

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 rights to freedom of peaceful assembly and of association; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA TUR 4/2020

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; 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 rights to freedom of peaceful assembly and of association; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/5, 42/22, 34/18, 41/12, 42/16 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding **the possible continued detention of human rights defenders and other civil society actors despite amendments to the Law on the Execution of Sentences and Security Measures which will authorise the early release of large groups of prisoners. We would also like to bring to the attention of your Excellency's Government information we have received regarding the criminalisation of woman human rights defender Nurcan Baysal for publicly raising concerns on the COVID-19 situation in the country.**

Ms. Nurcan Baysal is a woman human rights defender and journalist from the south-eastern province of Diyarbakır. She documents alleged human rights violations in Turkey, previously with regards to Kurdish conflict of 2015 and 2016 and more recently on issues such as poverty, gender and development. Ms. Baysal is the co-founder of several civil society organisations. She was the subject of one previous communication written to your Excellency's Government on 9 July 2019 (TUR 7/2019). We thank your Excellency for the reply however, we regret to have received further reports of harassment.

According to the information received:

On 13 April 2020, the Turkish Parliament approved the proposed amendments to the Law on the Execution of Sentences and Security Measures. The amendments will reportedly allow for the transfer to house arrest or early release of approximately 90,000 prisoners from Turkey's prison population of 286,000 persons. Previously, prisoners were eligible for parole after they had served two thirds of their sentence. The recent amendments make prisoners eligible for parole after they have served half of their sentence. In addition, pregnant women and prisoners over 60 years of age with documented health issues will be placed under house arrest. This development aims to reduce the impact and spread of the COVID-19 virus in Turkish prisons, which are allegedly designed to hold a maximum of 220,000 inmates and have already witnessed the death of a number of prisoners as a result of the virus.

The amendments exclude certain groups from being considered for early release, including those charged with terrorism-related offences, which stands for over 20% of the prison population. Those convicted with murder or sexual and drug related offences will also not be considered for release. There are reportedly no provisions for the release of individuals held in pre-trial detention, who, according to information received, number roughly 43,000 persons. Many human rights defenders, journalists, political prisoners and other civil society actors are imprisoned in Turkey suspected of or convicted for non-violent crimes related to their work, which falls under the country's anti-terror legislation. Many of these face heavy prison sentences. The amendments would prevent most of these individuals from being granted early conditional release, without consideration of their age, health condition, number of years served or the severity of their offence. However, the law establishes a committee to review the cases of those convicted of terrorist offences with penalties over ten years, with a view to grant their early release.

There are reportedly a number of human rights defenders, journalists, political prisoners and others charged in pre-trial detention or in prison who are sentenced under anti-terror legislation and who suffer from underlying health conditions or are within the at-risk age bracket, which according to the World Health Organisation include all individuals over the age of 60.¹

¹ https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10

Ms. Nurcan Baysal

On 30 March 2020, Ms. Nurcan Baysal was invited to the police headquarters in the city of Diyarbakır to give her testimony on a new investigation that had been opened against her. Ms. Baysal was already under investigation for at least three other issues related to her human rights work, the specific details of which have allegedly not been disclosed by the authorities. She requested that the interrogation be postponed in accordance with the directive on self-isolation during the COVID-19 pandemic, however the police allegedly insisted she come to the station, as a warrant for her arrest was already being processed.

On arrival at the police headquarters, Ms. Baysal was questioned about tweets she made regarding COVID-19, health professionals and the conviction of a recently sentenced human rights defender in the city of Diyarbakır. Her tweets regarding the COVID-19 virus were messages from imprisoned human rights defenders and their families, describing the prison conditions and risks they face due to their continued detention during the COVID-19 pandemic. Other tweets were personal commentaries on precautions taken by the government, and the implementation of measures in the city of Diyarbakır and other cities in south-eastern Turkey. She was also allegedly questioned on recent articles she wrote, such as one entitled “Routine life goes on in Diyarbakır despite coronavirus”. According to the record of her statement given to police, the motives behind her tweets amounted to “threat to incitement to fear and panic among the public”.

After Ms. Baysal gave her statement, she was formally placed under arrest, but was allowed to return home in accordance with special measures in place due to COVID-19. She was ordered to present herself to the police headquarters the following day to be escorted to the Prosecutor’s office at 14:00 to give her statement there.

When Ms. Baysal arrived at the Prosecutor’s office on 31 March 2020, she was again questioned about the content of her tweets. The Prosecutor referred her case to the Justice of Peace in Criminal Matters, requesting that the court issue a travel ban. Ms. Baysal successfully opposed the travel ban, arguing that it would impede her human rights work. Her case remains under investigation. If indicted, she will allegedly be charged with “provoking the public to hatred and hostility” under Article 216 of the Turkish Penal Code.

There is allegedly no incriminating content written in the tweets singled out by authorities. Ms. Baysal was allegedly informed by one official that she is one of the most influential persons in Diyarbakır, and she should be careful about what she writes.

Previously, in October 2019, Ms. Baysal was intimidated by the police for her human rights activities. On 19 October 2019, at around 5am, thirty masked and heavily armed police officers raided her home in the province of Diyarbakır. The director in chief of Diyarbakır Security Directorate allegedly obtained permission over the phone from the prosecutor on duty late in the evening before carrying out a raid on her home. They kicked down her door and violently searched her home. Ms. Baysal was not in the country at the time. However, her young children were at home when the raid took place.

The raid was allegedly also conducted in response to posts she made to social media. However, the authorities did not inform her for which posts she was under investigation. On 22 January 2020, Ms. Baysal filed a complaint to Diyarbakır Prosecutor's office in response to the violence of the raid and the trauma suffered by her children. She has yet to receive a response. She recently received compensation of 350 TL (approx. 50 USD) for a door that was broken during a similar raid at her home in January 2018.

Without prejudice as to the accuracy of the allegations, we welcome the intervention of the Turkish Government in the penitentiary system to allow for the early or temporary release of prisoners out of health considerations during the COVID-19 pandemic. However, we express our deep concern that the recently adopted amendments to the Law on the Execution of Sentences and Security Measures may exclude those prisoners charged without sufficient legal basis. Human rights defenders, journalists and political prisoners convicted under broad definitions of terrorism will remain in prison for offences resulting from their exercise of their fundamental freedoms. We have previously raised concerns about the misuse of counterterrorism legislation in Turkey. Human rights defenders in the past have allegedly been criminalised when their peaceful activities were conflated with threats to national security, for example in letters TUR 4/2018, TUR 3/2018, TUR 1/2018, TUR 12/2017, TUR 11/2017. We would also like to bring to the attention of your Excellency's Government the statement made by the UN High Commissioner for Human Rights on 25 March 2020, which reminded States to "release every person detained without sufficient legal basis... and others detained simply for expressing their dissenting views."

We reiterate the call to States of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. National security does not provide a blanket competence to restrict human rights. To the contrary, the State has a burden of proof to demonstrate that the use of national security measures is necessary, appropriate and proportionate in each particular instance, (A/70/371, para 46(c)). We also urge the authorities to consider the unconditional release of prisoners, rather than house arrest,

which is itself a form of detention when carried out in closed premises which the person is not allowed to leave.²

We are furthermore concerned by reports that individuals in pre-trial detention will not be considered for release, particularly as they have not yet been convicted of any crime and are, in the eyes of national and international law, innocent until proven guilty.. While early and temporary release for other prisoners will drastically reduce overcrowding, prisons will remain close to maximum capacity. This raises our concerns for the ability to implement effective measures to prevent the spread of the COVID-19 virus for those that remain in prison. We are deeply concerned for the physical and mental integrity of all those whose age, disability status or underlying health conditions will not be considered as grounds for early or temporary release, including human rights defenders, journalists and other civil society actors, charged under counterterrorism legislation.

In this regard, we would also like to remind your Excellency's Government of its obligations under Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), ratified by Turkey in September 2003, which guarantees all individuals, including prisoners and detainees, the right to the highest attainable standard of physical and mental health. Moreover, Article 12(2)(c) obliges States to take the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. We also recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules. In particular, Rule 30(d) establishes that in cases where prisoners are suspected of having contagious diseases, authorities should provide for the clinical isolation and adequate treatment of those prisoners during the infectious period.

As part of their obligations under ICESCR article 12, and considering the right to health is inclusive of other rights, States should respect, protect, facilitate and promote the work of human rights advocates and others with a view to assisting in people's realization of the right to health. (Committee on Economic, Social and Cultural Rights, General Comment 14, para 62).

With regards to the management of the COVID-19 pandemic outside of prisons, we express our concern for the continued ability of human rights defenders to exercise their free speech, in light of the treatment that Ms. Nurcan Baysal faces for reporting on the COVID-19 pandemic. We express our particular concern over the seemingly arbitrary nature of the arrest and charge brought against Ms. Baysal. We are concerned that the increasing raids and arrests of Ms. Baysal may show that she is being systemically targeted for exercising her right to freedom of expression and for her prominent role in

² Working Group on Arbitrary Detention, Deliberation No. 1 on House Arrest, E/CN.4/1993/24.

denouncing human rights abuses. We are furthermore alarmed that her most recent arrest comes after she raised comments and concerns over the COVID-19 response in Turkey. We would like to appeal to your Excellency's Government to take all necessary measures to respect and ensure her right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with Article 9 of the ICCPR

In relation to these charges, we would like to remind your Excellency's Government that any limitation to the right to freedom of expression must meet the requirements of Article 19 (3) of the ICCPR. That is, must pursue one of the legitimate aims exhaustively listed in Article 19 (3), be determined by law and be necessary and proportionate to achieve their protective function. Restrictive measures against journalists critical of the government or of government policies are contrary to the requirements of Article 19 (3) and thus incompatible with the Covenant (CCPR/C/GC/34, para. 42). More generally, attacks against individuals for exercising their freedom of expression, including through threats and arrests, should be subject to effective investigations in accordance with the requirements of Article 2(3) of the Covenant (CCPR/C/GC/34, para 23).

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.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures are being taken to secure equality of treatment to all groups of prisoners while giving effect to the early release provisions, including those charged under terrorist legislation for their peaceful activities defending human rights or exercising their right to freedom of expression, and those whose health is at increased risk, including those with underlying health conditions, older persons and those with disabilities.
3. Further to the early and temporary release for some prisoners to drastically reduce over-crowding, please provide information about the measures taken to prevent the spread of the COVID-19 virus for those that remain in prison, considering that prisons allegedly remain close to maximum capacity.
4. Please provide information on the factual and legal basis for the charges against Ms. Baysal, including the reasons behind the previous cases opened against Ms. Baysal, and how social media posts she made may have contravened the law. Please explain how such charges are consistent with international human rights law.
5. Please provide information on the status of investigations into the complaint lodged by Ms. Nurcan Baysal on 22 January 2020 in light of the October 2019 raid reportedly carried out at her house. Please also provide information on what measures are being taken to investigate whether the threats made and criminal charges brought against Ms. Baysal are compatible with her right to freedom of expression.
6. Please indicate what measures have been taken to ensure that human rights defenders and other civil society actors in Turkey, particularly those working on issues surrounding the COVID-19 pandemic, 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.
7. Please provide further information on the work (and composition) of the committee to review the cases of those convicted of terrorist offenses, and how the work of the committee is in line with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123,

72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein.

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 responsible of the alleged violations.

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

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.

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

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