

Mandates of the the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL TUR 8/2019

23 July 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 33/9 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 eleven council members of the Turkish Medical Association to prison on the charge of "provoking the public to hatred and enmity", following statements on the effects of war and conflict on public health.

The Turkish Medical Association (TMA) represents around 80 percent of the country's doctors with over 83,000 members and is the Turkish affiliate of the World Medical Association. It is an internationally renowned medical and health professional organisation, which aims to protect and promote public health in Turkey. The TMA regularly issues opinions on the determinants of public health, including peace and democracy.

The eleven TMA Council members concerned by this communication are: 1. Mr. Mehmet Raşit Tükel, 2. Mr. Taner Gören, 3. Mr. Sinan Adıyaman 4. Ms. Mehmet Sezai Berber, 5. Ms. Selma Güngör, 6. Mr. Bülent Nazım Yılmaz, 7. Mrs. Funda Barlık Obuz, 8. Mr. Dursun Yaşar Ulutaş, 9. Ms. Ayfer Horasan, 10. Mr. Şeyhmus Gökalp and 11. Ms. Hande Arpat.

According to the information received:

On 3 May 2019, the High Criminal Court in Ankara sentenced eleven TMA Council members to prison on the charge of "provoking the public to hatred and enmity", following a public statement issued in January 2018 entitled "War is a public health issue!"

The statement was issued in the context of the launch of a military operation called "Olive Branch" in Afrin, Syria in January 2018, and discussed the negative effects of war and conflict on public health.

On 26 January 2018, President Erdoğan publicly accused the authors of the statement of sympathizing with terrorists and of not being “domestic and national” enough. The TMA denied the accusations through another public statement. The authors of the statement stressed that the State has the obligation to create an environment that allows all persons to freely express their opinion.

On 29 January 2018, the Chief Prosecutor’s Office in Ankara opened a confidential criminal investigation against the eleven TMA Council members, following a complaint made by the Ministry of the Interior. On 30 January 2018, the police allegedly raided the houses of the eleven members mentioned above and seized some items, including electronic devices and books. They were thereafter taken into custody.

Following their arrests, the Rectorate of Istanbul University suspended Mr. Raşit Tükel and Mr. Taner Gören from their work for three months, while Mr. Şeyhmus Gökçalp was dismissed from his position at the Diyarbakır Central Bank.

On 2 February 2018, three TMA Council members, Mr. Sinan Adıyaman, Ms. Ayfer Horasan and Mr. Şeyhmus Gökçalp, were released on probation. On 5 February 2018, the remaining eight members were released. On 9 February 2018, the decision to suspend Mr. Raşit Tükel and Mr. Taner Gören from their work for three months was lifted.

On 12 October 2018, the High Criminal Court in Ankara accepted the indictment against the eleven TMA Council members. When their lawyers received the indictment, they learned that a second criminal investigation against the same Council members had been opened in relation to another statement made by the TMA in 2016 on International Peace Day. The two investigations were reportedly merged into a single indictment.

Hearings were held on 27 December 2018, 20 March 2019, and 3 May 2019. In the final hearing, the eleven TMA Council members were sentenced to 20 months in prison (10 months for each statement) on the charge of "provoking the public to hatred and enmity". Ms. Hande Arpat, was also charged with “making terrorist propaganda” and sentenced to an additional one year, six months and 22 days imprisonment in connection to her social media posts from 2016 related to Women's Protection Units fighting against ISIS. The TMA Council members have appealed their sentence.

We express grave concern at the sentencing to prison of eleven TMA Council members, representing an express target on health-care professionals and a criminalization of the exercise of the right to freedom of expression. We are dismayed that issuing opinions on public health can lead to almost two years of prison. We once again reiterate our concerns at the deteriorating space for health-care professionals and other human rights defenders in Turkey.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information about the charges brought against the eleven TMA Council members and explain how they are compatible with Turkey's obligations under international human rights law.
3. Please indicate what measures have been taken by your Government to respect, protect, facilitate and promote the work of advocates who assist groups in vulnerable or marginalized situation in the realization of their right to health.
4. Please indicate what measures have been taken to ensure that all 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.

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

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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 refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Turkey in September 2003. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19 (3). 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 wish to reiterate as well the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also like to remind your Excellency's Government of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Turkey in September 2003, which enshrines the right to physical and mental health. The Committee on Economic, Social and Cultural Rights in its General Comment No. 14 (E/C.12/2000/4) has stressed that the right to health is an inclusive right extending not only to timely and appropriate health care but also to other important aspects: it is closely related and dependant upon the realization of other human rights, including non-discrimination, equality, and the freedoms of association, assembly and movement, which address integral components of the right to health (para 3). An important aspect of the right to health is the participation of the population in all health-related decision-making at the community, national and international levels (para 11). The effective provision of health services can only be assured if people's participation is secured by States (para 54).

As part of their obligations under ICESCR article 12, States should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting groups in vulnerable or marginalized situation in the realization of their right to health. (para 62). Violations of the right to health may arise from those State actions, policies or laws that contravene the standards set out in ICESCR article 12 including the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health (para 50), including the promotion of health related work and campaigns with respect to HIV/AIDS, sexual and reproductive health rights, domestic violence, and the abuse of drugs and other harmful substances (para 36).

Finally, we would also like to refer your Excellency's Government to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 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 and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, as well as to article 6 (b) and c) which provides that everyone has the right, individually and in association with others, to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters We would also like to refer to Human Rights Council resolution 22/6, which indicates that domestic law should create a safe and enabling environment for the work of human rights defenders (paras. 10-13).