

Mandates of 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:
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9 December 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 situation of human rights defenders; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 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 legal action and the imposition of international travel ban against Ms. Nurcan Kaya, a human rights defender advocating for the rights of minorities in Turkey, as a result of her social media posting criticizing the recent Turkish military campaign in Syria.**

According to the information received:

On 27 October, Ms. Nurcan Kaya was apprehended and detained for several hours by the Turkish police at the Istanbul airport, as she was about to board her flight to Tunis to participate in an international conference organized by the UN Special Rapporteur on minority issues.

She was brought before the Istanbul prosecutor who informed her that she was under investigation for a social media posting (tweet) criticizing the Turkish Government's military campaign in Syria. She was released on the same day.

Ms Kaya's tweet, posted on 9 October, was a comment to a news website's tweet quoting a statement by the Turkish Minister of Foreign Affairs that the military operation in Syria was in line with the international law, the United Nations Charter and the United Nations' Security Council's resolutions on combatting terrorism. She reacted by tweeting "We know from experience how everything you call a peace operation turns out to be a massacre operation. Your racism and your ideology doesn't do any good, not even to yourself".

Ms. Kaya is charged with incitement to hatred under article 216(1) of the Turkish Penal Code, which carries a maximum possible sentence of 3 years imprisonment. According to article 218 of the Penal Code, if this offense is committed through the use of media, the maximum sentence is brought to 4.5 years of imprisonment.

On 28 October, the prosecutor applied to Istanbul's 12th Criminal Judgeship of Peace for an international travel ban against Ms. Kaya. Ms. Kaya's lawyers filed

an application to lift the international travel ban, which was rejected on 7 November.

Ms. Kaya would have been one of the invited panelists of the 2019 Forum on Minority Issues on “Education, Language and the Human Rights of Minorities”, which took place in Geneva on 28 and 29 November. She was expected to intervene and share her expertise under the thematic panel on “Language, education and the empowerment of minority women and girls”. Her travel to Geneva and participation in the Forum was seriously affected by the international travel ban imposed on her.

Without prejudging the accuracy of the information received, we express our serious concern over the legal action brought against Ms. Nurcan Kaya for a tweet criticizing the recent Turkish military campaign in Syria. In particular, we are concerned at what seems to be the application of hate speech provision clearly outside the scope of Article 20 of the ICCPR, to criminalise political criticism protected under the right to freedom of expression. Furthermore, we deeply regret the Court’s decision to impose on her an international travel ban, which prevents her from participating in international and regional events, including those organized by the United Nations and international human rights mechanisms.

We are also deeply concerned at information we have received about other similar cases of judicial harassment against human rights defenders in Turkey, and particularly against those who have criticized the recent military campaign in Syria.

Lastly, we express our concern that these reactions by the authorities may have chilling effect on any expression of disagreement and dissent, including through social media, by all those, including human rights defenders, who oppose specific government policies and actions, and who draw attention to possible human rights violations as a result of such policies and actions.

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 therefore 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 on the factual and legal grounds for the charges brought against Ms. Nurcan Kaya and enforcement of international travel ban, and explain how these measures comply with Turkey’s obligations under international human rights law.

3. Please indicate the measures undertaken by your Excellency's Government to ensure protection and promotion of the right of everyone to hold opinions without interference and to enjoy the right of freedom of expression either orally, in writing, print, art or through any other media of her choice.
4. Please indicate the measures undertaken by your Excellency's Government to ensure that human rights defenders, and in particular those advocating and working for the rights of persons belonging to minorities, are able to carry out their legitimate work in a safe and enabling environment, without the fear of prosecution, intimidation, harassment and violence, in full respect of their civil and political rights.

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

Fernand de Varennes
Special Rapporteur on minority issues

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, guaranteeing the right to liberty and security, equality before the law without discrimination on any grounds and freedom of expression.

Article 19 protects the right to freedom of opinion and expression. These rights are "indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society", see CCPR/C/GC/34 para. 2. The Human Rights Committee has free communication of information and ideas about public and political issues to be "essential", *id.* para. 20. Article 20 of the Covenant places a duty on the State to prohibit "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". Situations that for example constitute "advocacy of national, racial or religious hatred" that do not also constitute "incitement to discrimination, hostility or violence" fall outside the scope of Article 20. The State carries the burden of proof that a particular situation constitutes incitement, and that the measure implemented is in strict accordance with the principles under Article 19 (3) of the Covenant, see CCPR/C/GC/34 paras. 50 – 52. Article 19 paragraph 3, permitting certain restrictions to the freedom of expression "may never be invoked as a justification for the muzzling of any advocacy of [...] democratic tenets and human rights", *id.* para. 23.

Furthermore, as indicated by the Human Rights Committee "[i]t 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", see *id.* para. 45.

In this connection, we reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions on freedom of expression, including by persons belonging to minorities or vulnerable groups.

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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to 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;
- article 9, paragraph 4, point a), which provides for the right to unhindered access to and communication with international bodies;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would like to draw your attention to General Assembly resolution 68/181 as well as Human Rights Council resolution 31/32, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights.

We would further like to recall that one of the recommendations put forward in the report on the situation of women human rights defenders presented by the Special Rapporteur on the situation of human rights defenders to the fortieth session of the Human Rights Council (A/HRC/40/60) is to address barriers to the participation of women human rights defenders in public life, including in regional and international human rights forums, such as travel bans, visa restrictions and their lack of identity or travel documents and resources.

Finally, we would also like to refer to the international standards relevant to the protection and promotion of the rights of minorities, including article 27 of the ICCPR and the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In particular, the Declaration 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 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4).