

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL TUR 18/2020

14 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Working Group on Arbitrary Detention and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 35/11, 42/22 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest and detention of 48 lawyers, 7 trainee lawyers, 4 dismissed judges and a law graduate for being "members of a terrorist organisation"**.

According to the information received:

On 11 September 2020, the Turkish police allegedly arrested 48 lawyers, 7 trainee lawyers, 4 dismissed judges and a law graduate for being "members of a terrorist organisation". Most lawyers are accused of having links with the Fethullah Gülen movement (FETÖ), which the Turkish authorities deems to be a terrorist organization. The operation has also targeted lawyers representing Kurds and leftists accused of links to the armed Kurdistan Workers' Party (PKK) or to outlawed revolutionary left groups.

The Ankara prosecutor's office briefed Turkish media on the arrests of lawyers in Ankara and seven other provinces, saying that it was connected to a terrorism investigation involving 60 suspects. The arrested lawyers are said to have acted "under the guise of attorneyship activities" at the orders of a terrorist organisation because of the legal work they performed on behalf of their clients.

This new wave of arrests took place a few days after the ceremony for the opening of the new judicial year,¹ where the President of Turkey, H.E. Mr. Recep Tayyip Erdoğan, allegedly said lawyers who defend a terrorist "may not act like terrorists themselves", adding that Turkey stood ready to do "what is necessary to cut off the bloody path from attorneyship to terrorism."

It was reported that during the arrests and search procedures that took place at the private residences of these lawyers, procedural laws were violated and

¹ It was reported that 52 bar associations and 20 Court of Cassation members did not attend the ceremony in objection to its being held at the Presidential Palace, which amounted in their opinion to the judiciary paying homage to the executive: <https://www.evrensel.net/daily/386027/judicial-year-opening-ceremony-erdogan-accuses-palace-avoiding-bar-associations-of-provocation>

some of the lawyers were subjected to ill-treatment by law enforcement officials.

It is also alleged that after the arrests, some of the lawyers were held together on a police bus for about two hours. During this time, a medical doctor was brought onto the bus, but allegedly left without undertaking any individual medical examination. The lawyers were then transferred to the basement cells of the police department, where they were held in custody for a period of at least 12 days, presumably without a charge.

During detention, Turkish authorities seem to have taken no meaningful precautions to maintain social distancing, although the lawyers were required to wear masks. Three of the detained lawyers were found to have elevated temperatures, and one tested positive for the virus that causes Covid-19 and was subsequently released. The risk that others may have been infected during detention remains a concern.

It has also been reported that the arrested lawyers would not have been allowed to meet with members of their families or with a lawyer of their choice.

Bar associations throughout Turkey, including in Istanbul, Ankara, Izmir, and Diyarbakir, have raised strong concerns about the mass arrests of the lawyers and the assault on the legal profession it represents.

Following the attempted coup of 15 July 2016, it is alleged that over 1600 lawyers have been arrested, and more than 400 lawyers have been convicted of “being members of a terrorist organisation”. In most instances, the Turkish Government has reportedly misused terrorism charges to pursue lawyers, who have repeatedly found themselves targeted and associated with the alleged crimes of their clients.

Without prejudging the accuracy of the information made available to us, we express concern at the arrests and detention of 48 lawyers, 7 trainee lawyers, 4 dismissed judges and a law graduate, conducted under the guise of terrorism allegations.

The legal profession, and specifically defense lawyers, appear to have been targeted on the basis of their identification with clients or the crimes which clients have allegedly committed, in violation of international law relating to the free and independent exercise of the legal profession. In addition to affecting the liberty and security of the affected lawyers, these operations have a long-lasting adverse effect on the legal profession’s ability to uphold the rule of law and to ensure that everyone accused of a crime enjoys their right to a legal defense.

We further express our concerns at the alleged use of counter-terrorism legislation to criminalize association and assembly and caution against overly broad interpretations of terrorist acts and terrorist organisations, which may result human rights abuses. While there is no internationally agreed definition of terrorism, there are clear frameworks from which States national definitions should follow set by *inter alia* 33 Terrorism Treaties, and the Special Rapporteur on the promotion and

protection of human rights and fundamental freedoms while countering terrorism stresses that Turkey should ensure that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that that person knew or intended to be involved in acts of terrorism as defined by international law. In line with human rights standards, non-violent criticism of the State or any of its institutions, including the judiciary, cannot be made a criminal offence in any society governed by the rule of law.

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 comments which you may have on the above mentioned allegations.
2. Please provide detailed information on the individuals affected by the latest wave of arrests, and indicate the crimes they are charged for and the evidence used to proceed to their arrest. Please also indicate whether these individuals continue to be in pre-trial detention or have been brought before a judge. Please also indicate if and when these individuals have been brought before a judicial authority, what charges have been levied against them and if they are held in pre-trial detention.
3. Please provide information on why charges related to membership to a terrorist organization have been levied against these individuals and indicate how this complies with 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).
4. Please provide information on whether the lawyers in question have had prompt access to a lawyer of their choice and have been provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with, their lawyers, without any interception by prison authorities and in full confidentiality.

5. Please indicate the measures that your Excellency's Government has adopted to minimize the risk that lawyers under detention be exposed to the risk of contracting the virus that causes Covid-19.
6. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

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.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

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

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, and to the Basic Principles on the Role of Lawyers.

According to article 9 of the Covenant, everyone has the right to liberty and security of person, and no one shall be subjected to arbitrary arrest or detention. Article 9(2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Pursuant to article 9(3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pre-trial detention is an exceptional measure and must be assessed on an individual basis. Furthermore, article 9 (4) provides that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

We also recall that article 14 of the Covenant provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34). We would also like to refer your Excellency's Government to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, principle 9 and guideline 8).

We would further like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 16 requires Governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions.

Principle 20 establishes that lawyers must enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

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 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, in particular international human rights law, refugee law, and humanitarian law