

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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:
AL TUR 3/2019

4 March 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 34/18, 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 sentencing of 47 members of Academics for Peace between 11 December 2018 and 24 January 2019, including Ms. Şebnem Korur Fincancı and Mr. Gençay Gürsoy, as the result of their signing a peace petition.

Ms. **Sebnem Korur Fincancı** is an academic and Chairperson of Human Rights Foundation of Turkey (TIHV). She has been the subject of one previous joint communication sent by Special Procedures mandate holders on 24 June 2016 (TUR 4/2016).

Mr. **Gençay Gürsoy** is an academic and former Chair of the Turkish Medical Association Central Council. He is also a co-founder of Human Rights Association (İnsan Hakları Derneği "IHD") and TIHV.

Ms. Sebnem Korur Fincancı and Mr. Gençay Gürsoy are both signatories of a peace petition drafted in January 2016 by Academics for Peace, a group that unites more than 2,000 individuals supporting peace in the south-east of Turkey, called "We will not be a Party to this crime". The petition has over 1400 signatories. Since the publication of the petition, many of its signatories have reportedly been prosecuted on charges of creating "terrorist propaganda", while others have been dismissed, suspended or forced to resign from their jobs. Many also continue to be subjected to administrative and judicial investigations. Allegedly to date, the first hearings in the prosecutions of 493 academic signatories have been concluded.

Concerns about academic freedom and dismissal of academics following the signing of the "Peace Petition" on the basis of counter-terrorism legislation were raised by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his report presented to the Human Rights Council in June 2017 following his official visit to the country (A/HRC/35/22/Add.3). These concerns have also been the subject of four previous communications sent by several Special

Rapporteurs, on 11 December 2017 (TUR 13/2017); on 23 January 2017 (TUR 1/2017); on 24 June 2016 (TUR 4/2016); and on 31 March 2016 (TUR 3/2016). We thank your Excellency's Government for the replies of 9 February 2018; of 11 April 2017; of 3 August 2016; and of 18 May 2016, but remain concerned at the continued repression of freedom of expression in the country.

According to the information received:

Between 11 December 2018 and 21 February 2019, 87 academics, signatories to the peace petition "We will not be a Party to this crime", were sentenced on charges of creating "terrorist propaganda" under article 7(2) of the Anti-Terrorism Law (Law no. 3713). 64 academics received suspended sentences, while 23 academics, including Ms. Sebnem Korur Fincanci and Mr. Gençay Gürsoy, received sentences of between one year and three months and three years in prison.

On 11 December 2018, Mr. Gürsoy was sentenced by the Istanbul 37th High Criminal Court to two years and three months in prison. During the hearing, it became apparent that Mr. Gürsoy's social media posts had been added to his case file, along with an interview he conducted on the t24.com.tr news website, however he was not permitted to make statements on them. The Court refused to reduce Mr. Gürsoy's sentence allegedly due to "negative attitude and behaviour" and "lack of remorse". Mr. Gürsoy intends to appeal the verdict.

On 19 December 2018, Ms. Fincanci was sentenced by the Istanbul 37th High Criminal Court to two years and six months in prison. Previous interviews she had conducted with newspapers and the preliminary report on her visit to Cizre in 2016 with IHD had recently been added to her case file. The Court stated that her sentence took into consideration press statements which she had made, along with her descriptions of alleged war crimes committed by Turkey. The Court added that her sentence had been increased due to the use of the press in disseminating her statements, that she had failed to show remorse for signing the petition, and that she had behaved improperly during proceedings.

We express our serious concerns over the prison sentences handed down to 23 academics, including Ms. Sebnem Korur Fincanci and Mr. Gençay Gürsoy, along with the 64 suspended sentences handed down to other signatories to the Academics for Peace petition between 11 December 2018 and 21 February 2019 for allegedly creating "terrorist propaganda". We fear that the crime of propagandising terror has been used to criminalise legitimate exercise of the right to freedom of expression that is guaranteed by Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003. We also express our concerns that Article 7 of the Anti-Terrorism Law is not compatible with the permissible derogations to the right to freedom of expression under Article 19(3) of the ICCPR given its overbroad and vague wording which permits wide-ranging powers to authorities to arrest and prosecute people for their public statements.

We wish to highlight that article 19 ICCPR states that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Furthermore, Human Rights Committee General Comment No. 34 (2011), on the right to freedom of opinion and expression states that “all forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalise the holding of an opinion”. As noted in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, endorsed in E/CN.4/1996/39 of 1996, no one may be punished for criticising or insulting the nation, the State or its symbols, the Government, its agencies, or public officials unless the criticism or insult was intended and likely to incite imminent violence. We underline that this should be interpreted narrowly, giving full weight to the intent, likeliness and imminence of any violence which may result, factors which are cumulative. Moreover, we remind your Excellency’s Government of its obligation, as stated by the Human Rights Council, to respect and fully protect the civil, political, economic, social and cultural rights of all individuals, inter alia the rights to freedom of expression and opinion and to assemble peacefully and associate freely, online as well as offline, including for persons espousing minority or dissenting views or beliefs. (A/68/53/Add.1)

We also express our concerns over the alleged criminalisation of the right to freedom of peaceful assembly, as enshrined in article 21 of the ICCPR, in the context of the joint signing of the Academics for Peace petition. We remind your Excellency’s Government that although an assembly has generally been understood as a physical gathering of people, it has been recognised that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online, or in this context, in the signing of the petition (A/HRC/31/66 para. 10). We further note that any restrictions on the right to freedom of peaceful assembly must be imposed in conformity with the law and must be 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.

We also wish to refer to your Excellency’s Government’s attention the recommendations made by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his report presented to the Human Rights Council in June 2017 following his official visit to the country, which advance that offences such as “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not continue to lead to unnecessary or disproportionate interference with freedom of expression, and that nobody should be held in detention, investigated or prosecuted for expressing opinions that do not constitute an actual incitement to hatred or violence consistent with Article 20 and Article 19(3). (A/HRC/35/22/Add.3 paras. 77 & 84).

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.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information as to how the mass sentencing of the academic signatories to the petition is compatible with international human rights standards.
3. Please provide information on what further measures Turkey has taken with regards to ensuring that its national security legislation is in line with international human rights standards.
4. Please provide information in details of how prosecution and sentencing for signing a peace petition comply with your Excellency's Government's obligation to respect and protect the legitimate exercise of the rights to freedom of peaceful assembly and freedom of expression in line with international human rights standards, in particular with articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights; the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 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.
5. Please provide information as to what steps have been taken to ensure that human rights defenders and journalists in Turkey are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to Articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights, ratified by Turkey on 23 September 2003, which provide for the right to liberty and security of person, the right to a fair trial, the right to freedom of opinion and expression and the right to freedom of peaceful assembly.

We would like to draw the attention of your Excellency's Government to Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We further refer to the Human Rights Committee General Comment No. 34 (2011), on the right to freedom of opinion and expression. Accordingly, "all forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalise the holding of an opinion." The General Comment further establishes that "the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

We wish to highlight that under the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, no one may be punished for criticising or insulting the nation, the State or its symbols, the Government, its agencies, or public officials unless the criticism or insult was intended and likely to incite imminent violence.

We wish to refer your Excellency's Government that, as stipulated by the Human Rights Council that States have an "obligation to respect and fully protect the civil, political, economic, social and cultural rights of all individuals, inter alia the rights to freedom of expression and opinion and to assemble peacefully and associate freely, online as well as offline, including for persons espousing minority or dissenting views or beliefs, and that respect for all such rights, in relation to civil society, contributes to addressing and resolving challenges and issues that are important to society, such as (...) responding to humanitarian crises, including armed conflict, promoting the rule of law and accountability, achieving transitional justice goals, (...) combating racism and racial discrimination, supporting crime prevention, (...) and the realization of all human rights". (A/68/53/Add.1)

We further wish to bring to your Excellency's Government's attention Human Rights Council resolution 34/5 which states that in some instances, national security and

counter-terrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law and recognizes that there is an urgent need to address, and to take concrete steps to prevent and stop, the use of legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law.

We would like to draw attention of your Excellency's Government to the paragraph 28 of the report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, in which he strongly condemns the use of counter-terrorism legislation with penal sanctions against individuals peacefully exercising their rights to freedom of expression, as well as freedom of religion or belief and freedom of peaceful association and assembly. As a matter of international law, the imperative of effective counter-terrorism cannot lawfully be misused as an excuse to quash public advocacy by peaceful critics, human rights activists and members of minority groups.

We would also like to refer 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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to Article 1, 2, and 6 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would also like to refer to 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 70/148, which 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.