

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

REFERENCE:  
UA TUR 4/2018

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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 the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; 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, 34/21 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 arrest, detention and charges against Ms. Ayşe Lerzan Caner Conde along with the detention and attempted deportation of her husband Mr. Sekouba Conde.

Ms. Ayşe Lerzan Caner Conde and Mr. Sekouba Conde are human rights defenders and founders of the Association of Solidarity and Mutual Assistance to Migrants (ASEM), an organisation which focuses on the right to health of African migrants and refugees and, in particular, assists migrants and refugees who cannot access medical treatment due to limitations in Turkish health policies in respect to migrants and refugees.

Concerns about the use of counter-terrorism legislation and emergency decrees to restrict the activities of human rights defenders and the exercise of the right to freedom of expression have been raised by Special Procedures Mandate Holders in a number of communications, the most recent were sent on 22 February 2018 (TUR 3/2018); on 20 February 2018 (TUR 2/2018); on 9 February 2018 (TUR 1/2018); on 11 December 2017 (TUR 13/2017); and on 2 November 2017 (TUR 12/2017), as well as by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression following his official visit to Turkey in November 2016 (A/HRC/35/22/Add.3). We thank your Excellency's Government for the replies received to these communications but remain concerned by the continued use of such legislation and decrees to criminalize the legitimate exercise of the right to freedom of expression and the work of human rights defenders in Turkey.

According to the information received:

On 4 October 2017, Ms. Ayşe Lerzan Caner Conde and Mr. Sekouba Conde's home was raided by police. Ms. Conde was taken into custody on suspicion of membership of the Revolutionary People's Liberation Party (DHKP-C), a group listed in Turkey as a terrorist organization, on the basis of allegations that she had previously worked for them as an interpreter.

When police attempted to forcefully take Ms. Ayşe Lerzan Caner Conde into custody, her husband intervened and stated his intention to file a complaint against the responsible police officers. Mr. Sekouba Conde was then threatened with being taken into custody himself and sent to a deportation centre for "resisting a police officer". Ms. Ayşe Lerzan Caner Conde and Mr. Sekouba Conde were then brought to İstanbul Security Directorate's Anti-Terror Branch.

On 11 October 2017, Ms. Ayşe Lerzan Caner Conde was formally charged with "membership of an armed terrorist organization" and placed in pre-trial detention in Balıkesir T Type Prison.

Although the couple's lawyers were informed that Mr. Sekouba Conde would be released, a deportation process was initiated by the Directorate General of Migration Management of the Ministry of Interior under article 54 (1) of the law "On Foreigners and International Protection". This law states that "a removal decision shall be issued in respect of those foreigners who (...) pose a public order, public security or public health threat." Mr. Sekouba Conde is originally from Guinea and is a legal resident in Turkey. He has been granted mandatory refugee status by the United Nations High Commissioner for Refugees and possesses a two year residency and work permit issued by Turkish authorities valid until 2019.

Mr. Sekouba Conde was initially sent to Istanbul Kumkapı Repatriation Centre, Kırkkale before being sent to İzmir Harmandalı Repatriation Centre. For approximately one month after he was sent to the latter Centre, Mr. Sekouba Conde was held incommunicado, leading his colleagues to presume that he had already been deported.

On 14 February 2018, the lawyer of Mr. Sekouba Conde was informed that the deportation process initiated against him by the Directorate General of Migration Management of the Ministry of the Interior was temporarily suspended, however he remains in custody and still faces the risk of the resumption of the process.

The case against Ms. Ayşe Lerzan Caner Conde is confidential and the authorities have failed to provide any information to her lawyers regarding the investigation. No hearing has been scheduled.

While we do not wish to prejudge the accuracy of these allegations, we express our serious concern over the arrest, detention and charges against Ms. Ayşe Lerzan Caner Conde, and the detention and possible deportation of her husband, Mr. Sekouba Conde. These measures against them appear to be connected to their peaceful and legitimate work in defense of human rights. Our concern arises from the vague and imprecise charge of “membership of an armed terrorist organization”, which we have seen to be repeatedly used to target critics of the Government’s policies as well as human rights defenders, particularly since the imposition of the state of emergency. The misuse of counter-terrorism legislation to criminalize the work of human rights defenders risks conflation of their peaceful and legitimate activities with threats to national security, placing them at risk of prosecution and discrediting them in the eyes of the public.

These allegations appear to constitute, *prima facie*, a violation of articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, and articles 5, 6, 10 and 11 of the European Convention on Human Rights (ECHR), ratified by Turkey on 18 May 1954, which guarantee the universally-recognized rights not to be deprived arbitrarily of liberty, to due process and fair trial, to freedom of opinion and expression and freedom of peaceful assembly and association. The international human rights law allows State to limit the full exercise of derogable rights provided by ICCPR and ECHR when country is faced with emergency challenges. However, it requires that, even during an armed conflict, measures derogating from ICCPR and ECHR are only allowed if and to the extent that the situation constitutes a fundamental threat to the State. An essential requirement for measures derogating from ICCPR and ECHR is that they be limited to the extent strictly required by the exigencies of the situation. The obligation to limit derogations to those strictly required by the exigencies of the situation reflects the principles of legitimacy, proportionality and necessity.<sup>1</sup>

In this regard, we express concern at the renewal on 18 January 2018 of the derogation from several articles of ICCPR and ECHR following the extension of the state of emergency, which appear not 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.

In this regard, we also refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178

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<sup>1</sup> See more in para 10, 11 and 12 of [A/HRC/37/52](#)

(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, which all 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 the present case, and with regard to the detention and possible deportation of Mr. Sekouba Conde, we are drawing your Excellency's Government's attention to article 33(1) of the Convention relating to the Status of Refugees, and its Protocol, which Turkey signed on 30 March 1962 and 31 July 1968, respectively, and which states that "(n)o Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". This fundamental principle is reaffirmed in article 3(1) of the Convention against Torture (CAT), which states that "No State Party shall expel, return 'refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". Article 32 of the refugee Convention provides that the expulsion of a refugee deemed to pose a security threat can only take place "in pursuance of a decision reached in accordance with due process of law." Under international human rights law no limitation or exception whatsoever is permissible where deportation would expose the person in question to a real risk of torture or ill-treatment.

We note that Mr. Conde is a legal resident in Turkey that has been granted refugee status by the United Nations High Commissioner for Refugees and possesses a two year residency and work permit issued by Turkish authorities valid until 2019. The vague wording of article 54 (1) of the law "On Foreigners and International Protection" and its use to deport Mr. Sekouba Conde on the ground that he would pose a threat to "public order, public security or public health" does not appear to be based on credible evidence. The onus to produce such evidence is on the State.

Finally, we refer to the UN Declaration on Human Rights Defenders, in particular articles 1 and 2, which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal basis for the arrest and detention of Ms. Ayşe Lerzan Caner Conde, and how these measures are compatible with Turkey's international human rights obligations under, inter alia, in articles 9, 14 and, 19 and 22(2) of ICCPR and articles 5, 6, 10 and 11 of ECHR.
3. Please provide details on the decision of the Prosecutor to keep the investigation against Ms. Ayşe Lerzan Caner Conde confidential and restrict the lawyer's access to the case files, and explain how these measures are compatible with article 14 of ICCPR and article 6 of ECHR.
4. Please provide accurate and detailed information on the factual and legal basis for the detention and the initiation of the process of deportation of Mr. Sekouba Conde and explain how these actions against him are compatible with international human rights law, including article 13 of ICCPR, and the principle of *non-refoulement*; and please explain in details and provide evidence that the activities of Mr. Sekouba Conde pose such a threat to public order, public security or public health that would justify his deportation.
5. Please provide information on Mr. Sekouba Conde's alleged restrictions on contact during his detention and explain how this is compatible with Turkey's obligation under international human rights law.
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, or threats or acts of intimidation and harassment of any sort, in the full respect of their civil and political rights.

Given the urgency of the matter, we would be grateful for a prompt response to this letter. In the meanwhile, and in the light of the above, we are respectfully urging Your Excellency's Government to reconsider the decision to deport Mr. Conde and to annul the current procedure so as to allow a detailed factual and legal review of the case that will meet all the requirements provided for under international human rights and refugee law. We also urge that the arrest and detention of Ms. Conde be thoroughly reviewed, and that if she remained in detention, she be afforded all guarantees of due process to ensure her fair trial.

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 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.

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

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

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