

Mandates of the Working Group on Arbitrary Detention; 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

REFERENCE:
UA TUR 9/2017

12 July 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, incommunicado detention, and the investigations linked to terrorism conducted against human rights defenders **Nalan Erkem, Seyhmuz Ozbekli, Ozlem Dalkiran, Idil Eser, Veli Acu, Gunal Kursun, Ilknur Ustun** and **Nejat Tastan**, as well as the consultants **Ali Gharawi** and **Peter Steudtner**.

Nalan Erkem, Seyhmuz Ozbekli and Ozlem Dalkiran are human rights defenders working for the Helsinki Citizen's Assembly, an organization which promotes peace and democracy throughout Europe. Idil Eser is the Director of Amnesty International Turkey. Veli Acu and Gunal Kursun work for the Human Rights Agenda Association, which monitors human rights violations throughout the country. Ilknur Ustun is a member of the Women's Coalition, which focuses on gender equality and enhanced female participation in public life. Nejat Tastan is coordinator at the Association for Monitoring Equal Rights, an organization promoting equality and carrying out independent election observation. Ali Gharawi and Peter Steudtner are consultants who were collaborating with the Dutch Development Agency, to support human rights defenders and development organizations.

Ms. Nalan Erkem was the subject of a communication sent to your Excellency's Government on 11 March 2008 (case TUR 2/2008), concerning her prosecution for activities as human rights defender denouncing and combating torture. A reply dated 2 April 2008 was received from your Excellency's Government, although we regret that it did not refer to the substance of the allegations raised.

According to the information received:

Around noon on 5 July 2017, human rights defenders Nalan Erkem, Seyhmuz Ozbekli, Ozlem Dalkiran, Idil Eser, Veli Acu, Gunal Kursun, Ilknur Ustun and Nejat Tastan, together with the consultants Ali Gharawi and Peter Steudtner, were arrested by Turkish security forces while participating in a workshop organized by the Helsinki Citizen's Assembly on the island of Buyukada, near Istanbul. The event had the purpose of discussing security issues, sharing methodologies and exchanging ideas on how human rights defenders should conduct their work in the context of the state of emergency.

The defenders were allegedly kept *incommunicado* during 24 hours. The Turkish authorities justified this measure as part of a secret investigation on a state security matter. During this time, the detainees were reportedly ill-treated while undergoing a first medical assessment in the detention center of Buyukada island as some of them were handcuffed and not properly examined by the doctors. Furthermore, it has been reported that Mr. Ali Gharawi did not receive needed medication for two days, leading to the worsening of his medical condition.

On 6 July 2017 at 2.30 p.m. the arrested human rights defenders were allowed to contact their lawyers. According to reports, their pre-trial detention was extended for seven days on the basis of suspected "membership of armed terrorist organizations". On 7 July 2017, the defenders were transferred to the Istanbul Directorate of Security.

It has been informed that the Prosecutor ordered the investigation to be confidential, which prevents the human rights defender's lawyers' from having access to the case files. However, concerns have been expressed regarding the possibility of information being leaked to media agencies linked to the Turkish Government, which have allegedly undertaken an extensive smear campaign against the human rights defenders portraying them as criminals, as well as discrediting and stigmatizing them before the public opinion.

Serious concern is expressed regarding the arrest, the *incommunicado* detention, and investigation based on suspected membership of terrorist organizations of Nalan Erkem, Seyhmuz Ozbekli, Ozlem Dalkiran, Idil Eser, Veli Acu, Gunal Kursun, Ilknur Ustun, Nejat Tastan, Ali Gharawi and Peter Steudtner, which appear to relate to their work promoting and defending human rights in Turkey. Likewise, we express our serious concern at the decision of the Prosecutor to keep the investigations confidential, gravely jeopardizing the detainees' right to adequate defense in trial, as well as at the allegations of leaks of information to the press and the undertaking of a smear campaign against them in the media.

The allegations evidence a particularly concerning pattern of targeting human rights defenders by the Turkish authorities, which has a widespread negative effect in the

exercise of the rights to freedom of expression, assembly and association in Turkey, and provokes a chilling effect on civil society organizations working in the country.

We also express our deep concern at the state of emergency measures themselves, which fail to comply with the requirements of necessity and proportionality under international law. The criteria for permissible derogations from or limitations of human rights are deliberately narrow and restrictive, and your Excellency's Government has not demonstrated that measures adopted meet their threshold.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to abide by articles 9, 10, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, which express the rights not to be arbitrarily detained and to security of person, to enjoy due-process guarantees, to freedom of opinion and expression, and to peaceful assembly and association.

We wish to refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognize the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society, and which reminds that any limitation to the right to freedom of expression must be determined by law and conform to the strict test of necessity and proportionality. We would also like to refer to Human Rights Council resolution 24/5 of 2013 which reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, as well as to ensure that any restrictions on these are in accordance with their obligations under international human rights law.

We would also like to highlight the fundamental principles set forth in articles 1 and 2 of the UN Declaration on Human Rights Defenders, which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms.

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 steps taken by your Excellency's Government to safeguard the rights of the persons concerned, 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 legal grounds for the arrest, detention and accusations of membership of armed terrorist organizations pressed against the human rights defenders and experts referred to in this communication, and explain how these measures are compatible with Turkey's obligations under articles 9, 19, 21 and 22 of the ICCPR.
3. Please provide information on the reasons to hold *incommunicado* during 24 hours the human rights defenders and experts referred to in this communication, as well as on the allegations of ill-treatment during their medical examination.
4. Please provide details on the decision of the Prosecutor to keep the investigations confidential and restrict the lawyer's access to the case files, and explain how these measures are compatible with article 14 of the ICCPR. Moreover, please provide information on the measures adopted by your Excellency's Government to respect the fundamental due process guarantees in their cases.
5. Please provide additional information on the compatibility of the state of emergency measures with the obligations of Turkey under international human rights law, including at the moment of adoption and at present.
6. Please provide information on the measures adopted by your Excellency's Government to ensure that sensitive information concerning the cases is not leaked to the media and misused to discredit and target the human rights defenders mentioned in this communication.
7. Please provide information on the measures undertaken by the Turkish authorities to protect the rights affected by the state of emergency measures, including the right not to be arbitrarily deprived of liberty, fair trial rights, freedom of expression, freedom of assembly and association, as well as the effects of these restrictions on the right to work.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We would finally like to inform your Excellency's Government that we are intending to publicly express our concerns on the matter in the near future as we are of the view that the information upon which the press release will be based is sufficiently reliable to warrant immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders