

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL TUR 1/2022
(Please use this reference in your reply)

15 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the alleged criminalisation and ill-treatment of human rights defenders Ersin Berke Gök and Caner Perit Özen.**

Messrs. **Ersin Berke Gök** and **Caner Perit Özen** are students at Boğaziçi University in Istanbul. Both form part of the Boğaziçi Resistance Movement, a peaceful student movement calling for academic freedom and university autonomy, which emerged following the appointment of a new Rector of Boğaziçi University by presidential decree in January 2021.

According to the information received:

On 5 October 2021, Messrs. Berke Gök and Perit Özen, along with eight other students from Boğaziçi University gathered to deliver a statement in front of the Boğaziçi University Rector's building. While delivering the statement, which acknowledged the students' participation in the wider Boğaziçi Resistance Movement and contained a request for an easing of Covid-19 prevention measures and the organisation of in person classes at the university, the students were assaulted by security guards contracted by the university. They were subsequently arrested by police and brought to Istanbul Police Headquarters, where seven of the students were held overnight, with the others released after making statements. On the same day, a formal complaint was filed against the students by Mr. Naci İnci, Rector of Boğaziçi University, for alleged threats, insult and damage to property, among other criminal acts. These events coincided with a speech delivered the same day by the President of Turkey, Recep Tayyip Erdoğan, at the Beştepe People's Congress and Culture Centre in Ankara, wherein he allegedly labelled protesting students as terrorists infiltrating universities.

On 6 October 2021, Messrs. Berke Gök and Perit Özen and their fellow students were taken to the Istanbul Çağlayan Courthouse where they were interrogated at the prosecutor's office. While four of the students were provisionally released following their interrogation, Messrs. Berke Gök and Perit Özen and one fellow student were thereafter referred to the Istanbul 9th Magistrate's Court. Upon appearing at the court the same day, while the

provisional release of the third student was authorized, the pre-trial detention of Messrs. Berke Gök and Perit Özen was ordered on charges of obstructing the exercise of public duties and failing to comply with orders of the security forces for the dispersal of an unlawful demonstration. The order of the court was based on a video allegedly showing Messrs. Berke Gök and Perit Özen intercepting and climbing on Mr. İnci's vehicle the previous day, an allegation which the students deny.

Following the order of the court, Messrs. Berke Gök and Perit Özen were taken to Metris Prison where they were placed in solitary confinement for 51 days, before then being transferred to Silivri Prison, a high security institution, on 26 October 2021. While detained at Metris Prison, they were denied access to university exam papers and medicine. Following their transfer to Silivri Prison, they were denied access to letters addressed to them by family members, while Mr. Berke Gök, who is vegan, was denied access to food compatible with his diet.

On 26 November 2021, Messrs. Berke Gök and Perit Özen were formally indicted by the Istanbul Public Prosecutor on charges of failing to comply with orders from the security forces to disperse during an unlawful demonstration, per art. 32 of Law No. 2911 on Meetings and Demonstrations, and deprivation of liberty, hijacking or seizing a vehicle, and preventing a public officer from performing their duties, per articles 109, 223 and 265 of the Criminal Code. If convicted, they face between 6 and 32 years' imprisonment. Twelve other students were also formally accused in the case.

On 7 January 2022, the first hearing in the case took place before the 22nd Istanbul Criminal Court of First Instance, during which the provisional release of Messrs. Berke Gök and Perit Özen, who participated in the proceedings via video link, was ordered, and the next hearing in the trial set for 21 March 2022. Despite this scheduling, on 17 January 2022 the court allegedly held a private hearing with Mr. İnci and a group of security guards hired by Boğaziçi University, without informing Messrs. Berke Gök and Perit Özen or their lawyers.

Without wishing to prejudge the accuracy of the information received, we wish to express our serious concern at the alleged assault of Messrs. Berke Gök and Perit Özen and their fellow students, as well as the arrest of the human rights defenders, their pre-trial detention and period in solitary confinement, and their ongoing prosecution, which we fear to be based on their exercise of their rights to freedom of peaceful assembly and of association, as well as to freedom of expression.

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 comment(s) which you

may have on the above mentioned allegations.

2. Please provide detailed information as to the legal and factual basis for the arrest of Messrs. Berke Gök and Perit Özen and the charges brought against them, including how these actions comply with Turkey's obligations under international human rights law, in particular those corresponding with articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR).
3. Please provide information on the reasons justifying the pre-trial detention of Messrs. Berke Gök and Perit Özen and their being placed in solitary confinement, including on the compatibility of this measure with Turkey's obligations under article 9 (3) of the ICCPR, as well as details of the measures taken to ensure the conditions of their detention complied with international standards, in particular the United Nations Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

We would appreciate receiving a response within 60 days. Past 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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

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 the 23 September 2003, in particular its articles 9, 19 and 21.

ICCPR article 9, in its first paragraph, guarantees the right to freedom from arbitrary detention and establishes that no one shall be deprived of their liberty except on such grounds and in accordance with such procedure as established by law. In elaborating on this paragraph in its General Comment No. 35, the Human Rights Committee underscored the arbitrariness of any arrest or detention without a legal basis and further held that an arrest or detention may be arbitrary irrespective of its being authorized by domestic law, with the notion of "arbitrariness" introduced in article 9 to be broadly interpreted to include elements of "inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."¹ In the same instance, the Human Rights Committee also held any arrest or detention carried out as punishment for the legitimate exercise of the rights as guaranteed by the Covenant to be arbitrary. In its paragraph 3, article 9 holds that it shall not be the general rule that persons awaiting trial shall be detained in custody. As set out by the Human Rights Committee, pre-trial detention must be based on an individualized assessment of the reasonableness and necessity of such detention for the purposes of preventing flight, interference with evidence or recurrence of the crime alleged. A decision to enforce pre-trial should not be made on vague or expansive grounds of "public security", even where these are codified in law as such.²

In relation to article 19 of the ICCPR, which in its second paragraph guarantees the right to freedom of expression, we would like to underline that while the right may be subject to limitation, this may only be realised when adhering to the strict requirements of legality, necessity and proportionality, as established in article 19 paragraph 3. We further wish to underline the interpretation of the Human Rights Committee, in its General Comment No. 34, that paragraph 3 may never be invoked to justify the muzzling of human rights advocacy.³

In this context, we would further like to draw the attention of your Excellency's Government to the Human Rights Council resolution 12/16, calling 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. Furthermore, we would like to refer to Human Rights Council resolution 24/5 in which the Council "remind[ed] States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections and including persons espousing *minority or dissenting views or beliefs*, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions of the free exercise of the rights to freedom of peaceful

¹ Human Rights Committee, *General Comment No. 35 – Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para 12.

² *Ibid.*, para 38.

³ CCPT/C/GC/34 para 23.

assembly and of association are in accordance with their obligations under international human rights law” (OP2, emphasis added).

Concerning article 21, which guarantees the right of peaceful assembly, we would like to draw the attention of your Excellency's Government of the recent General Comment No. 37 of the Human Rights Committee, concerning the scope of the right to freedom of assembly guaranteed in the Convention. Therein, the Committee underlined that the recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination⁴, and stressed that there is a presumption in favour of considering assemblies peaceful.⁵ The Committee also noted that prohibiting, restricting, blocking, dispersing or disrupting peaceful assemblies without compelling justification may be a violation of the negative duty imposed upon States through the obligation to respect and ensure peaceful assemblies.⁶

In direct connection to the above-mentioned rights and obligations, we wish to refer to the UN Standard Minimum Rules for the Treatment of Prisoners, also known as the “Nelson Mandela Rules”, adopted by General Assembly resolution 70/175. We would like to make particular reference to Rule 1 of the rules, which states that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. We would also like to refer to rule rule 43, concerning the prohibition of indefinite or prolonged solitary confinement, rule 45, which stipulates that solitary confinement shall only be used in exceptional cases as a last resort, and even in such cases, for as short a time as time as possible, subject to independent review, and rule 58. We also wish to highlight rule 104, on the requirement for the provision of the further education of all prisoners, and rules 111 to 120, on prisoners under arrest or awaiting trial.

Finally, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to articles 5(a), 9 and 12(2) of the Declaration, which hold that all persons, individually or in association with others, have the right to meet or assemble peacefully for the purpose of promoting and protecting human rights and fundamental freedoms; that everybody has the right to benefit from an effective remedy in the case of the violation of their rights and fundamental freedoms; and that everyone has the right, individually or in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

⁴ CCPR/C/GC/37 para 8.

⁵ Ibid., para 17.

⁶ Ibid., para 23.