

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
UA TUR 3/2018

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/5, 33/30, 34/18 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations concerning the arbitrary arrest, detention and judicial harassment of six human rights defenders and members of **İnsan Haklari Derneği (Human Rights Association, IHD), Ms. Nuray Çevirmen, and Messrs. Ali Dağdelen, Ahmet Adigüzel, Hayrettin Pişkin, Mehmet Tuncel and Abuzer Yavas, under charges for terrorism related activities.**

IHD is a non-governmental and voluntary human rights association committed to the upholding of all human rights. IHD also monitors conflicts and provides analysis on international humanitarian law through the preparation of observations and reports. It is a member of the International Human Rights Federation and the Euro-Mediterranean Human Rights Network.

Concerns at the use of overbroad counter-terrorism legislation and emergency decrees to detain human rights defenders have previously been raised in communications to your Excellency's Government by Special Procedures Mandate holders, including most recently on 9 February 2018 (UA TUR 1/2018); 11 December 2017 (UA TUR 13/2017); 2 November 2017 (UA TUR 12/2017); and 26 October 2017 (UA TUR 11/2017); as well as by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in his report on his official visit to Turkey in November 2016 (A/HRC/35/22/Add.3). We thank your Excellency's Government for the replies received but remain gravely concerned at the continued arrest, detention and criminal prosecution of human rights defenders based on legislation that is incompatible with international human rights law.

According to the information received:

Since 22 January 2018, a number of IHD members have been arrested or detained in relation to postings on social media denouncing Turkish military incursions in Afrin, northern Syria against the Syrian Kurdish People's Protection Units (YPG) militia.

On 22 January 2018, in the evening, Ms. Çevirmen was detained and brought to the anti-terror unit of Ankara Security department where she was kept for three days and released on 25 January 2018. She is being investigated on charges of "making propaganda of a terrorist organisation" and "instigating people to grudge and hostility".

On the same day, Mr. Adigüzel was detained at the anti-terror unit of Ardahan Security Department. On 24 January he was formally placed in detention in Ardahan T-Type Closed Prison on charges of "making propaganda of a terrorist organisation".

On 24 January 2018, Mr. Piskin was arrested in Çanakkale and taken into custody in Çanakkale E-Type Prison pending trial on charges of "making propaganda of a terrorist organisation".

That same day Messrs. Tuncel, Dağdelen and Yavas were arrested and taken into custody in Malatya on the basis of social media posts they had allegedly made. When it was discovered that Mr. Tuncel did not have a social media account, new accusations against Mr. Tuncel and Mr. Yavas were made, based on allegations from 2001 that they had attended the funeral of an armed militant.

Mr. Dağdelen was released on 26 January 2018 but remains under investigation on charges of "making propaganda of a terrorist organisation". Mr. Tuncel and Mr. Yavas have been transferred to an E-Type Prison in Malatya.

We express very serious concern about what appears to be a pattern of widespread and systematic arbitrary arrests and detention of persons, including human rights defenders, for peacefully exercising their legitimate human rights to freedom of expression, belief, assembly and association based on national counter-terrorism legislation.

Grave concern is expressed at the allegations concerning serious accusations and charges levelled against the six aforementioned members of IHD for terrorism related activities, along with allegations of the ongoing arbitrary detention of Messrs. Ahmet Adigüzel, Hayrettin Piskin, Mehmet Tuncel and Abuzer Yavas. We deplore instances when overbroad national security and counter-terrorism legislation and other measures

have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law.

We also wish to express our deep concern at the renewal on 18 January 2018 of the derogation from certain articles of ICCPR and ECHR following the extension of the state of emergency measures in Turkey, which fail to comply with the requirements of necessity and proportionality under international law, in particular under article 4(1) of ICCPR and article 15(1) of ECHR. The criteria for permissible derogations from or limitations of human rights are deliberately narrow and restrictive designed to maximize the protection for human rights even in situations of emergency, 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 draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to bring to the attention of your Excellency's Government articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), as ratified by Turkey on 23 September 2003, which establish the right not to be deprived arbitrarily of liberty, the guarantees of due process, and the protection of the rights to freedom of opinion and expression, as well as freedom of association, respectively, and which note that no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

With regard to the right to freedom of opinion and expression, we would like to recall Human Rights Council resolution 12/16, which calls on States to recognise the exercise of this right as one of the essential foundations of a democratic society. While acknowledging that article 19, paragraph 3, of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, we note that it is the duty of States to refrain from imposing restrictions that are not consistent with paragraph 3 of that article, including on discussion of government policies and political debate; reporting on human rights; peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent.

Moreover, we would like to bring to your Excellency's Government's attention the latest thematic report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which she recalls that "new counter-terrorism laws across the globe criminalizing freedom of expression or

views that appear to praise, glorify, support, defend, apologize for, or seeks to justify acts defined as ‘terrorism’ under domestic law implicate both serious concerns of legality and limitations on freedom of thought and expression. The application of such provisions has inter alia been targeted at the legitimate activities of political opposition, critics, dissidents, civil society, human rights defenders, lawyers, religious clerics, bloggers, artists, musicians and others. Furthermore, the non-violent criticism of state policies or institutions, including the judiciary, should not be made a criminal offence as terrorism in any society governed by rule of law and abiding by human rights principles and obligations” (A/HRC/37/52, para. 47).

In this regards, we refer to the relevant provisions of 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 resolutions 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 encitement 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.

We also recall the relevance of the Guidelines of the Committee of Ministers of the Council of Europe adopted at the 804<sup>th</sup> meeting (July 2002) entitled *Guidelines on Human Rights and the Fight Against Terrorism* as well as the Council of Europe Convention on the Prevention of Terrorism to which Turkey is a party which recalls that “[t]he need to strengthen the fight against terrorism and reaffirming that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms as well as other provisions of international law, including, where applicable, international humanitarian law”.

Finally, we would like to refer to the Declaration on Human Rights Defenders, in particular articles 1, 2 and 6(b) which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms, as well as to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the arrest, detention, accusations and charges of making propaganda of a terrorist organisation

against the human rights defenders mentioned in this letter, and explain how these measures are compatible with Turkey's obligations under articles 9, 19 and 22 of the ICCPR. In particular, please explain which actions undertaken by these defenders are deemed to amount to making propaganda of a terrorist organisation and how.

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 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 information on the legal grounds for the arrest and detention of Messrs. Tuncel and Yavas on the basis of allegations that they attended the funeral of an armed militant and explain how these measures are compatible with Turkey's obligations under articles 9, 21 and 22 of the ICCPR.
6. 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 of threats or acts of intimidation and harassment of any sort.

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 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 prejudge any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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(s) 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.

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

Michel Forst  
Special Rapporteur on the situation of human rights defenders

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

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