

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 promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL TUR 2/2022
(Please use this reference in your reply)

22 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 promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 43/4 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **multiple criminal proceedings against human rights defender Öztürk Türkdöğän**, co-chairperson of the Human Rights Association (İnsan Hakları Derneği – İHD) in Turkey.

Mr. **Öztürk Türkdöğän** is a human rights defender who has been a chairperson of the Human Rights Association (İHD) since 2008. He is also a lawyer and member of the Ankara Bar Association.

We have raised concerns with your Excellency's Government on numerous previous occasions regarding the criminalisation and harassment of members of İHD, most recently in communications TUR 9/2021, sent on 20 May 2021, TUR 7/2019, sent on 9 July 2019 and TUR 5/2019, sent on 16 May 2019. We thank your Excellency's Government for your willingness to engage with UN Special Procedures on these issues through the replies received to all of these communications, however we regret that İHD members continue to be targeted for their human rights work.

According to the information received:

On 19 March 2021, Mr. Türkdöğän's home in Ankara was raided by police officers in the early hours of the morning. The police provided a warrant and he was taken into custody at the Ankara Chief Public Prosecutor's office, where he was informed that he was under investigation for "membership of an illegal armed organisation" in line with Article 314/2 of the Criminal Code. He was reportedly questioned in relation to statements that he made about prison conditions of a detainee in İmralı Prison that appeared in the press, as well as his interactions with national and international officials on the case, including

His Excellency
Mr. Mevlüt Cavusoglu,
Minister of Foreign Affairs

the European Committee for the Prevention of Torture. Mr. Türkdoğan was allowed access to his lawyer while detained at the Ankara Chief Public Prosecutor's office.

Mr. Türkdoğan was released later that day pending investigation. He was required to present himself once a week to his local police station and was handed down a ban on international travel on the same day. The decision for Mr. Türkdoğan to present himself once a week to his local police station was lifted in November 2021, although the international travel ban is still in place. Mr. Türkdoğan is due to appear before the Ankara 19th Heavy Penal Court on 22 February 2022. If convicted on this charge he faces between five and ten years in prison.

Since December 2021, he has been handed down two additional charges. On 4 January 2022, he was handed down the charge of “degrading the Turkish nation, state of the Turkish Republic and institutions and organs of the state” under Article 301 of the Criminal Code, which he will face before the Ankara 24th Criminal Court of First Instance. The charges relate to an article published on the İHD website titled “Stop Denying the Armenian Genocide for Justice and Truth”, on 24 April 2017. If convicted on this charge, he faces up to two years in prison. A hearing date for this charge has not been determined to date.

Mr. Türkdoğan was also charged with “insult” under Article 125/3 of the Criminal Code on 11 January 2022. The charge related to a statement published by İHD on 29 June 2018 which was critical of statements made by the Interior Minister about civil society organisations and other groups. It was alleged in the indictment that the statement by İHD was defamatory and intended to harm the Minister's honour or reputation. The first hearing in this case is due to take place before the Ankara 60th Criminal Court of First Instance on 18 February 2022. A conviction carries a prison sentence of up to two years.

According to reports, the maximum penalty Mr. Türkdoğan is facing is fourteen years' imprisonment, however, the penalties given may differ.

Without prejudging the accuracy of the above-mentioned allegations, we wish to express our deep concern regarding the attempted criminalisation of Mr. Türkdoğan for his legitimate human rights work and exercise of freedom of expression. We are particularly concerned that Mr. Türkdoğan's work on the rights of prisoners, which was carried out in coordination with international organisations, has been conflated with violent national security related crimes, and could lead to his imprisonment for up to ten years.

We would like to draw the attention of your Excellency's Government to the fact that articles 314/2 and 301 of the Criminal Code, under which Mr Türkdoğan was charged, have raised concerns in the past due to their overly broad nature (see OL TUR 13/2020). We remind your Government that in previous communications we have drawn your attention to the principle of legal certainty, which according to article 15(1) of the ICCPR, requires criminal laws to be sufficiently precise so that it is clear what type of behaviours and conduct constitute a criminal offense and what would be the legal consequences of committing such an offence. We remind your Excellency's that

while a number of provisions of the ICCPR enable limitations on the basis of national security (e.g., Article 21), any such limitations must be legally based, necessary, proportionate, and non-discriminatory.

In line with our previous communications, we reiterate our concerns about the vagueness of the counterterrorist and national security legislation in Turkey. We note with concern that this legislation is being misused to target human rights defenders and lawyers critical of the Government. In particular, we are concerned by the use of Article 314/2 whereby Mr. Türkdoğan, like many other human rights defenders previously mentioned in TUR 9/2021, has been accused of the serious crime of “membership” of an illegal armed organisation, despite that there is reportedly no proof of his membership or association with any such groups.

We are furthermore deeply concerned by the charge of “degrading the Turkish nation” against Mr. Türkdoğan, which appears to target the legitimate free speech and human rights work of İHD in the context of truth justice and reparations. We are also concerned that the Interior Minister, an elected public official, could bring “insult” charges against those critical of comments he made in an official capacity. We remind your Excellency’s Government that criminal defamation laws, particularly those that accommodate public officials bringing defamation lawsuits against criticism of their activities in public office, are detrimental to freedom of expression and should be revoked or revised. Criminal law should only be used against speech only in very exceptional and most egregious circumstances of incitement to violence, hatred or discrimination. Any restriction on freedom of expression 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). Counter terrorism and national security 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 in a manner contrary to international law. We recall that these rights are protected under ICCPR and that the non-violent exercise of these rights is not a criminal offence.

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 this regard, we would like to bring the attention of the Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism’s (A/HRC/40/52) on the impact of terrorism measures on civic spaces and human rights defenders.

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 any comment you may have on the above-mentioned allegations.

2. Please provide information on the factual basis for the charge of “membership of an illegal armed organisation” faced by Mr. Türkdoğan and how this is compatible with Turkey’s obligations under international human rights law.
3. Please provide information on how the factual basis for the charge of “insult” and “degrading the Turkish nation” are compatible with Turkey’s obligations under international law, with reference to the limited legitimate restrictions to freedom of expression under Article 19(3) of the International Covenant on Civil and Political Rights.
4. Please provide information on how the above-mentioned criminal charges respect the criteria of necessity, proportionality, and non-discrimination.

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

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 remind your Excellency's Government of the duty to respect and ensure the right to freedom of opinion and expression in accordance with article 19 of the ICCPR. Any restriction on the rights enshrined in Article 19 (2) must be compatible with the requirements in Article 19 (3). The scope of the right to freedom of expression includes even expression that may be regarded as deeply offensive, although such expression may be restricted in accordance with the provisions of article 19 (3), CCPR/C/GC/34 para. 11. However, it is not compatible with Art. 19 (3), for instance, to invoke laws protecting national security or otherwise, in order to suppress or withhold from the public information of legitimate public interest that does not harm national security, or use such laws to prosecute journalists or human rights defenders for having disseminated such information, *id.* para. 30. As indicated by the Human Rights Committee, under no circumstance can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest [...] be compatible with article 19", *id.* para. 23.

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.

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 respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174. All these resolutions require that States must ensure that

any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law contained therein.

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 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, and;
- 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.