

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Working Group on Arbitrary Detention; 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

Ref.: UA TUR 13/2021
(Please use this reference in your reply)

6 December 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Working Group on Arbitrary Detention; 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 42/16, 42/22, 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 the alleged arbitrary arrest and detention under accusations of membership of a terrorist organization of Ms. Ayşe Özdoğan who is in serious medical situation (Cancer stage 4) and strongly urge your Excellency's Government to grant her immediate release, including on humanitarian grounds. This person is accused of being a member of the so-called "Gülen" or "Gülenist" movement considered by the Turkish Government as "terrorist" and referred to as FETÖ (Turkish acronym for "Fethullahçı Terör Örgütü").

We would like to reiterate the concerns raised in OL TUR 13/2020 of 26 August 2020 about the framework of anti-terrorism laws implemented by your Excellency's Government which include measures that significantly limit the exercise of fundamental freedoms. We thank the Government's reply of 22 October 2022.

According to the information received:

Ms. Ayşe Özdoğan was arrested and detained on 8 April 2019, for alleged ties with the Gülen Movement. According to available information, the evidence against Ms. Ayşe Özdoğan was that: (a) she had installed the messaging application ByLock on her phone; (b) she had a savings account at Bank Asya; and (c) she was organizing gatherings with young people to discuss religious topics.

A few months after her arrest in April 2019, Ms. Ayşe Özdoğan was diagnosed with a rare form of cancer. She underwent an operation on 12 November 2019 but was rearrested shortly after because of her judicial conviction and sentence to nine years and four months in prison under the aforementioned charges.

Ms. Ayşe Özdoğan's situation received significant attention on the Turkish social networks. She was released on appeal on 27 December 2019. At the time of her release, it was already too late to perform the second operation that her situation required. Following an emergency operation, her tooth, palate, zygomatic bone and lymph nodes had to be removed. She lost her ability to see and hear after the operation due to the trauma her facial bones suffered, a loss that could have been avoided in the first place.

On 5 June 2021, the Court of Cassation rejected her appeal and approved the initial sentence of nine years and four months imprisonment.

On 2 October 2021, Ms. Ayşe Özdoğan was sent to prison to serve her remaining sentence. On 27 October 2021 she was hospitalized and returned to prison the same day. The Forensic Medicine Institution in Istanbul issued a first report saying that her cancer was in remission and tests did not show metastasis or recurring tumors and stated that she could stay in prison.

On 12 November 2021 Ms. Ayşe Özdoğan was brought back again to the Forensic Medicine Institution for another examination, the results of which became available on 24 November 2021

On 26 November 2021, the Office of the Prosecutor of Execution of Antalya suspended the prison sentence of Ms. Ms. Ayşe Özdoğan for three months on the basis of the aforementioned medical report of the Forensic Medicine of Istanbul and an earlier medical report by the Akdeniz University Hospital, issued on 3 November 2021.

According to the information received, she would need at least four more surgeries. For several months, various steps have been undertaken, including by Ms. Ayşe Özdoğan, requesting a compassionate decision, in view of her medical situation.

Ms. Ayşe Özdoğan is expected to be sent back to prison on 25 February 2022 to serve her remaining sentence.

According to reports there are more than 1.605 sick prisoners in Turkish prisons, approximately 604 of whom are critically ill. For those critically ill and convicted in connection to the Gülen Movement, conditional release or suspension of sentence for medical reasons is not granted on the grounds they are considered to "pose a threat to public security" and release on medical grounds where approved takes place at a very late stage close to the death of the prisoner.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern for the continuous alleged arbitrary detention of Ms. Ayşe Özdoğan, despite her serious medical condition and, according to the above-mentioned allegations, the lack of access to adequate medical treatment to her rare form of cancer. The State has a duty of care for all persons deprived of liberty, according to the Standard Minimum Rules for the Treatment of Prisoners (the Nelson

Mandela Rules 24 to 35), on States obligation to provide adequate healthcare services. In particular, rule 27 requires that “Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.”

Also, our concerns arise from the wide application of the vague and imprecise charges of “membership of an armed terrorist organization”.

These allegations appear to constitute, prima facie, a violation of articles 7, 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Turkey ratified on 2 August 1988, and articles 3, 5, 6, 10 and 11 of the European Convention on Human Rights (ECHR), ratified by Turkey on 18 May 1954, which guarantee the universally-recognized rights not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, not to be deprived arbitrarily of liberty, and to due process and fair trial, freedom of opinion and expression, and freedom of peaceful assembly and association.

We also draw your Excellency’s Government’s attention to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Turkey on 23 September 2003, which establishes that an obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services (General Comment 14, Para. 34). Further States are required to take positive measures that enable individuals to enjoy the right to health and create, maintain and restore the health of the population (General Comment 14, Para. 37). 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).

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

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

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide details information on the current physical and mental integrity of Ms. Ayşe Özdoğan.

3. Please provide details on the measures taken to ensure the physical and mental integrity of Ms. Ayşe Özdoğan while in detention, including any measures to ensure her continued access to adequate healthcare. Please indicate in particular measures taken to provide Ms. Ayşe Özdoğan access to appropriate health services who suffer a rare form of cancer (stage 4), that require daily access to specific healthcare, including particular medical treatment, check-ups, surgeries and other adequate medication her health condition requires.
4. Please provide information on the factual and legal basis for the arrest and detention of Ms. Ayşe Özdoğan, and how these measures are compatible with Turkey's international human rights obligations as set forth, inter alia, in the norms and standards referred to above. In particular, please provide details about the evidence used as a basis for the charges against her and how this complies with articles 9 and 14 of the ICCPR and articles 5 and 6 of ECHR.
5. Please provide information on why charges related to being a member of a terrorist organisation have been levied against Ms. Ayşe Özdoğan and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004), and the model definition provided by the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
6. Please indicate what measures have been taken by your Excellency's Government to ensure that people are able to carry out their legitimate exercise of the right to peaceful assembly and association in a safe and enabling environment, without fear, or threats or acts of intimidation and harassment of any sort, in the full respect of their civil and political rights.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
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Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
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