

Mandates 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 Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
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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 human rights and fundamental freedoms while countering terrorism; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 33/30, 31/3, 27/1 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 alleged arbitrary arrest and detention of Mr. **Cemil Tekeli**, a Turkish national; in circumstances that could also constitute an enforced disappearance.

Mr. Tekeli is a professor of law at Medeniyet University in Istanbul and a member of the International Jurists Union.

According to the information received:

From 11 to 15 January 2018, Mr. Tekeli went on a four-day trip to Jerusalem with his wife and daughter and a group of 35 members of the International Jurists Union.

On 15 January 2018, he was supposed to depart on the 9 p.m. flight from Tel Aviv to Istanbul. However, as he was passing through the passport control at Ben Gurion Airport, he was apprehended by the authorities and interrogated for a significant period of time without being given a justification or assisted by a lawyer, or being presented with an arrest warrant. The authorities promised that he would be sent back to Turkey on the next flight.

Mr. Tekeli was subsequently subjected to an enforced disappearance for two and a half days. He was detained incommunicado and deprived from any contact with the outside world. His family, lawyers and the Turkish Embassy in Tel Aviv had no information on his whereabouts or why he was detained, despite urgent actions taken by the Embassy.

On 18 January 2018, Embassy officials finally learned that Mr. Tekeli had been arrested at the airport and they sent him a lawyer who visited him in detention. Mr. Tekeli was informed that he is facing charges of being suspected of conducting terrorist activities. In addition, he informed his family that he would have a court hearing on 21 January 2018. At the hearing on 21 January before an Israeli military court in Petah Tikva, his detention was further extended until 28 January 2018. At the hearing on 28 January 2018, his detention was further extended until 4 February 2018. Mr. Tekeli has denied all charges against him.

On 19 January 2018, the Israeli authorities reportedly arrested four other Turkish citizens in Jerusalem. They were arrested while walking in Alwad Street in the Old City of Jerusalem and taken for interrogation at Bab Al-Selsela Police Station. On the same day, two other Turkish citizens were arrested following the Friday Prayer at the Al-Aqsa Mosque without being given a reason. All six individuals were subsequently released.

As Mr. Tekeli is being tried before a military court, his lawyer has presented an appeal before the Ofer military court. In addition, his lawyer appealed to the Supreme Court on 21 January 2018 that he had been denied contact with his client. However, this appeal was rejected by the Court. The prohibition of contacting the lawyer was subsequently extended until 25 January 2018.

Mr. Tekeli suffers from diabetes, high blood pressure and a problem in his spine, and he is in need of medical care.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Tekeli is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of 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 (ICCPR), ratified by Israel on 3 October 1991.

We are respectfully reminding your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

In relation to Military Courts and Commissions, the UN Human Rights Committee, in its General Comment No. 32 at paragraph 22, notes that: "The provisions of [the ICCPR] apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military ... While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned."

The United Nations Declaration on the Protection of All Persons from Enforced Disappearance sets out the responsibility of protection of the State, in particular that no State shall practice, permit or tolerate enforced disappearances (article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). Article 10 of the Declaration establishes the right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and article 12 the right to the maintenance in every place of detention of official up-to-date registers of all detained persons.

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 importance of the matter and its urgency – the next hearing in the case is scheduled for 4 February - we would appreciate a prompt response on the steps taken by your Excellency's Government to safeguard the rights of Mr. Tekeli, in compliance with Israel'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 detailed information concerning the factual and legal grounds for the arrest and detention of Mr. Tekeli and explain how these measures are compatible with the international human rights obligations of Israel under the ICCPR.
3. Please explain the reasons why Mr. Tekeli is being denied access to a lawyer and why he is being tried before a military court.

4. Please explain why Mr. Tekeli was initially detained incommunicado and why his whereabouts were only officially disclosed on 18 January 2018, that is, more than two days after his arrest, and how this is compatible with Israel's international human rights obligations.
5. Please provide detailed information about measures taken to revise counter terrorism and security related legislation, including rules and procedures related to the jurisdiction of the military court, access to lawyer and prohibition of arbitrary detention, in line with international human rights standards, in particular with articles 9 and 14 of the ICCPR, as well as with the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180.

While awaiting a reply to this communication, we urge your Excellency's Government to ensure that while the case of Mr. Tekeli 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.

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers