

Mandate of the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL TUR 10/2019

2 January 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 35/11.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged arbitrary arrest, detention and conviction of judge Sultani Temel; as well as the alleged lack of medical attention she receives in prison and the absence of adequate facilities for her daughter who is with her in prison.

Concerns regarding dismissal, arrest, arbitrary detention and conviction of judges, prosecutors and lawyers have been expressed in a number of communications that I have addressed to your Excellency's Government, both alone and together with other mandate holders, since the failed coup d'état of 15 July 2016 and the consequent enactment of the state of emergency (see TUR 6/2016, TUR 7/2016, TUR 5/2017, TUR 7/2018, TUR 15/2018 and TUR 2/2019).

While I take this opportunity to thank once again your Excellency's Government for the replies to these communications, I remained gravely concerned at the adverse effects that the measures adopted by your Excellency's Government have had, and continue to have, on the equal and effective enjoyment of human rights and fundamental freedoms of targeted individuals as well as on the independence of the judiciary and the free exercise of the legal profession.

I also wish to restate that the communications mentioned above only represent a small fraction of the individual complaints that I have been receiving since July 2016.

According to the information received:

After the failed coup d'état attempt in July 2016, judge Sultani Temel was accused of having links to what Turkish authorities refer to as Fethullah Gülen Terrorist Group/Parallel state structure or FETÖ. On 24 August 2016, the High Council of Judges and Prosecutors dismissed her as a judge, without any disciplinary proceedings and without the opportunity to defend herself.

On 16 January 2017, judge Temel was taken into custody by the Istanbul Counter-Terror Police Department, following a request of the Tokat Province Public Prosecutor, with an order of 30 days of detention period. Judge Temel was kept in a cell for 11 days in poor living conditions and without access to a lawyer. She was allegedly subjected to psychological torture. She was threatened by the police

and forced to accept the charges against her. On 27 January 2017, a Magistrate from Tokat Province issued a detention order and she was sent to Tokat prison. On 5 October 2017, the 27th Court of Terrorist Crimes of Istanbul released her on bail with a “house arrest” order. During her “house arrest” she was treated by a doctor due to her [REDACTED] condition, which was affected in prison. She was diagnosed with a “ [REDACTED] ” and prescribed medication.

On 6 June 2018, the 27th Court of Terrorist Crimes of Istanbul sentenced her to 8 years and 9 months of imprisonment. The court dismissed all her claims, including those related to her [REDACTED]. According to the information received, the sentence did not refer to any fact or evidence relating to her alleged link to FETÖ. Judge Temel was sent back to prison, the house arrest being lifted apparently without a legal basis. Currently, judge Temel is in Erzurum Penitentiary Institute together with her daughter; who is with her because she needs the care of her mother.

On 4 May 2017, judge Temel applied to the Turkish Constitutional Court. On 22 February 2019 a decision was given, which apparently did not provide a response to any of her claims. On 8 August 2019, the Constitutional Court also rejected the interim measures requested by judge Temel.

According to the information received, judge Temel’s [REDACTED] condition has further deteriorated. As mentioned-above, she had been diagnosed with a [REDACTED] [REDACTED]. While judge Temel has been able to continue to take her medication in prison, she has not been able to continue her [REDACTED] treatment due to the lack of a [REDACTED] specialist in prison.

Judge Temel’s daughter has stayed with her for more than two years in prison. Erzurum Penitentiary Institute does not have educational or training facilities for children. Furthermore, due to the prison conditions her daughter’s state has aggravated. She has been treated by the [REDACTED] [REDACTED]. She has been diagnosed with “ [REDACTED] ” and prescribed medication. She is receiving treatment.

Without prejudging the accuracy of the information received, I am concerned about the allegedly politically-motivated criminal proceedings against judge Temel which have apparently resulted in serious violations of the guarantees set out in article 14 of the International Covenant on Civil and Political Rights, and could also be regarded as an inappropriate interference with, and an act of reprisal for, the legitimate exercise of the profession of judge. I am also concerned about allegations that prison authorities have been denying judge Temel access to appropriate medical care while in detention, which appears to violate article 25 of the UDHR and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The criminal proceedings against judge Temel may also have an adverse impact on the independence of the judiciary in the country, since other judges may be deterred

from exercising their judicial independence and their freedom of expression out of fear of being subject to disciplinary or criminal proceedings.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Detailed information on the factual and legal grounds for the dismissal of judge Temel from the Court in 2016 and on the subsequent judicial proceedings described above, and explain how these measures are compatible with international human rights norms and standards relating to the independence of the judiciary.
3. Detailed information on the current physical and [REDACTED] conditions of judge Temel, along with information on what steps have been taken to allow her access to appropriate medical care.
4. Detailed information on the measures taken to ensure that judge Temel's daughter has access to educational, health and social facilities that a child requires to ensure an adequate emotional, physical and psychological development at the Erzurum Penitentiary Institute.
5. Detailed information on the guarantees in place to protect and promote judicial independence, including legal means that judges may use to defend themselves against any threat to their independence.

I 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, I 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 my highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

Without prejudging the accuracy of the information received, these allegations appear to constitute, *prima facie*, a violation of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, which guarantee the universally-recognized rights not to be deprived arbitrarily of liberty, to due process and fair trial, and to freedom of opinion and expression. Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law.

In its General Comment No. 32 (2007), the Human Rights Committee observed that article 14 requires States to adopt appropriate measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them (para. 19).

The Human Rights Committee also stated that judges may be dismissed only on serious grounds of misconduct or incompetence, and in accordance with fair procedures ensuring objectivity and impartiality. The dismissal of judges without following the procedures provided for by the law and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary (para. 20).

Additionally, the UN Basic Principles on the Independence of the Judiciary state, *inter alia*, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that the judiciary shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

According to the Basic Principles, judges can be suspended or removed only for reasons of incapacity or behavior that renders them unfit to discharge their duties, and only in accordance with fair procedures ensuring objectivity and impartiality. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure, and the judge shall have the right to a fair hearing (principle 17). Moreover, all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct (principle 19), and decisions in disciplinary, suspension or removal proceedings should be subject to an independent review (principle 20).

In the Report on the impact of the state of emergency on human rights in Turkey (January – December 2017), issued on March 2018, the United Nations High Commissioner for Human Rights documented increased executive control over, and interference with the judiciary and prosecution service (para.34); the arrest, dismissal and arbitrary transfer of judges and prosecutors to other courts; and recurring instances of threats against lawyers.

According to the European Parliament resolution on the current human rights situation in Turkey (2018/2527(RSP), recent years have seen the extension of executive control over the judiciary and prosecution, the widespread arrest, dismissal and arbitrary transfer of judges and prosecutors, and persistent attacks against lawyers.

Finally, article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Turkey on 23 Sep 2003 establishes States' obligation to protect, respect and fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. We also refer to the Committee on Economic, Social and Cultural Rights General Comment No. 14, paragraph 34 to that effect. The United Nations Standard Minimum Rules for the Treatment of Prisoners state that the provision of health care for prisoners is a State responsibility.