

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; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL TUR 9/2021

20 May 2021

Excellency,

We have the honour to address you in our capacities 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; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 41/12, 42/16, 44/8, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning cases **of human rights defenders who have allegedly been arbitrarily detained and sentenced to 10 years or more, or those at risk of being sentenced to 10 years or more, in connection to the promotion and defence of human rights.**

In this letter, we would like to follow up on previous communications sent to your Excellency's Government on human rights defenders **Ms. Ebru Timtik, Mr. Aytaç Ünsal, Mr. Özgür Yılmaz, Mr. Behiç Aşçı, Ms. Şükriye Erden, Mr. Engin Gökoğlu, Mr. Süleyman Gökten, Ms. Barkın Timtik, Mr. Selçuk Kozağaçlı, Ms. Oya Aslan, Mr. Günay Dağ, Mr. Osman Kavala, Ms. Eren Keskin, Mr. Mehmet Tuncel, Mr. Abuzer Yavas, and Ms. Vetha Aydın, Ms. Şebnem Korur Fincancı and Mr. Erol Önderoğlu,** and bring to your attention the allegations concerning **Mr. Fevzi Kayacan, Mr. Turan Canpolat, Mr. Feti Ün, and Mr. Talip Nayir.**

Fourteen human rights defenders currently serving prison sentences of 10 years or more, and one human rights defender died in custody, in connection to the defence of human rights and/or their work as human rights lawyers.

The cases of Ms. Ebru Timtik, Ms. Barkın Timtik, Mr. Aytaç Ünsal, Mr. Özgür Yılmaz, Mr. Behiç Aşçı, Ms. Şükriye Erden, Mr. Engin Gökoğlu, Mr. Süleyman Gökten, and Mr. Selçuk Kozağaçlı.

Ms. Ebru Timtik, Ms. Barkin Timtik, Mr. Ünsal, Mr. Yılmaz, Mr. Aşçı, Ms. Erden, Mr. Gökoğlu, Mr. Gökten, and Mr. Kozağaçlı, are human rights defenders and members of *Progressive Lawyers' Association (Çağdaş Hukukçular Derneği - ÇHD)*, which was dissolved by governmental decree on 22 November 2016. As prominent human rights lawyers and members of ÇHD, they have represented victims of the Soma and Ermenek mining massacres, victims of forced re-locations, victims of police violence and torture, victims of other human rights violations, human rights defenders, and citizens being prosecuted for expressing their opinions and individuals who have been suspected of or convicted of terrorist activities.

Ms. Ebru Timtik, Ms. Barkin Timtik, Ms. Erden and Mr. Kozağaçlı were all the subject of a communication sent to your Excellency's Government by Special Procedures (TUR 1/2013). Ms. Ebru Timtik, Ms. Barkin Timtik, Mr. Ünsal, Mr. Yılmaz, Mr. Aşçı, Ms. Erden, Mr. Gökoğlu, and Mr. Gökten were included in the communication (TUR 11/2017). We thank your Excellency's Government for responding to both communications, but reiterate our concern about the terrorism charges brought against the aforementioned human rights defenders.

We would like to reiterate our serious concerns with the framework of antiterrorism laws implemented by Your Excellency's Government, in particular with Anti-Terror Law No. 3713 ("Anti-Terror Law") and the amendments made to this law and the Penal Code through Law No. 7145. Our concerns have been communicated to your Excellency's Government on 26 August 2020 (TUR 13/2020). We also reiterate our recommendation to review the legislation to bring it in line with international human rights standards. We acknowledge the Government's reply of 22 October 2020.

According to the information received:

In 2013, Mr. Kozağaçlı, Ms. Barkin Timtik, Ms. Ebru Timtik, Mr. Yılmaz and Ms. Erden were accused of "support, membership and leadership of a terrorist organisation (the Revolutionary People's Liberation Party DHKP/C)" in a trial known as ÇHD trial I. ¹ Mr. Kozağaçlı, Ms. Barkin Timtik, Ms. Ebru Timtik, and Ms. Erden were arrested on 21 January 2013. Mr. Kozağaçlı, Ms. Barkin Timtik, Ms. Ebru Timtik, were detained and deprived of their liberty for one year and three months, and released on 21 March 2014. Ms. Erden was released on 23 December 2013, after spending almost one year in detention. Mr. Yılmaz was never detained in relation to this case, and his arrest warrant was cancelled upon his colleague's release in 2014. CHD trial I has been pending in court since 2013.

On 12 September 2017, police arrested Ms. Ebru Timtik, Ms. Barkin Timtik, Mr. Ünsal, Mr. Yılmaz, Mr. Aşçı, Ms. Erden, Mr. Gökoğlu, and Mr. Gökten at the premises of the People's Law Office. On 13 November 2017, Mr. Kozağaçlı, chair of ÇHD, was arrested. On 14 September 2018, all the above-mentioned lawyers were released, however, within 24 hours, the Istanbul 37th Heavy Penal Court ordered their re-detention, and Mr. Ünsal, Mr. Aşçı, Mr. Gökoğlu, Mr. Gökten and Mr. Kozağaçlı were re-arrested the same day. The four other

¹ <https://cagdashukukcular.org/genel/5437>

human rights defenders remained as fugitives until they were re-arrested between February and June 2019.

On 20 September 2017, all nine above-mentioned human rights defenders were formally accused of “membership of a terrorist organisation (DHKP-C)” This trial, known as ÇHD trial II, opened in autumn 2018. On 20 and 21 March 2019, the Istanbul 37th Heavy Penal Court sentenced the nine human rights defenders to between three and eighteen years in prison under terrorism-related charges. The Istanbul Regional Court of Appeals upheld this decision on 8 October 2019, without permitting them the opportunity of attending an oral hearing.

During ÇHD trial I and II, concerns were raised regarding the impartiality of the proceedings and the defendants’ right to a fair and free trial. Many irregularities have been reported during the judicial process of both trials, including violation of the defendants’ rights to independent and impartial trials, the right to participate effectively in the proceedings, the right to defence, including one’s own defence, the right not to be tried or punished for the same charge twice, the right to publicity of one’s trial, the right to examine witnesses, and the right to be informed of the accusations upon one’s arrest, which are all elements of the fair trial standards under international law.

To demand fair trials for themselves and their colleagues, and in protest against the administration of justice in Turkey, Ms. Ebru Timtik and Mr. Ünsal engaged in an open-ended hunger strike, which developed into an indefinite death fast by 5 April 2020. On 27 August 2020, after 238 days of hunger strike, Ms. Ebru Timtik died in custody, weighing just 65 pounds. Due to the deterioration of his health, Mr. Ünsal’s sentence was suspended and he was released until 9 December 2020, when he was re-arrested for allegedly breaching the conditions of the suspension. Despite his critical health condition, Mr. Ünsal was allegedly subjected to ill-treatment upon his re-detention; he suffers from intense hunger, pains in his legs, and is not receiving the appropriate medication.

On 15 December 2020, the Court of Cassation of Turkey announced its decision to uphold the sentences of seven of the human rights lawyers and convicted them of “membership of a ‘an armed’ terrorist organisation”, under article 7 of the Anti-Terror Code (ATC) article 314 of Turkish Penal Code (TPC). Mr. Ünsal was sentenced to 10 years and six months; Mr. Yılmaz was sentenced to 13 years and 6 months, Mr. Aşçı, was sentenced to 12 years, Ms. Erden was sentenced to 12 years, Mr. Gökoğlu was sentenced to 10 years and 6 months, and Mr. Gökten was sentenced to 10 years and 6 months.

The Court of Cassation also decided to overturn the lower court’s decision and to re-evaluate Ms. Barkin Timtik’s sentence of 18 years and 9 months and Mr. Kozağaçlı’s 11 years and 3-month sentence in conjunction with the identical terrorist related charges that are still pending against in them in ÇHD trial I in the 18th Penal Court. They remain in detention pending their next hearing. The court did not find a legal basis to convict Ms. Ebru Timtik who had died during the judicial proceedings, and both cases against her were dropped.

On delivering its verdict, the court stated that the human rights lawyers were not criminalised for representing members of “terrorist groups” but “were guilty for protecting terrorist organisations and its members in a manner that exceeded their right to defence”.

Ms. Barkin Timtik, Mr. Kozağaçlı and Mr. Aşçı are currently detained in Silivri Prison no.1, a high security “isolation” prison, and it has been reported that there are issues concerning visitation rights, communication and access to books and magazines. Mr. Yılmaz and Mr. Gökten are detained at Tekirdağ no. 1 type F prison and Mr. Gökoğlu is serving his sentence at Tekirdağ no.1 type T prison. Mr. Ünsal is currently detained at Edirne no. 1 type F prison. All of these detention facilities are high security prisons in which the human rights defenders are experiencing issues with communication and visitation. Ms. Erden remains as a fugitive since her release on 14 September 2018.

The case of Mr. Osman Kavala

Mr. Osman Kavala is a human rights defender who has been at the forefront of civil society activities in Turkey since the 1990’s. He is the head of the not-for-profit Anadolu Kültür, whose members are active in the fields of arts, business, and civil society to promote and defend the right to cultural diversity in Turkey. Mr. Kavala is a member of many other civil society organisations such as the Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı – TESEV), Diyarbakır Political and Social Research Institute (Diyarbakır Siyasal ve Sosyal Araştırmalar Enstitüsü – DİSA), Open Society Foundation (Açık Toplum Vakfı), History Foundation (Tarih Vakfı), and Turkish Cinema and Audiovisual Culture Foundation (Türkiye Sinema ve Audiovisuel Kültür Vakfı – TÜRSAK). Mr Kavala was the subject of a previous joint communication by Special Procedures’ mandate holders (TUR 12/2017). We thank your Excellency’s Government for its reply dated 15 December 2017.

Mr. Kavala has allegedly been deprived of liberty and right to a fair and free trial for over three and a half years. Mr. Kavala was arrested on 18 October 2017 at Ataturk Airport and remanded in custody for seven days. During his first hearing on 25 October 2017, no formal charges were pressed against him, and his pre-trial detention was extended for a further seven days period. It is alleged that by extending Mr. Kavala’s detention, the judicial administration, including judges and prosecutors have abused the rule of law and arbitrarily deprived him of his liberty.

On 18 February 2020, after six court hearings and two years of pre-trial detention, the 30th Heavy Penal Court in Istanbul acquitted and released Osman Kavala and the eight other defendants in the Gezi Park Trial on account of insufficient evidence. Hours after this verdict was announced, Mr. Kavala was re-detained and charged with “attempting to overthrow the constitutional order”, for his supposed involvement in the 2016 coup attempt. The next day, the 8th Criminal Court of Peace of Istanbul announced his formal arrest.

Despite the European Court of Human Rights (ECHR) December 2019 ruling that declared the detention of Mr. Kavala as arbitrary, and called for his

unconditional release, judicial proceedings against the human rights defender are ongoing and he remains in the detention of the Turkish authorities.

On 22 January 2021, the 3rd Penal Chamber of Istanbul Regional Appeals Court overturned the acquittal of Mr. Kavala and the eight other human rights defenders in the Gezi Park Trial, and requested to combine the charges against Mr. Kavala with the charges of “espionage and attempt to overthrow the constitutional order” he faces in relation to the 2016 military coup. On 5 February 2021, the Istanbul 26th Assize Court granted this request and merged the two cases together. A hearing into this newly formed case will take place on 21 May 2021. On 6 February 2020, the prosecutor in the Gezi Park Trial requested to the 30th Heavy Penal Court that Mr. Kavala be handed down a life sentence without parole. The charge of “political and military espionage” under article 328 of the Turkish Penal Code (TPC) and “attempt to overthrow the constitutional order” under article 309 of the TPC. Both carry the penalty of life imprisonment.

The case of Mr. Fevzi Kayacan

Mr. Kayacan is a human rights defender and lawyer, and former president of the Konya Bar Association from 2010 to 2016. As a human rights defender and lawyer, Mr. Kayacan is a staunch advocate for human rights and democracy. Mr. Kayacan has not been the subject of previous communications sent by Special Procedures.

According to information received:

Mr. Kayacan has been deprived of liberty since his arrest on 21 July 2016, five days after the failed coup attempt. He spent 15 months in pre-trial detention due to his alleged links to the Gülen movement. On 27 October 2018, Konya 6th High Assize Court convicted Mr. Kayacan of being a member of the Fetullahist Terrorist Organization (FETÖ) under Article 314 (2) of the TPC and sentenced him to 10 years and 6 months imprisonment. Despite no concrete evidence linking Mr. Kayacan to the Gülen movement, sources report that he was convicted for his affiliations and social contacts in civil society and his role as a prominent human rights lawyer.

Mr. Kayacan is currently serving his sentence in Ankara Sincan Penitentiaries Campus. His appeal is pending before the Supreme Court Appeal (YARGITAY). Mr. Kayacan had access to his lawyer during his judicial process. While in prison, the human rights defender’s ability to meet his lawyer was restricted due to the state of emergency, overcrowding in prisons and the COVID-19 pandemic. Concerns have been raised over the health condition of Mr. Kayacan in prison; he is currently held in an overcrowded cell, and had recently suffered serious health conditions from gastric bleeding.

The case of Mr. Feti Ün

Mr. Ün is a prominent human rights lawyer and is over 70 years old. Between 1990 and 1994, Mr Ün represented Fethullah Gülen, defacto leader of the Gülen movement and political opponent of President Erdogan.

According to information received:

Mr. Ün has been denied of liberty for almost five years. He was arrested shortly after the failed coup attempt and sentenced to 12 years imprisonment on 20 November 2017, after spending almost one year in pre-trial detention. The 16th Criminal Chamber of the Supreme Court of Appeals upheld the lower court's decision to convict Mr. Ün under article 314 (2) of the TPC.

Mr. Ün had access to his lawyer during his judicial process, however once imprisoned, he did not have access to a computer which meant he could not effectively prepare his defence. Due to the state of emergency, overcrowding and the COVID-19 pandemic, Mr. Ün has had restricted contact with his lawyer. Currently, Mr. Ün is detained in solitary confinement in Denizli T Type Closed Prison.

The case of Mr. Talip Nayir

Mr. Nayir is a human rights lawyer and member of the Erzincan Bar. During his career, he fought for ensuring access to fair trial and represented many victims of human rights violations, arbitrary arrests and torture, as well as raising awareness on human rights and advocating for an end to discrimination in Turkey.

According to information received:

On 27 August 2016, Mr. Nayir was arrested as part of the Erzincan Chief Public Prosecutor's alleged widespread crackdown on lawyers with links to the Gülen movement. On 30 May 2017, Mr. Nayir was sentenced to 10 years in prison on the charge of "membership of 'an armed' terrorist organisation", under article 315 (2) of the TPC. The evidence supporting these charges is reportedly based on his use of the encrypted messenger app ByLock, the content of his social media posts, and the alleged associations and affiliations of his clients with the Gülen movement.

As of the date of this communication, Mr. Nayir has been deprived of liberty for 4 years and 9 months, and is still under arrest and serving his sentence. Mr. Nayir was given access to his lawyer during his judicial process. This legal access was restricted when he was detained, due to the state of emergency, overcrowding in prisons and the pandemic. It is of particular concern that Mr. Nayir is reported to be held in an overcrowded cell in Gümüşhane Prison House, in northeastern Turkey.

The case of Mr. Turan Canpolat

Mr. Canpolat is a human rights defender and member of the Malatya Bar Association of Turkey. His career as a defence lawyer spanned a vast 21 years, during which he represented victims of human rights violations, including those who were denied the right to a fair trial.

According to information received:

Mr. Canpolat has been deprived of liberty for over five years. He was arrested on 30 January 2016 while the police were searching the house of one of his clients. When Mr. Canpolat arrived at the police station to assist his client, he was detained based on incriminating statements given by his client, claiming that he was a member of the Gülen movement. During the course of the trial, Mr. Canpolat's client admitted that these statements were made against his will. According to the source, the police manipulated the arrest warrant to include Mr. Canpolat and forged the date to make it appear as if it had been issued before his arrest. On 20 November 2017, Mr. Canpolat was sentenced to 10 years imprisonment under terrorist related articles of the TPC, for representing those with alleged affiliations with the Gülen movement, representing companies that were shut down during the emergency decree, and for using the encrypted messenger app ByLock.

Mr. Canpolat was placed in solitary confinement in Malatya prison after his sentencing, where he has remained since due to the alleged high risk of him escaping. Due to the COVID-19 pandemic, Mr. Canpolat has been denied visitors. He has submitted over 14 separate applications requesting his release to the Turkish Court of Cassation, which have gone unanswered to date. At the time of writing, Mr. Canpolat is detained in solitary confinement in Elazığ Type Closed Prison.

Nine human rights defenders who are awaiting trial and are at risk of being sentenced to 10 years or more in prison

The case of Ms. Oya Aslan, Mr. Günay Dağ

Ms. Aslan and Mr. Dağ are both human rights defenders and members of ÇHD. As prominent human rights lawyers, they have represented victims of human rights violations and advocate for transparency and equality in the Turkish judicial system. The cases of both Ms. Aslan and Mr. Dağ were brought to the attention of your Excellency's Government in a previous communication sent by Special Procedures' mandate holders (TUR 1/2013). Once again, we thank you for responding to these allegations.

According to information received:

Ms. Aslan and Mr. Dağ are both defendants of ÇHD trial I and II alongside their imprisoned ÇHD colleagues. Mr. Dağ was arrested with the above mentioned ÇHD colleagues on 21 January 2013, deprived of his liberty for one year and three months and released on 21 March 2014, and has been a fugitive since. Ms. Aslan was not arrested in relation to this case. The trial has been ongoing since 2013, and both human rights defenders are accused of support, membership and leadership of a terrorist organisation (the Revolutionary People's Liberation Party DHKP/C), which carries sanctions of 10 years or more according to the TPC.

When the 37th Heavy Penal Court announced its verdict of the ÇHD trial II on 20 March 2019, the cases of Ms. Aslan and Mr. Dağ were separated from their colleagues due to their status as fugitives.

Ms. Aslan was re-arrested in December 2019 and her case is pending trial at the 37th Heavy Penal Court for membership of a terrorist organisation. According to sources, Ms. Aslan is currently detained at Silivri prison no. 1, she has allegedly been subjected to torture and her visitation rights have been restricted. Ms. Aslan's next hearing will take place on 15 September 2021, in which she faces a possible sentence of over 10 years imprisonment.

Mr. Dağ is currently in exile and awaiting the completion of his refugee application. He is on trial in absentia in the same case pending trial at the 37th Heavy Penal Court as Ms. Aslan.

The cases of Mr. Mehmet Tuncel and Abuzer Yavas

Both Mr. Tuncel and Mr. Yavas are human rights defenders and members of the Human Rights Association/İnsan Hakları Derneği (İHD), a non-governmental organisation founded in 1986 with branches throughout Turkey. The İHD work on issues such as prisoners' rights, alleged instances of torture, the promotion of a peaceful solution to the Kurdish issue and general human rights education. Mr. Tuncel and Mr. Yavas were the subject of a communication sent by Special Procedures' mandate holders to your Excellency's Government (TUR 3/2018) and we thank you for your response to these allegations.

According to information received:

Both human rights defenders were arrested on 24 January 2018 and an investigation was launched by Malatya Chief public Prosecutor's office on allegations relating to some social media posts they issued. When it was made public that Mr. Yavas did not have a social media account, new accusations were brought against him and Mr. Tuncel, this time in relation to their alleged attendance at a militant's funeral in 2001. Mr. Yavas and Mr. Tuncel face the charges of "membership of a terrorist group" under article 7 of the antiterrorism law, and article 314(2), 53, 58(9) and 63 of the TPC, and "propaganda for a terrorist organisation" under article 7 (2) and 5 of the ATC, crimes which are sanctioned with five to ten years imprisonment.

Mr. Tuncel was released from Malatya E-type prison on 20 February 2018, after spending a month in detention. On 7 May 2019, Malatya 1st Heavy Penal Court ruled for Mr. Tuncel's acquittal for propaganda charges, and sentenced him to 6 years and 3 months under article 314 (2) TPC. The Gaziantep Regional Court of Justice's 4th Criminal Circuit court dismissed the appeal of the initial verdict, and the file is now pending before the Court of Cassation. If the original charges are reinstated, Mr. Tuncel could face over 10 years in prison.

At the date of writing, sources could not confirm if Mr. Yavas remains in prison or has been released, nor if the charges against him still stand.

The case of Ms. Vetha Aydin

Ms. Aydin is the President of İHD's branch in the province of Siirt. She is an active member of İHD, and works to promote human rights in the country, on issues such as the right to life and enforced disappearances. Ms. Aydin was the subject of an urgent appeal sent to your Excellency's Government (TUR 2/2011). We would like to thank your Excellency's Government for its response to this communication.

According to the information received:

Officers from the anti-terrorism unit reportedly arrested Ms. Aydin during an anti-terrorism operation on 16 March 2010. Upon arrest, Ms. Aydin was charged with "membership of an illegal organisation" under article 314 (2) of the TPC and article 7 (1) of the ATC. These charges are related to her participation in press conferences held by various NGOs and her senior role within İHD. Ms. Aydin was held in pre-trial detention for almost one year. She was released on 15 March 2011, but the charges against her are still pending before the Siirt 1st Heavy Penal Court. The next hearing will be held on 8 June 2021.

The case of Ms. Eren Keskin

Ms. Keskin is a long-standing human rights defender, human rights lawyer and civil society figure in Turkey. She is the founder of Gözaltında Cinsel Taciz ve Tecavüze Karşı Hukuki Yardım Bürosu (Legal Aid Bureau against Sexual Harassment and Rape in Custody) and the co-chair of the Human Rights Association in Turkey.

Ms. Keskin acted as the chief editor of Özgür Gündem newspaper between 2014 and 2015, which reported extensively on the Turkish-Kurdish conflict and Kurdish minority rights. Ms. Keskin is also a member of and former president of the Istanbul branch of the İHD.

Ms. Keskin has been the subject of four communications (TUR 6/2005, TUR 4.2006, TUR 9/2018 and TUR 7/2019) sent by Special Procedures' mandate holders to your Excellency's Government. We would like to thank you for responding to all four communication letters, but emphasise again our request to provide information on how the charges brought against Ms. Keskin are compatible with international human rights law.

According to information received:

Since 2005, Ms. Keskin has been the subject of various legal proceedings in relation to her human rights work. There are currently 143 criminal cases filed against her in Turkish courts, relating to terrorism, propaganda and national security charges, with sentences adding up to 17.5 in prison if the Court of Appeals uphold her convictions.

On 30 March 2018, the Istanbul 2nd Criminal Court of First Instance sentenced Ms. Keskin to 7.5 years in prison as a result of her participation in the solidarity campaign with newspaper Özgür Gündem, which was closed by Government decree in 2016. Ms. Keskin and the eight other defendants were charged with

“degrading the Turkish nation, the Republic, institutions and organs of the state” under article 301 of the TPC, and “insulting the President of the Republic of Turkey” under article 299 of the TPC. This case is pending in the Court of Appeals.

On 21 May 2019, the Istanbul 14th Heavy Penal Court convicted Eren Keskin of “propagandising for a terrorist organisation” under article 7(2) of the anti-terror law. The charge against her was related to her work as chief-editor of the *Özgür Gündem*. Ms. Keskin was sentenced to 3 years and 9 months in prison. The charges still stand as the case is pending in the Court of Appeals.

On 15 February 2021, the Istanbul 23rd Heavy Penal Court sentenced Ms. Keskin to six years and three months in prison as part of the *Özgür Gündem* main trial for her alleged “membership of an armed terrorist organisation” under article 314 of the TPC. Ms. Keskin remains free pending her appeal.

The case of Mr. Erol Önderoğlu and Ms. Şebnem Korur Fincancı

Mr. Önderoğlu is a dual French-Turkish national, human rights defender and correspondent of Reporters Without Borders (RSF) in Turkey. He is also the editor of a Turkish website called Bianet, which covers political, social and cultural affairs with a particular focus on human rights and fundamental freedoms, including women’s rights, in Turkey.

Ms. Fincancı is the President and founding member of the Turkish Medical Association and Board Member of the Human Rights Foundation of Turkey. The Human Rights Foundation of Turkey documents cases of torture, provides rehabilitation and legal assistance to victims of human rights violations and torture. As founding member of the Turkish Medical Association, Ms. Fincancı has assisted in developing the Istanbul Protocol; the United Nations reference standards on the investigation and documentation of the cases of torture. Ms. Fincancı has been at the forefront of defending human rights in Turkey and has conducted investigations into and uncovered incidents of torture in many countries.

Mr. Önderoğlu was subject to the previous communication, TUR 4/2021, Ms. Fincancı was subject to the previous communication, TUR 3/2016 and both human rights defenders were included in the communication TUR 4/2016, all of which were sent by special procedures to your Excellency’s Government. We would like to thank your Excellency’s Government for its response to these communications.

According to information received:

On 20 June 2016, Mr. Önderoğlu and Ms. Fincancı, alongside one other colleague, were detained because of their alleged involvement in the propaganda of terrorism. Their arrest came after a ruling by the 1st High Court of Peace in Istanbul. At this first hearing, the human rights defenders were questioned in relation to their participation and editorial role in the freedom of expression and solidarity campaign with the *Özgür Gündem* newspaper. The human rights defenders were accused of “inciting the committing of crimes,” “praising crime and criminals” and “conducting propaganda for a terrorist

organization”, punishable under article 214 and article 215/1 of the TPC and article 7/2 of the Turkish Law on the Fight Against Terrorism.

On 17 July 2019, the court acquitted Mr. Önderoğlu, Ms. Fincancı and their colleague, based on lack of substantial evidence linking them to the publications in question. On 3 November 2020, the Istanbul Regional Court of Appeal overturned the human rights defenders’ acquittal. The retrial of Mr. Önderoğlu and Ms. Fincancı’s case began on 3 February 2021 in which they face possible convictions of up to 14 years imprisonment.

While we do not wish to prejudge the accuracy of the information received, we express our concern about the worrying pattern of widespread long-term detention of human rights defenders and human rights lawyers in Turkey, which appears to be in response to their legitimate work in the defence of human rights. We are deeply worried about an apparent misuse of anti-terrorism law to convict these human rights defenders and civil society actors since the failed military coup in 2016. The anti-terrorism law in Turkey is vague and is being abused in trumped-up cases against human rights defenders and lawyers who voice dissent against the government. In particular, we are deeply concerned by the use of article 314 of the Turkish Penal Code and article 7 of the Anti-Terror Code, both of which have been used extensively to silence human rights defenders and categorise them as members of terrorist organisations, namely the DHKP/C. It is deeply concerning that the Turkish judicial authorities appear to have misused national criminal legislation to suppress and violate the rights of many civil society actors in Turkey, including the human rights defenders named in this communication. By exposing human rights violations, exercising their right to freedom of expression and association, which are rights protected under international human rights law and outlined in the annex below, the above-mentioned human rights defenders are at risk of or have been criminalised and given lengthy prison sentences.

We express concern of the targeting of two non-governmental, non-political, civil society organisations, namely the ÇHD and the İHD, whose work was vital in advocating for the right to life, the right to fair trial, women’s rights, civilians’ rights, as well as carrying out all-important research on policy work and monitoring and documenting human rights in Turkey. In particular, we are concerned about the above-mentioned members of the ÇHD and the İHD who appear to have been targeted, judicially harassed and criminalised due to their affiliation with and active roles within these human rights organisations. We express concern about the long-term prison sentences of more than ten years imposed against many human rights defenders as a result of their affiliation with the ÇHD and İHD, as well as their work as human rights lawyers who represented clients of human rights violations, and alleged clients with links to terrorist organisations. The targeting of these human rights organisations has had a chilling effect on civil society in Turkey, as it aimed to silence the voices of dissent and consequently has deterred many human rights defenders from carrying out their legitimate and essential human rights work. The fear of long-term imprisonment has had a stark effect on the ability and willingness of human rights defenders to work in the country.

Of particular concern are the human rights defenders and critics of the government who were arrested in 2016, many of whom still remain in prison serving lengthy prison sentences. We draw your attention to the cases of Mr. Kayacan,

Mr. Nayir, and Mr. Canpolat in this context. We express concern over the widespread arrest and detention of human rights defenders, human rights lawyers and civilians, including the above-mentioned human rights defenders, who due to their supposed links with the Gülen movement, were prosecuted and labelled as terrorists. Once again, it appears that counter-terrorism legislation law was used to criminalise social, political and cultural affiliations, or those of their clients, that was dissenting or critical to the Turkish Government.

In the case of Mr. Kavala, we are deeply concerned at the alleged ongoing arbitrary detention of the human rights defender, the inadequate manner in which the Turkish courts carried out his judicial process, and the continuous extension of Mr. Kavala's detention. The continued deprivation of Mr. Kavala's liberty has been questioned by the ECHR, due to the lack of evidence to support the accusation that Mr. Kavala was involved in the abortive coup in 2016. The decision by Turkish authorities to keep Mr. Kavala in detention, and to indict him in a new judicial process, shows an apparent disregard with the ECHR ruling on Mr. Kavala's unlawful arbitrary detention.

Finally, we are particularly concerned about the physical, psychological and integral health of the human rights defenders included in this communication who remain in prison. We wish to highlight the case of Ms. Ebru Timtik, who died while serving the heavy prison sentence handed down to her. We raise concern about the prison conditions of Ms. Barkin Timtik, Mr. Aytaç Ünsal, Mr. Özgür Yılmaz, Mr. Behiç Aşçı, Mr. Engin Gökoğlu, Mr. Süleyman Gökten, Mr. Selçuk Kozağaçlı, Mr. Osman Kavala, Mr. Fevzi Kayacan, Mr. Feti Ün, Mr Talip Nayir and Mr. Turan Canpolat, who remain in high security prisons in Turkey and regarding whom sources have reported issues regarding their prison conditions, visitation and communication. We express our utmost concern about the critical health condition of Mr. Ünsal and Mr. Kayacan who are not receiving the critical medical care required while in prison. The allegations of ill-treatment and alleged torture against Ms. Aslan while in the detention of the Turkish authorities is also a matter of our concern. Finally, we fear that the COVID-19 pandemic may be used as a pretext to limit and/or deny imprisoned human rights defenders their rights.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the factual and legal basis for the arrests and sentencing of Ms. Barkin Timtik, Mr. Aytaç Ünsal, Mr. Özgür Yılmaz, Mr. Behiç Aşçı, Ms. Şükriye Erden, Mr. Engin Gökoğlu, Mr. Süleyman Gökten, and Mr. Selçuk Kozağaçlı, Mr. Fevzi Kayacan, Mr. Feti Ün, Mr. Talip Nayir, Mr. Turan Canpolat and Ms. Eren Keskin, and please provide information on why charges related to terrorist acts, support to or

membership of a terrorist organisation have been levied against the above-named human rights defenders and indicate how this complies with the obligation to pursue counter-terrorism obligations consistent with international law as set out *inter alia in* United Nations Security Resolution 1373, FATF Recommendation 8, 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) and the model definition of terrorism provided by the mandate of the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism

3. Please provide information on the factual basis of the charges against Mr. Osman Kavala, Ms. Oya Aslan, Mr. Günay Dağ, Mr. Mehmet Tuncel and Abuzer Yavas, and Ms. Vetha Aydin. Please provide information on how the charges against them relate to article 314 of the Turkish Penal Code and article 7 of the Anti-Terror Code.
4. Please provide the legal basis justifying the repeal of Erol Önderoğlu and Ms. Şebnem Korur Fincancı's acquittal. Please also provide the factual and legal basis for the charges they face in their ongoing retrial.
5. Please provide an update on the whereabouts of Mr. Abuzer Yavas, and if he remains in prison, please provide information of his health and well-being. If he has been released, please provide information as to whether the judicial process against him is still ongoing.
6. Please provide information on the health status of Mr. Fevzi Kayacan and Mr. Aytaç Ünsal, including information on their access to the appropriate and required medical care and treatment while in prison.
7. Please provide information on the legal proceedings against the human rights organisations *Çağdaş Hukukçular Derneği* (ÇHD) and *İnsan Hakları Derneği* (İHD), which seems to be in connection to their work in protecting, defending and researching human rights, and documenting human rights violations in Turkey.
8. Please provide information on the legal and factual basis for the extension of Mr. Osman Kavala's detention. Please explain the factual and legal basis for why the Turkish authorities did not comply with the ruling of the ECHR to release Mr. Osman Kavala.
9. Please provide information on whether the 22 human rights defenders referred to above were granted the exercise of their right to due process throughout the judicial proceedings against them, including when they were in pre-trial detention, as well as their right to appeal.
10. Please provide information on the prison conditions of Ms. Barkin Timtik, Mr. Aytaç Ünsal, Mr. Özgür Yılmaz, Mr. Behiç Aşçı, Mr. Engin Gökoğlu, Mr. Süleyman Gökten, and Mr. Selçuk Kozağaçlı, Mr. Osman Kavala, Mr. Fevzi Kayacan, Mr. Feti Ün, Mr Talip Nayir and Mr. Turan

Canpolat and explain why they have been allegedly denied their right to visitation and communication.

11. Please provide details on the measures taken to investigate the alleged torture of Ms. Oya Aslan while in detention. If not investigation had taken place, please explain why.
12. Please provide information of the measures your Excellency's Government has taken to ensure that the UN Basic Principle on the Role of Lawyers is respected in Turkey, to provide that human rights lawyers are protected and guaranteed a safe environment to carry out their profession. If no such measures have been taken, please indicate a manner in which we may engage with your Excellency's Government as to the development of such measures.
13. Please provide information of the measures taken by your Excellency's Government to protect the rights of human rights defenders in Turkey, and ensure that they are guaranteed protection and that they are able to carry out their legitimate work defending human rights in a safe and enabling environment, free from fear of prosecution, criminalisation and deprivation of liberty.

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 an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

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

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 December 2003.

We would like to refer to article 9.1 of the ICCPR that states that everyone has the right to liberty and security, and that no person should be the subject of arbitrary arrest or detention. This article also provides that in accordance with international law, no individual should be deprived of his liberty without cause. Article 9.2 states that upon arrest, any person must be informed of the reasons for their arrest and charges they face, and part 3 of the same article stating that anyone brought into custody should be brought promptly before a judge, and a trial and/or release should be scheduled at the earliest possible date. We also wish to refer to article 9.4 of the ICCPR, whereby individuals deprived of their liberty have the right to be brought before a court without delay to decide on the lawfulness of their detention. We wish to emphasize that this right, which is in fact a peremptory norm of international law, applied to all forms of deprivation of liberty, including not only to detention for purposes of criminal proceedings, but also to situations of detention under administrative and other fields of law, including detention under counter-terrorism measures.² We further recall that in order to ensure an effective exercise of this right, the detained persons should have access, from the moment of arrest, to legal assistance of their own choosing.³ We also draw attention to article 10.1 of the ICCPR, which enshrines the right of all persons deprived of their liberty to be treated with humanity and respect for the inherent dignity of the human person.

In the context of the death of Ms. Ebru Timtik while in custody, we draw particular attention to article 6 of this Covenant, which provides that every human being has the inherent right to life, and no one should be deprived arbitrarily of this right.

We also recall article 14 (1) of the ICCPR, which provides that under international law all individuals are equal before the law, and everyone has the right to a fair, free and public trial before an independent and impartial tribunal. We draw your attention to article 14 (2) that all persons are presumed innocent until proven guilty according to law, article 14.2 (c) that all persons shall be tried without undue delay, and (d) all persons tried must be present and permitted to defend themselves in person or through legal assistance of their own choosing.

In relation to the cases of Ms. Barkin Timtik and Mr. Selçuk Kozağaçlı, we would like to highlight article 14.7 that underlines that no one shall be tried or punished for the same offence twice.

We would like to refer your Excellency's Government to General Comment No 35 of the Human Rights Committee, which has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is

² See the UN Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings before a Court (A/HRC/30/37).

³ Ibid, Principle 9, paras 12-15.

arbitrary, including freedom of opinion and expression (article 19), freedom of assembly (article 21), freedom of association (article 22) and freedom of religion (article 18). The Human Rights Committee has further stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is in principle arbitrary. The Working Group on Arbitrary Detention has also confirmed this in its jurisprudence.

In relation to the criminalisation of human rights defenders and lawyers due to their affiliations with human rights organisations as outlined in the communication, we draw your attention to article 15 of the ICCPR, which provides that no person should be held guilty of any criminal offence on account of any act, or omission that did not constitute a criminal offence at the time when it was committed. We would like to refer to article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression. It includes the freedom to hold opinions without interference and the right to seek receive and impart information and ideas through any media and regardless of frontiers.

We refer also to the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Turkey on 23 September 2003. In particular, we draw attention to article 15 (a) which describes the State's obligation to recognise the right of each citizen to take part in cultural life. It is in relation to this right that we note with concern the case of Mr. Osman Kavala, a key figure in cultural and civil society in Turkey, who appears to have been targeted in relation to his cultural expression and associations.

In this regard, we would also like to remind your Excellency's Government of its obligations under Article 12 of ICESCR, which guarantees all individuals, including prisoners and detainees, the right to the highest attainable standard of physical and mental health. In addition, we would like to underline the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in resolution 45/111, according to which prisoners should have access to health services available in the country without discrimination on the grounds of their legal situation (Principle 9). 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, (reviewed on 17 December 2015 and renamed the "Mandela Rules"), in particular Rule 24 that establishes that the provision of health care for prisoners is a State responsibility and rule 27(1), which provides that all prisons shall ensure prompt access to medical attention in urgent cases..

Moreover, we refer to the UN Basic Principles on the Role of Lawyers, the guiding principles that specify both lawyers' and governments' rights and responsibilities to guarantee that the right to a fair trial is upheld. We draw particular attention to article 1, which outlines the principle right of defendants to choose their own representation. We draw particular attention to article 23, which acknowledges that lawyers are entitled to freedom of expression, belief, association and assembly, and have the right to engage in public discussion concerning matters of law, administration of justice and the promotion and protection of human rights, and actively partake in national and international organisations, meetings and gatherings to discuss these matters, without suffering professional restrictions as a result of their membership or activity within these organisations. We refer also to article 24 that affirms the right of

lawyers to form or join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity.

We also recall article 19 of the ICCPR, which guarantees that everyone shall have the right to hold opinions without interference, and the right to freedom of expression; which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice. We note with deep concern the apparent retaliatory measures taken against human rights defenders in Turkey. Legitimate restrictions to freedom of expression may be implemented in accordance with the requirements of Article 19 (3) of the ICCPR only. Hence, we reiterate once again that the use of national security and counter-terrorism as justifications to restrict the right to freedom of expression, without meeting the strict threshold established by article 19(3) of the ICCPR, would be incompatible with Turkey's obligations under international human rights law.

We would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10). We would further like to refer to Human Rights Council resolution 34/5, which notes that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law. We would also like to bring to remind your Excellency's Government that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States 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. (A/70/371, para 46(b)).

We would also like to emphasize that that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members.

Furthermore, we bring to your attention 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.

Finally, 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 5 (b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 7 which provides that everyone has the right, individually or in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance;
- article 8.2 which provides that all persons, individually or in association with others, have the right to submit to government authorities criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms;
- article 11 which provides that everyone has the right, individually or in association with others, to the lawful exercise of their profession;
- 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;
- article 16, which enshrines the fundamental role of individuals, non-governmental organisations and relevant institutions in society, who raise awareness to the public of issues relating to human rights and fundamental freedoms through their activities within civil society.