

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 situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA TUR 1/2018

9 February 2018

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 situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5, 35/11 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary re-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. He was arrested on 6 June 2017 and charged with membership of the "Fethullah Gülen Terrorist Organization" on 9 June 2017. He was subsequently remanded in detention pending trial.

Mr. Kiliç has been the subject of a previous communication, UA TUR 7/2017, sent on 4 July 2017. He was also one of the subjects of two press releases issued on 14 July 2017, and 13 November 2017, respectively. We acknowledge the reply from your Excellency's Government to UA TUR 7/2017 received on 4 October 2017, including the analysis of the justification for the detention of Mr. Kiliç, and reiterate our concerns in the context of the recent developments stated below.

In addition, 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, urgent appeal TUR 6/2017, urgent appeal TUR 9/2017, urgent appeal TUR 11/2017 and urgent appeal TUR 12/2017, as well as in three press releases issued on 19 August 2016, 13 April 2017 and 17 January 2018; and 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 all the above communications. We have read them carefully but our main concerns remain unaddressed.

According to the information received:

On 9 August 2017, the Izmir prosecutor filed an indictment in respect of Mr. Kiliç. On 4 October 2017, an Istanbul prosecutor included Mr. Kiliç into an indictment concerning 10 other human rights defenders, including Idil Eser, the Director of Amnesty International Turkey, who were detained on 5 July 2017 while attending a workshop on the island of Büyükada, Istanbul (ref. UA TUR 9/2017).

On 17 October 2017, the Istanbul trial court accepted the indictment with the inclusion of Mr. Kiliç. The first hearing in the combined Istanbul Büyükada case took place on 25 October 2017, in which eight of the 10 human rights defenders who had been remanded in pre-trial detention were released. However, the court did not have the authority to rule on Mr. Kiliç's pre-trial detention which was held by the court in Izmir.

The separate Izmir trial hearing took place the next day on 26 October 2017. At this first (and final) hearing, the Izmir court accepted the request of the Istanbul court for Mr. Kiliç to be transferred to the Istanbul prosecution and closed the separate prosecution against him in Izmir. The Izmir court heard Mr. Kiliç's initial defence and that of his lawyers. The court also ruled that he should remain in pre-trial detention despite no credible evidence having been presented against him. On the contrary, the court cited the fact that "evidence is still being collected" as the reason for his continued detention. In addition, the motivation of the order to remand him in further detention is not clear.

The main claim presented by the authorities, purportedly linking Mr. Kiliç to the Gülen movement is that ByLock, a secure mobile messaging application which the authorities say was used by the Gülen movement to communicate, was downloaded to his phone in August 2014. However, at the second hearing at the Istanbul court on 22 November 2017, an independent expert witness provided evidence to the court that there was no trace of ByLock on Mr. Kiliç's telephone and that his telephone records showed no evidence of ByLock use either. Despite this and the fact that the State had still not produced any evidence to substantiate the ByLock allegation, the court ruled for the continued detention of Mr. Kiliç.

Ahead of the third hearing, which was set for 31 January 2018, there had been releases of people across Turkey following the Government acknowledgments

that some people accused of using ByLock may have in fact used other linked applications despite their telephone records appearing to show communication with the ByLock server.

At the third hearing which took place before the 35th Heavy Penal Court in Istanbul, the court decided to conditionally release Mr. Kiliç from pre-trial detention (with a travel ban). In the evening, with the family of Mr. Kiliç waiting outside the prison for his release, his lawyers discovered that the prosecutor had appealed the court's decision to the 36th Heavy Penal Court, and had listed the allegations against him as the reasons to oppose the release, without further elaboration.

The 35th Heavy Penal Court subsequently issued a short statement, saying that its release decision was reached in accordance with applicable law and procedure, rejecting the prosecutor's appeal.

The 36th Heavy Penal Court accepted the prosecutor's appeal and it ordered the "capture and remand" of Mr. Kiliç, despite the fact that he was still in pre-trial detention and had never been released. The court did not elaborate on why it took the decision other than that it agreed with the prosecutor's appeal. Instead of being released, Mr. Kiliç was thus taken from Sakran Prison in Izmir where he had been held since June, and into Gendarmerie custody.

The following day, the 35th Heavy Penal Court (that had initially ruled for Mr. Kiliç's release) aligned itself with the decision of the 36th Heavy Penal Court, without elaborating why it changed its decision, and it thereby overturned its own verdict and ruled for the detention of Mr. Kiliç to be continued. The lawyers of Mr. Kiliç have subsequently appealed this decision. The next review of the case will take place next month and the next court hearing has been scheduled for 21 June 2018.

While we do not wish to prejudge the accuracy of these new allegations, we are raising our serious concern at what appears to be the arbitrary re-arrest and detention of Mr. Kiliç in relation to his activities as a human rights defender. We urge your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of liberty. We also reiterate our 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 and comply with the principles of legitimacy, proportionality and necessity. We further restate our concerns at the scale of the state of emergency measures, which does not meet the requirement of the exigencies of the situation, and at the repressive environment they have established for the exercise of fundamental rights and freedoms in Turkey.

We wish to recall articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, which guarantee the rights not to be deprived arbitrarily of liberty, to a fair trial before a competent, independent and impartial tribunal, to freedom of expression, to peaceful assembly and to association.

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.

We respectfully draw your Excellency's Government's attention to the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (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.

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 re-arrest and detention of Mr. Kiliç, and how these measures are compatible with Turkey's international human rights obligations. In particular, please provide further 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 ICCPR.

3. Please provide detailed information on how your Excellency's Government's counter-terrorism efforts and use of emergency powers to prosecute the human rights defenders in Turkey, including Mr. Kiliç, comply with the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law, refugee law, and humanitarian law.
4. 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. Specifically, please provide information on how the emergency based counter-terrorism laws applied in this case conform to the requirements laid down in article 15 of the European Convention on Human Rights (ECHR), and article 4 of ICCPR to which your State is a party with respect to proportionality, absolute necessity and non-discrimination as set out in the case law of ECHR.
5. Please provide updated information on measures 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, 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.

We are informing your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case 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 intend to publicly express our concerns in the near future as, in our view, the information upon which our concerns are based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the human rights implications of these concerns. Any public expression of concern on

our part would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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

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