

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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16 May 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 and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning criminal charges against Ms. **Gönül Öztürkoğlu**, a human rights defender and president of the Malatya branch of İnsan Hakları Derneği (IHD – Human Rights Association). Ms. Öztürkoğlu has been actively involved in defending the human rights of women and children, the rights of prisoners, in particular the sick and the elderly, and the rights of persons belonging to Yezidi communities. We would furthermore like to bring to your Excellency's Government's attention information received concerning the hearing of [REDACTED] on 8 May.

Concerns at the suspension of Mr. [REDACTED] from his position at Agri Ibrahim Cecen University, in Ankara, through the use of emergency decrees, following his signing of the "Peace petition" by Academics for peace in 2016, as well as concerns at reported act of reprisal for his cooperation with the Special Rapporteur on the promotion of the right to freedom of opinion and expression during his official country visit to Turkey from 14 to 18 November 2016, was raised in a communication by Special Procedures mandate holders on the 23 January 2017. We thank your Excellency's Government for the reply received on 11 April 2017, explaining the legal basis for the suspension as well as the scope of the emergency decrees. We remain concerned at the continued trial against Mr. Osman İsci in light of the lifting of the State of Emergency in July 2018.

According to the information received:

The case against Ms. Gönül Öztürkoğlu

Ms. Gönül Öztürkoğlu was charged under article 314 (2) of the Turkish Criminal Code and article 5 of Regulation No. 3713 (Anti-Terrorism Law). She has been charged with and is currently being tried for, 'membership in a terrorist organization', specifically 'armed terrorist organization PKK/KCK'. Additionally, although propaganda related charges were not included in the original indictment, on 22 February 2019 the judge acting on her case requested that Ms. Gönül Öztürkoğlu would also be tried for charges relating to 'spreading terrorist propaganda via the media', under article 7 (2) of the Anti-Terrorism Law.

The maximum sentence for the charge of 'membership in a terrorist organization' is 15 years, and the maximum sentence for 'propaganda on behalf of a terrorist organization' is 7.5 years.

On 27 November 2018, Ms. Gönül Öztürkoğlu was arrested and taken into police custody in Malatya, Eastern Anatolia region. On 30 November 2018 she was officially arrested. Initially neither Ms. Öztürkoğlu, nor her lawyer were informed of the reasons for her arrest, and the evidence used against her. During the investigation neither she, nor her lawyer were able to obtain information about the evidence and charges against her, as there is a confidentiality order in place under the scope of article 157 of the Turkish Code of Criminal Procedure.

The charges relate to a series of events and actions, in which Ms. Gönül Öztürkoğlu has participated, including a protests in October and November 2014 in Malatya, condemning the attacks in Kobane; joining a press conference on 26 December 2016, condemning military operations in East and Southeast Turkey; joining a press conference and sit-in on 14 July 2016 condemning military operations in South and Southeast Turkey; joining a protest and issuing a press statement in Malatya prepared by the IHD headquarters, demanding information about Hursit Kulter; joining a press conference on 3 August 2018, condemning the treatment of Yezidi women by ISIS in Sinjar; promoting a panel and event for 8 March 2018, for International Women's Day, among others.

During April to June 2018, the phone of Ms. Gönül Öztürkoğlu had been allegedly tapped. Thirteen tapes of her conversation from this period have allegedly been used as evidence of unlawful activity against her. In these conversations, Ms. Öztürkoğlu has reportedly discussed the possibility of organizing funerals for deceased PKK militants, supporting the families that have applied for help with the IHD. It is reported that Ms. Öztürkoğlu herself did neither organize nor join any funerals for PKK members.

All IHD branches regularly raise their concerns about the imprisonment of individuals with critical medical conditions, as medical care is frequently inadequate or denied in Turkish prisons. In 2018, IHD Malatya demanded the conditional release of [REDACTED] and [REDACTED], who were both imprisoned for 'undermining the unity of the State'. The father, [REDACTED], was in dire need for treatment of his cancer. His son, [REDACTED], frequently requested to be placed in the same prison as her father, in order to care for him while his health was in critical condition, a request that was repeatedly rejected.

On 22 March 2019, following her second hearing, Ms. Gönül Öztürkoğlu was released under judicial control. In addition to a travel ban imposed to her by the court, she also required to report to a police station every Monday. The next hearing in the case is scheduled to take place on 17 May 2019.

The case against [REDACTED]

Mr. [REDACTED] is [REDACTED] in Turkey, and also member of the trade-union Egitim Sen, affiliated to the Confederation of Public Workers' Union (KESK).

Between June 2012 and March 2013, Mr. [REDACTED] was detained for ten months in pre-trial detention in a high security prison, of which eight months without being formally accused nor having access to the accusation files. Released pending trial on 10 April 2013, Mr. Isci has been regularly summoned to court in the context of the ongoing trial targeting him and 71 other members of KESK before the 6th Heavy Penal Court of Ankara, on the charges of "being a member of an illegal organization" under Article 314/2 of the Turkish Penal Code.

A hearing was scheduled for 8 May at the 6 Heavy Penal Court of Ankara. The hearing took regularly place on that day, without a decision. A 14th hearing has been scheduled for 23 October 2019. If found guilty, Mr. [REDACTED] will be sentenced to 6 years and 3 months in prison.

Without prejudging the accuracy of the above-mentioned allegations, we would like to raise our concerns regarding the charges and ongoing criminal proceeding against, as well as the travel ban and weekly reporting to the police imposed on Ms. Öztürkoğlu for her work defending the rights of women, children, the elderly, prisoners and the disappeared.

Furthermore, we express concern at the lengthy trial of Mr. [REDACTED] in particular as the charges against him are incompatible with international human rights law. We 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 legislation that fail to meet the standards of international human rights law and comply with the principles of legitimacy, proportionality and necessity.

We express further serious concerns about the chilling effect that the charges and criminal proceedings may have on free expression in general, and on the activities of members of civil society, whose space to carry out their work is continuously shrinking in the country.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information of the basis of the criminal charges against Ms. Öztürkoğlu for her expressions of opinion and peaceful acts of assembly and association, and indicate how such measures are compatible with Turkey's obligations under international human rights law, in particular with respect to articles 19, 21 and 22 of the ICCPR.
3. Please provide information about the legal basis and practical necessity for imposing a travel ban and the obligation to report to the police station on a weekly basis for Ms. Öztürkoğlu.
4. Please provide information about why KESK is considered an "illegal organization".
5. Please provide information about the reasons for the continued postponement and lengthy trial against Mr. [REDACTED] and explain how this is compatible with due process and fair trial guarantees under international law.
4. Please indicate what measures have been taken to ensure that human rights defenders in Turkey can operate in an enabling environment and can carry out their legitimate activities without fear of reprisals threats, harassment or criminalisation of any kind.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. 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

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

The above-mentioned allegations appear to be in contravention of the rights to freedom of expression, freedom of association and to freedom of assembly guaranteed under articles 19, 21 and 22 of the ICCPR.

Concerning the right to freedom of expression under article 19 of the ICCPR, we would like to refer to the principle enunciated in Human Rights Council Resolution 12/16, which calls 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, and which also calls on States to refrain from imposing restrictions which are not consistent with 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. We would similarly like to recall that, while national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to claim it as a justification to pursue illegitimate purposes such as silencing critical voices. Governments have to demonstrate that the measures adopted are necessary to achieve a legitimate objective, and proportional in the means used to implement them. In any case, article 19(3) may never be invoked as a justification for the hindering of any advocacy of human rights (CCPR/C/G/34).

Finally, we wish to draw the attention of your Excellency's Government to the UN Declaration on Human Rights Defenders. In particular, articles 1, 2, 5, 6 and 12, which state that everyone has the right to promote the protection and realization of human rights, that the State has a prime responsibility and duty to protect, promote and implement all human rights, that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights.

