

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; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA TUR 9/2020

30 June 2020

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; 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 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 final hearing and verdict of eleven human rights defenders in Turkey, who were arrested in 2017 for engaging in activities related to the promotion and protection of human rights.

Mr. **Taner Kılıç** is a human rights defender and the former Chair of Amnesty International Turkey.

“Istanbul 10”

Ms. **Özlem Dalkıran** is a woman human rights defender who was a founding member of the Turkish branch of Amnesty International. She was also a member of the Citizen's Assembly, a non-governmental organisation that promotes fundamental freedoms and public participation.

Ms. **İdil Eser** is a woman human rights defender and former Director of Amnesty International Turkey.

Ms. **Nalan Erkem** is a lawyer and woman human rights defenders. She was a member of the Citizen's Assembly and Amnesty International Turkey.

Ms. **İlknur Üstün** is a woman human rights defender and member from the non-governmental organisation Women's Coalition.

Mr. **Günel Kurşun** and Mr. **Veli Acu** are human rights defenders and members of Amnesty International Turkey. They are also members of the Human Rights Agenda Association.

Mr. **Şeyhmus Özbekli** is a lawyer and human rights and member from the non-governmental organisation Rights Initiative.

Mr. **Ali Gharavi** is human rights defender who acts as a digital strategy and wellbeing consultant for other human rights defenders, so that they can safely and effectively carry out their work.

Mr. **Peter Steudtner** is a human rights defender and also digital strategy and wellbeing consultant for human rights defenders. He also provides training around non-violent communication.

Mr. **Nejat Taştan** is a human rights defender and member of the non-governmental organisation, the Association for Monitoring Equal Rights.

Taner Kılıç was the subject of one previous communication, TUR 7/2017, sent on 4 July 2017. We thank your Excellency's Government for the replies received on 15 August and 3 October 2017. This communication was based on allegations that, on 6 June 2017, Taner Kılıç was arrested and detained by police in the city of Izmir and charged with "membership of a terrorist organisation" under Article 314/2 of the Turkish Penal Code. The charges were based on allegations that he downloaded and used the mobile application ByLock, a secure messaging app that encrypts users' conversations. The application is reportedly used by individuals associated with the so-called "Fethullahist Terrorist Organisation" (FETÖ), the group that is charged with helping to orchestrate the coup attempt in July 2016.

According to the information received:

On 5 July 2017, ten human rights defenders, Özlem Dalkıran, Ali Gharavi, İdil Eser, Veli Acu, Günel Kurşun, Peter Steudtner, Nalan Erkem, Şeyhmus Özbekli, İlknur Üstün and Nejat Taştan were arrested and detained while attending a human rights workshop on digital security on the island of Büyükada in Istanbul. Police were allegedly informed by an unidentified individual that the human rights defenders were conducting a secret meeting, in the run up to the anniversary of the 2016 attempted coup. All 10 defenders were detained for 12 days, before appearing before a judge, who ruled that Nejat Taştan and Şeyhmus Özbekli should be released on bail. The remaining were sent to pre-trial detention. They were all charged under Article 220/6 of the Turkish Penal Code, which stipulates, "[a]ny person who commits an offence on behalf of an organisation, although he is not a member of that organisation, shall also be sentenced for the

offence of being a member of that organisation.” They became known as the “Istanbul 10”.

On 4 October 2017, at the court’s request, Taner Kılıç’s prosecution was transferred and merged with the case of the Istanbul 10. Taner Kılıç was not granted bail and remained in pre-trial detention.

On 25 October 2017, at the Heavy Penal Court No. 35 the first hearing of the so-called Istanbul 10 took place. The court released on bail the eight human rights defenders of the group that had been in pre-trial detention. Travel bans were imposed upon all ten of them.

On 22 November 2017, the second hearing took place. An independent expert ruled that there was no trace that the mobile application ByLock had ever been installed or used on Mr. Kılıç’s phone. Despite this, the court ruled for the continued detention of Mr. Kılıç. The travel bans on Özlem Dalkıran and Veli Acu were lifted. By this time Mr. Kılıç was still detained, six human rights defenders were under travel bans and the remaining four had less strict bail conditions.

From 31 January 2018, hearings primarily focused on Mr. Kılıç’s case, with less frequent reference to the other ten defendants. On that date, the Istanbul Heavy Penal Court No. 35 ruled to release Mr. Kılıç, however the court overturned its own decision the following day after the prosecutor’s objection. He was rearrested on 1 February 2018. On 1 June 2018, Istanbul cybercrimes police department submitted its report on the analysis of Mr. Kılıç’s mobile and computing devices. For each device analysed it stated that “no data was found that would fall within the parameters of the investigation”. The court returned the report, asking that it be resubmitted to address specifically whether the mobile application ByLock was ever used on the phone. On 21 June 2018, the Istanbul cybercrimes police department resubmitted the report stating explicitly that there was no evidence that the ByLock mobile application was ever installed on Mr. Kılıç’s phone. The court requested that Mr. Kılıç remain in detention as it again requested further information on the police report that had already been elucidated in previous hearings.

On 15 August 2018, after over 14 months in detention, Mr. Kılıç was conditionally released with administrative controls and a ban on foreign travel. Subsequent hearings on 7 November 2018, 21 March 2019, 16 July 2019 and 9 October 2019 were brief, and requests to lift Mr. Kılıç’s travel ban were denied.

Before a further hearing which took place on 27 November 2019, the defence lawyers discovered that the Istanbul 10 were being investigated for espionage and financing terrorism up to June 2018.

On 19 February 2020, the final hearing and verdict for the 11 human rights defenders were expected to take place. The Prosecutor requested the conviction of Taner Kılıç for “membership of a terrorist organisation” and convictions for İdil Eser, Günal Kurşun, Nejat Taştan, Veli Acu and Özlem Dalkıran “committing a crime on behalf of a terrorist organisation”. It requested the acquittal of the remaining human rights defenders for the same charge. Reportedly, Özlem Dalkıran, Ali Gharavi, Peter Steudtner and Nalan Erkem were unable to give their final statements, so the trial was postponed.

On 3 July 2020, the remaining human rights defenders are expected to give their testimonies and the final verdict of all 11 human rights defenders, will be announced.

Without prejudging the accuracy of the allegations, we express our profound concern at the terrorism-related charges that the 11 named human rights defenders are facing. Of particular concern is that the Istanbul 10 were arrested as they led a human rights workshop, with little factual basis to support the charges at the time of the arrest and were not presented before a judge promptly in order to challenge the legality of their detention. We note that alleged evidences presented to support the charges do not appear to be proportionate to the seriousness of the allegations against them. We are also deeply concerned that the court overturned the decision to release Mr. Kılıç the day after the decision took place. Furthermore, we find the refusal to accept repeated, expert evidence that supported Mr. Kılıç’s claim that he did not use the ByLock mobile application on his phone deeply concerning particularly as it was used as the main proof of his alleged links to FETÖ.

We would like to convey our concern for the significance that this case has on all civil society in Turkey. If human rights defenders are criminalised while conducting their legitimate activities, we fear for the chilling effect that this may have on all those seeking to uphold and defend international human rights law in Turkey, as well as exercising their own rights of freedom of opinion and expression. A conviction for any of the 11 human rights defenders mentioned in this case could lead others to cease their civil society work, for fear of their own liberty and security. Such an event could leave vulnerable groups in Turkish society increasingly exposed, with less recourse to find remedy in the event that their rights are violated.

We would like to refer to Opinions 42/2018, 44/2018, 29/2020 and 30/2020 of the Working Group on Arbitrary Detention as well as the findings of the Human Rights Committee in the Communication 2980/2017 (CCPR/C/125/D/2980/2017), which

dismisses the mere use of the ByLock mobile application as sufficient basis for an arrest and detention of an individual.

These allegations appear to constitute, *prima facie*, a violation of articles 9, 14, 19 and 22 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, to freedom of opinion and expression and freedom of peaceful assembly and association.

In this regard, we also refer to the relevant provisions of 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 and 72/180, which all require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law.

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 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 on why the Istanbul 10 were arrested during a human rights workshop.
3. Please provide detailed information about the factual and legal grounds for the arrest and charges against Mr. Taner Kılıç and the Istanbul 10.
4. Please provide information on the ByLock mobile phone application and how its use, or any association with its use, implies involvement with terrorist activities.
5. Please provide information on why charges related to terrorist acts, raising funds for terrorist acts, conspiracy, being a member of a terrorist organisation, offences relating to membership of a terrorist organisation, and offences relating to raising funds for a terrorist organisation have been levied against these named human rights defenders and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

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 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.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Elina Steinerte
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
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