

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; and the Special Rapporteur on minority issues

REFERENCE:
AL TUR 7/2019

9 July 2019

Excellency,

We have the honour to address you in our capacities as the 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; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5 and 34/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of Ms. **Eren Keskin**, as well as the arrest and subsequent release of Ms. **Nurcan Baysal**.

Ms. Eren Keskin is a prominent lawyer and human rights defender. She is the co-president of the Human Rights Association in Turkey (IHD). For the past 30 years, Ms. Keskin has contributed to protecting the rights of persons belonging to minorities, and worked on issues relating to violence against women and torture. She is the recipient of numerous human rights awards, including the Aachen Peace award in 2004.

Ms. Keskin has been subject of a joint communication sent by Special Procedures mandate holders to your Excellency's Government on 27 June 2018 (JAL TUR 9/2018). As a result of Ms. Keskin's symbolic title of "editor-in-chief" of the now closed newspaper *Özgür Gündem*, which reported extensively on the Turkish-Kurdish conflict and on the situation of persons belonging to the Kurdish minority, over 100 lawsuits had been filed against her in Turkish courts. On 30 March 2018, the Istanbul Criminal Court of First Instance sentenced Ms. Keskin to seven and a half years of imprisonment. While we would like to thank your Excellency's Government for the response dated 7 August 2018, we regret that it does not provide information on how the charges against Ms. Keskin are compatible with international human rights law.

Ms. Nurcan Baysal is a Kurdish human rights defender and journalist from the south-eastern province of Diyarbakır. She writes particularly about the military operations conducted in the Kurdish region and development and poverty issues. Ms. Baysal is also the co-founder of several civil society organisations. In 2018, she received the Front Line Defenders Award for Human Right Defenders at risk.

According to the information received:

Ms. Eren Keskin

A total of 143 lawsuits have been filed against Ms. Keskin to date. A number of cases were merged, 12 have been finalised, and five are pending before the Court of Appeals. As a result, Ms. Keskin received cumulative sentences of 12.5 years in prison.

In August 2018, the Office of the President of Turkey filed an application with the Istanbul Bar Association requesting a disciplinary investigation against Ms. Keskin, which could result in her disbarment and prevent her from continuing her work as a human rights lawyer.

On 10 October 2018, in the 10th hearing held in the *Özgür Gündem* case, the Istanbul 23rd High Criminal Court ordered the lifting of the international travel ban imposed on her. The international travel bans issued against her by other courts and related to other cases remain valid. Ms. Keskin was consequently unable to travel to Geneva for the award ceremony for the Martin Ennals Award for Human Rights Defenders in February 2019, for which she was a finalist.

On 21 May 2019, the İstanbul 14th Heavy Penal Court convicted Ms. Eren Keskin for “propaganda on behalf of a terrorist organisation”, namely the Kurdistan Workers Party (PKK), under Article 7(2) of the Anti-Terror Law No. 3713, and sentenced her to three years and nine months of prison. The sentence will be appealed at the Regional Court of Appeal, and if the Court upholds it, Ms. Keskin will be imprisoned.

Ms. Nurcan Baysal

On 21 February 2019, the 7th Criminal Court of First Instance of Diyarbakır acquitted Ms. Baysal of the charge of “inciting the public to hatred and enmity” under article 216 of the Turkish Penal Code. She had been facing up to three years in prison for her anti-war tweets about the Turkish military offensive in Afrin, Syria.

In the morning of 3 June 2019, five heavily armed police officers raided Ms. Baysal’s house and took her into custody at the Diyarbakır Police Anti-Terror Branch. Only hours later, she was informed that there had been an arrest warrant issued against her on charges of “membership of an armed terrorist organisation” under article 314 of the Turkish Penal Code. While in custody, police questioned Ms. Baysal in relation to her involvement with different civil society organisations.

At 2 pm on the same day, Ms. Baysal was brought before the Penal Judgeship on Duty who lifted the arrest warrant against her and ordered her release. The prosecutor’s office dropped the charges against her on 17 June 2019. Her lawyers were not provided with any further details on the case.

We would like to express our serious concern over the latest conviction of Ms. Eren Keskin and reiterate our concern about the apparent continuous judicial harassment against her. Further concern is expressed at the alleged arbitrary arrest of and charges against Nurcan Baysal. These actions against both human rights defenders appear to be directly linked to their journalism and their peaceful work defending human rights in Turkey, in particular the rights of persons belonging to the Kurdish minority, and may deter human rights defenders from continuing their work promoting and protecting human rights. We reiterate our concerns at the continued use of national security and counter-terrorism legislation and criminal defamation to criminalise the exercise of the right to freedom of expression in Turkey.

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 the observations of your Excellency's Government 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 how the charges against, and conviction of, Ms. Eren Keskin is compatible with Turkey's obligations under international human rights law, in particular with articles 14 and 19 of the International Covenant on Civil and Political Rights.
3. Please provide information on the legal and factual basis of the arrest and charges against Ms. Nurcan Baysal, as well as the raid of her house, and explain how these are compatible with international human rights law.
4. Please provide information on measures taken to ensure that trials are conducted in a free and fair manner, in compliance with Turkey's obligations under international human rights law.
5. Please provide information on measures taken to ensure that all lawyers, journalists and human rights defenders, including all those who work and advocate for the rights of national or ethnic, religious and linguistic minorities, can carry out their legitimate professional duties and activities without fear of reprisals, physical violence or other forms of intimidation and threats.

We would appreciate receiving a response within 60 days. Beyond 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Leigh Toomey
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

Fernand de Varennes
Special Rapporteur on minority issues

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, without expressing at this stage an opinion on the facts of the case and on whether the detention of the individuals was arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to respect and ensure the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9, 14 and 19 in conjunction with article 2 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Turkey on 23 September 2003.

We remind your Excellency's Government of the duty to respect and ensure the right to freedom of opinion and expression in accordance with article 19 of the ICCPR. Any restriction on the rights enshrined in Article 19 (2) must be compatible with the requirements in Article 19 (3). The scope of the right to freedom of expression includes even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19 (3), CCPR/C/GC/34 para. 11. However, it is not compatible with Art. 19 (3), for instance, to invoke laws protecting national security or otherwise, in order to suppress or withhold from the public information of legitimate public interest that does not harm national security, or use such laws to prosecute journalists or human rights defenders for having disseminated such information, *id.* para. 30. As indicated by the Human Rights Committee, under no circumstance can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest [...] be compatible with article 19", *id.* para. 23. Furthermore, it is "normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party", *id.* para. 45.

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 the 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.

Furthermore, we would like to bring article 17 of the Declaration to the attention of your Excellency's Government. This article provides that in the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of

securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

We would like to bring to the attention of your Excellency's Government the international standards regarding the protection of the rights of persons belonging to minorities, in particular to article 27 of the International Covenant on Civil and Political Rights and to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities), adopted by the General Assembly in 1992, which in its article 1 refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end. Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them. Article 4.1 establishes that "States will take measures where required, to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law".