

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

REFERENCE:
AL TUR 10/2021

27 July 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 independence of judges and lawyers; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 42/22, 43/4, 41/12, 44/8 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 judicial harassment against and sentencing of woman human rights defender Ms. Sevda Özbingöl Çelik, as well as the judicial harassment against human rights defender Mr. Cihan Aydın.**

Ms. Sevda Özbingöl Çelik is a human rights defender and a lawyer from the Urfa Bar Association and a member of Urfa Bar's Human Rights Center and Women's Rights Committee. She is also a member and recently elected delegate of the Supreme Council of the Human Rights Association/ İnsan Hakları Derneği (İHD), a non-governmental organisation founded in 1986 that advocates for human rights in Turkey.

Mr. Cihan Aydın is a human rights defender and prominent human rights lawyer, known for his work representing victims of human rights violations in both domestic courts and the European Court of Human Rights. He worked at Human Rights Association Diyarbakır Branch between 1998 and 2004. He worked in the Diyarbakır Bar Association Board in 2008-2014. He became the Chair of the Bar Association on October 2018 and continued as its chair until April 2021.

The United Nations Special Procedures have previously raised human rights concerns about the pattern of widespread arrests, judicial harassment, prosecution and long-term detention of human rights defenders and human rights lawyers in Turkey. In the most recent communication TUR 9/2021, sent on 25 May 2021, concern was raised about the misuse of anti-terrorism law to convict human rights defenders, label them as terrorists, and sentence them to long-term imprisonment. Concerns were also raised about the targeting of human rights organisations and their respective members, including the İHD, in response to their legitimate human rights activities. We look forward to receiving a response to TUR 9/2021 and the allegations raised in this

communication due to the fact that the prosecution of human rights defenders and lawyers continues.

We would like to reiterate the concerns communicated in TUR 13/2020 about the Anti-Terror Law No. 3713 (“Anti-Terror Law”) and the amendments made to this law and the Penal Code through Law No. 7145. In this line we also reiterate our recommendation to your Excellency’s Government to review this 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:

Concerning Ms. Sevda Özbingöl Çelik

On 12 March 2020, Ms. Çelik’s house and office were searched as part of a widespread police operation carried out by law enforcement on the homes of Ms. Çelik and 12 of her colleagues. Following the search, Ms. Çelik was arrested and taken into custody and on 17 March 2020. She was formally charged with “membership of an armed terrorist organisation”. A warrant was issued authorizing the police to search Ms. Çelik’s house and office and to remand her in custody. Although the woman human rights defender was allowed access to lawyers of her own choosing, she and her lawyers were not given access to the case file until the indictment was issued.

During her interrogation, it is reported that Ms. Çelik was asked about her professional work and her relationship with clients based on a statement made against her by an anonymous witness, who allegedly claimed that Ms. Çelik enabled communication between alleged members of terrorist groups through her meetings with imprisoned clients as a lawyer, and that she herself was a member of a terrorist organisation.

After her arrest, Ms. Çelik was held in pre-trial detention for 9 months. Initially she was given access to her lawyers, however after the first month she was not allowed to see her lawyers for the next three months. Similarly, family visits were also banned and she was only allowed one phone call to family per week. In addition, after her first court hearing and those subsequent, she was quarantined for a period of 15-24 days in an isolated cell, where prisoners condemned to life imprisonment are normally kept. As a result, she spent an estimated two and a half months in solitary confinement.

Ms. Çelik was released under judicial control, including an international travel ban. On 6 April 2021, Urfa’s Sixth Penal Court issued its final verdict and sentenced Ms. Çelik to 11 years and 6 months imprisonment, on the charges of "membership to a terrorist organisation" (Article 314/2 of the Turkish Criminal Code), "violating the Law no. 2911 on Assemblies and Meetings" (Article 28 of the Law no. 2911), and "terrorist propaganda" (Article 7/2 of Anti-Terror Law).

The verdict is reported to be based on Ms. Çelik’s involvement in peaceful assemblies between 2013 and 2017, in which she advocated for women’s rights,

prisoner's rights and accountability for the killing of civilians. The court also made reference to her meetings with clients as a lawyer, her social media posts, and membership of human rights organisations with alleged terrorist cells. While the judicial control measures and travel ban imposed on her remain, Ms. Çelik remains free until her case is heard by the court of appeal. If the conviction against her is upheld, she will be ordered to serve her sentence and her licence to practice as a lawyer will be terminated.

Concerning Mr. Cihan Aydın

Two separate criminal investigations were launched against the Diyarbakır Bar Association, including Mr. Aydın, in response to statements issued by the association on 24 April 2019 and 24 April 2020 relating to the crimes against the Armenian people. Diyarbakır Bar Association challenged the first investigation before the Court of Appeals and the procedure is pending. As to the second investigation into the statement made 24 April 2020, no decision has been taken yet.

Furthermore, the Head of Religious Directorate delivered hateful statements against LGBTİ individuals in his sermon on 24 April 2020, after which the Diyarbakır Bar Association issued a statement against this hate speech. An investigation was launched against the Chair and the members of the Board of the Diyarbakır Bar Association, including Mr. Aydın, for allegedly insulting the religious values under article 216 of the Criminal Code. This investigation is still pending.

In September 2020, Mr. Aydın was accused of “membership of a terrorist organisation” under article 314 of the Turkish Criminal Code, punishable by 5-15 years imprisonment. This charge is in relation to his leading role in the Diyarbakır Bar Association at the time, in particular to press releases published by the association as well as peaceful gatherings he attended. On 9 September 2020, the human rights lawyer gave a statement to the prosecutor's office, during which he was accompanied by his lawyer. No further information about this investigation has been provided thus far.

In additional, on 3 May 2021, Mr. Aydın was informed by the prosecutor's office that he was the subject of a criminal investigation. On 26 May 2021, he was asked to give a statement about the accusations of “propaganda for terrorism” against him. The charges against him are allegedly related to a statement made by the Women Rights Centre of the Diyarbakır Bar Association, which called for the end of the Turkish military action in Syria and urged for a diplomatic resolution to the conflict. Mr. Aydın was given full access to his lawyer and the case files once the judicial process against him began.

If convicted under article 7 of the Anti-Terror Law, Mr. Aydın may be sentenced to up to 7.5 years imprisonment. At the time of writing, there have been no further updates on any developments in the investigation.

Without wishing to prejudge the accuracy of the information received and allegations above, we wish to express our concern about the ongoing judicial

harassment and prosecution against human rights defenders Ms. Sevda Özbingöl Çelik and Mr. Cihan Aydın, which appears to be directly related to their legitimate work as human rights lawyers and their membership of the human rights organisations and lawyers associations they are affiliated with. We are also concerned that the judicial harassment against them forms part of a larger pattern of the misuse of anti-terrorism legislation to target human rights defenders in the country and sentence them to long-term imprisonment.

In the case of Ms. Sevda Özbingöl Çelik, we are concerned about the circumstances surrounding the judicial process against her. We are concerned that she was deprived of her liberty for 9 months in pre-trial detention before a verdict was reached. We are also concerned that in a case involving terrorism charges, the evidence used to convict Ms. Sevda Özbingöl Çelik, an alleged statement from an anonymous witness and her work as a human rights lawyer, appears to lack credibility.

We are also concerned that the investigations against Mr. Cihan Aydın also appear to be in direct violation of his right to freedom of expression, and his presiding role in the Diyarbakır Bar Association. We are very concerned that in this case, the human rights defender is being prosecuted for his criticisms of the Government and for urging to pursue a peaceful end to a conflict, for exercising his right to freedom of expression, association and peaceful assembly, and for defending the human rights of LGBTI people and the people of Armenia.

Finally, we express our concern regarding the continuous judicial harassment, criminalisation and prosecution of human rights defenders in Turkey with the aim of delegitimizing their human rights work. We are concerned that this has already had a chilling effect on civil society, and has deterred many other human rights defenders from carrying out their work promoting and protecting human rights in the country for fear of harassment or criminalisation.

We are issuing this appeal in order to safeguard the rights of Ms. Çelik, and Mr. Aydın from irreparable harm and without prejudicing any eventual legal determination.

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 search of the home of human rights defender Ms. Sevda Özbingöl Çelik and her subsequent arrest and detention. Please provide information on the evidence used to convict Ms. Sevda Özbingöl Çelik.

3. Please provide the factual and legal basis for the criminal investigations opened against Mr. Cihan Aydın, and explain how this is compatible with both international human rights law related to the right to freedom of expression.
4. Please provide further information about charges relating to anti-terror legislation, in particular article 7/2 of the Anti-Terror Law, levied against Ms. Sevda Özbingöl Çelik and Mr. Cihan Aydın, 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.
5. Please provide information on the measures your Excellency's Government has taken or plans to implement in order to ensure that all human rights defenders in Turkey are guaranteed a safe environment to carry out their legitimate human rights work, free from any kind of restrictions, including judicial harassment and prosecution.

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 a joint communication 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 letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Miriam Estrada-Castillo
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

Diego García-Sayán

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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 above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In this regard, we would like to refer your Excellency's Government to articles 9, 14, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 December 2003, which ensures the right to liberty and security of a person, the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law, the right to freedom of expression and the right to hold opinions without interference, the right to peaceful assembly and association.

We would like to refer your Excellency's Government to article 9 of the ICCPR whereby everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. We would also like to draw the attention of your Excellency's Government to article 14 of the ICCPR which stipulates that all persons shall be equal before the courts and tribunals. It also notes that everyone charged with a criminal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. This includes the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing (article 14(3)(b)). In this respect, we recall that the Working Group on Arbitrary Detention has established in its jurisprudence that access to the case file must be provided from the outset.¹

We would also like to draw the attention of your Excellency's Government to article 19 of the ICCPR, which provides for the right to freedom of expression, as well as to the Human Rights Council resolution 12/16, which called on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

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

¹ See WGAD opinions No. 29/2020, at para. 94 and No. 78/2019, at paras. 78-79.

also recall that the Human Rights Council, in its resolution 7/36, stressed “the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression.” We would further like to remind your Excellency’s Government that respect for human rights and the rule of law must be the bedrock of the global fight against terrorism. This requires the development of national counter-terrorism strategies that seek to promote and protect human rights and the rule of law.

We would also like 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.