

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 TUR 7/2017

04 July 2017

Excellency,

We have the honour to address you in our capacity as 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 33/30, 34/18, 32/32, 34/5 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of **Mr. Taner Kiliç**.

Mr. Kiliç is a lawyer and longstanding human rights defender. He is the Chair of Amnesty International Turkey since 2014, and has served on the board of Amnesty International Turkey for various periods since 2002.

Mr. Kiliç has not been the subject of previous communications by special procedures. However, concerns relating to various measures implemented under the state of emergency declared on 20 July 2016 and their reported serious negative impact on the enjoyment of fundamental human rights were expressed in a series of communications addressed to your Excellency's Government, including urgent appeal TUR 6/2016, urgent appeal TUR 7/2016, urgent appeal TUR 8/2016, allegation letter TUR 4/2017, other letter TUR 5/2017 and urgent appeal TUR 6/2017, as well as in two press releases issued on 19 August 2016 and 13 April 2017.

Concerns about the necessity and proportionality of a number of state of emergency measures, in particular the detention of individuals for the legitimate exercise of the right to freedom of expression, as well as concerns at the use of the encryption application ByLock as evidence for bringing charges of membership or support to terrorist organizations, have also been raised by the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, following his official country visit to Turkey (A/HRC/35/22/Add.3).

We thank your Excellency's Government for the replies to the four communications mentioned above and would encourage the submission of timely responses to the communications TUR 5/2017 and TUR 6/2017.

According to the information received:

On 6 June 2017, Mr. Taner Kiliç was arrested on the basis of a warrant against him and 22 other lawyers in the city of Izmir in Western Turkey. Mr. Kiliç was arrested at his home at 6.30am on suspicion of involvement with the Fethullah Gülen movement and taken to his office; both his home and office were subsequently searched by police officers, and he was taken into police custody.

On 8 June 2017, eight lawyers in the case were reportedly remanded in pre-trial detention and one was released on bail.

On 9 June 2017, Mr. Kiliç was brought before a prosecutor and charged with membership of the "Fethullah Gülen Terrorist Organization". He was remanded in detention pending trial.

Seven of the other lawyers were taken to the court house at the same time as Mr. Kiliç, but are reportedly still awaiting a decision on their cases. A further six individuals remain in police custody.

The prosecutor claims that ByLock, an encrypted mobile messaging application that the authorities say was used by members of the "Fethullah Gülen Terrorist Organization," has been discovered on Mr. Kiliç's phone. This appears to be the sole piece of evidence provided so far to substantiate the charge against Mr. Kiliç. He denies having downloaded or used ByLock, or being a member of the "Fethullah Gülen Terrorist Organization". On the contrary, Mr. Kiliç has reportedly been critical of the role of that movement in Turkey.

The authorities have failed to provide any credible and admissible evidence, indicating that Mr. Kiliç may have been involved in a criminal activity. He is one of thousands of individuals currently in detention on terrorism charges, along with political activists, lawyers, journalists and others critical of government policy in Turkey.

The detention of Mr. Kiliç takes place in the context of an ongoing widespread crackdown by the Turkish authorities against suspected opponents, following the failed coup attempt on 15 July 2016. Tens of thousands of public sector employees have been dismissed and hundreds of journalists and media workers detained. Hundreds of media outlets and non-governmental organizations have been shut down.

While we do not wish to prejudge the accuracy of these allegations at this point, we are raising our concern at what appears to be the arbitrary arrest and detention of Mr. Kiliç in relation to his human rights activities. We express concern at the criminalization of the legitimate exercise of the rights to freedom of peaceful assembly and association and freedom of opinion and expression through state of emergency decrees and laws that fail to meet the standards of international human rights law. We reiterate our concerns at the scale of the state of emergency measures, and the repressive environment they have established for the exercise of fundamental rights in Turkey.

We are also concerned about the situation of many other lawyers arrested, detained and/or undergoing trial, and about the independence of the legal profession, especially in light of the number of lawyers reportedly under criminal investigation and the number of restrictions on the rights to a due process and a defence that were introduced by decree laws under the state of emergency.

The allegations transmitted in this letter also appear to be in contravention of the right not to be deprived arbitrarily of liberty and the right to a fair trial before an independent and impartial tribunal established by law, as set forth in articles 9 and 14 of the International Covenant on Civil and Political Rights (the Covenant), ratified by Turkey on 23 September 2003.

The right to freedom of opinion and expression, as guaranteed by article 19 of the Covenant (paragraph 3) sets out the requirement that any legitimate restriction to that right must be necessary, proportionate and prescribed by law. While national security is a legitimate basis for restricting the right to freedom of expression under article 19 (3), it is not enough to simply claim it to justify silencing dissident or critical voices. The state has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in its general comment no. 34, that article 19 (3) of the Covenant may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

We are also drawing the attention of your Excellency's Government to 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, and in particular to articles 1, 2, 5, 6, 9 and 12.

The full texts of the human rights instruments and standards referred to 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 steps taken by your Excellency's Government to safeguard the rights of Mr. Kiliç, in compliance with Turkey's international human rights commitments.

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 on the factual and legal basis for the arrest and detention of Mr. Kiliç, and how these measures are compatible with Turkey's international human rights obligations as set forth, inter alia, in the norms and standards referred to above. In particular, please provide details about the evidence used as a basis for the charges against Mr. Kiliç and how this complies with articles 9, 14 and 19 (3) of the Covenant.
3. Please provide information on measures that your Excellency's Government may have taken to ensure the independence of the legal profession, both at the individual and the institutional level.
4. Please provide information, if any, about the measures taken to review and revise the state of emergency decrees that have been enforced since 15 July 2016, in line with international human rights law as recommended by regional and international organizations, including the Council of Europe, the Organization for Security and Co-operation in Europe and the United Nations. In particular, please provide information about the ability of individuals to challenge restrictions to their fundamental rights under these decrees.
5. Please indicate what measures have been taken to ensure that human rights defenders in Turkey are able to carry out their legitimate work in a safe and enabling environment without fear, or threats or acts of intimidation and harassment of any sort, as well as undue restriction of their civil and political rights.

While awaiting a reply to this and previous unanswered communications, we urge your Excellency's Government to ensure that while the case of Mr. Kiliç is being investigated, interim measures are taken to protect his human rights; and in the event that the investigation confirm that the allegations are correct, to ensure the accountability of any person responsible for the alleged violations.

We are considering to publicly express our concerns in the near future as, in our view, the information in our possession is sufficiently credible to indicate a matter warranting immediate attention. We also believe that the public should be alerted to the

risks implied in this and other similar cases for the legitimate exercise of human rights in the country. Our public statement would indicate that we have been in contact with your Excellency's Government to clarify the case in question.

Lastly, we would like to inform your Excellency's Government that after having transmitted an urgent appeal such as this to the Government, the Working Group on Arbitrary Detention may also transmit the case to the Government through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is expected to respond separately to the present urgent appeal and to the communication of the Working Group under its regular procedure.

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

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
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Diego García-Sayán
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