 14(3) of the International Covenant on Civil and Political Rights, further establishes: "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 defence and to communicate with counsel of his own choosing." In its General Comment No. 32, the Human Rights Committee further indicated that: "Adequate facilities' must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory." Principle 21 of the Basic Principles on the Role of Lawyers further establishes: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."

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 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 case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide detailed information concerning the legal grounds for the arrest, detention and conviction of the above mentioned human rights lawyers and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, article 9, 10 and 14 of the ICCPR, and the UN Basic Principles on the Role of Lawyers.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please explain which safeguards have been put in place to guarantee that counter-terrorism legislation does not unduly restrict the right of human rights defenders to carry out their human rights activities and the right of lawyers to access all the information necessary to defend their clients.
6. Please kindly explain how the alleged actions undertaken by public officials regarding this case are compatible with the international norms and standards and, in particular, with the right to freedom of opinion and expression and the rights to freedom of peaceful assembly and of association.
7. Please explain whether human rights defenders in Turkey, in particular human rights lawyers, are able to perform their peaceful work in defence of human rights without fear of judicial harassment or other restrictions. Is there any system of protection in place?

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 the above mentioned 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.

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

El Hadji Malick Sow

Chair-Rapporteur of the Working Group on Arbitrary Detention

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