

**Mandates of 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 3/2022  
(Please use this reference in your reply)

21 March 2022

Excellency,

We have the honour to address you in our capacities as 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 43/4 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 charges against and alleged arbitrary arrest and detention of journalist Ms. **Sedef Kabaş** in relation to critical comments she made about H.E President Erdoğan on television and on social media.

The issue of journalists being charged and allegedly arbitrarily arrested in apparent retaliation for their journalism, and or expressing dissenting opinions, has been the subject of previous communications to your Excellency's Government, most recently a communication dated 1 March 2021 (TUR 4/2021). A number of Special Procedures mandate holders expressed their concern in response to the re-trial of journalist Mr. Erol Önderoğlu on charges of "propagandizing a terrorist organization". While we thank your Excellency's Government for its response dated 30 April 2021, we remain concerned with the characterization of Mr. Önderoğlu's legitimate exercise of freedom of opinion and expression as part of his involvement with the *Özgür Gündem* journal solidarity campaign as expression that "absolutely and seriously incite violence and hatred".

Ms. **Sedef Kabaş** is a prominent journalist and television host, usually appearing on political television talk shows in Turkey, and operates a YouTube channel with over 89,000 followers, *Sedef Kabaş TV*, on which she discusses topical political issues in the country.

According to the information received:

On 14 January 2022, Ms. Sedef Kabaş appeared on the television show *The Arena of Democracy* on the network TELE1, during which she used a well-known Circassian proverb in relation to President Erdogan: "A cattle might find his way into the palace but it doesn't make him a king. It does, however, turn the palace into a barn".

On 21 January 2022, Ms. Sedef Kabaş tweeted a version of the same proverb, saying: "When an ox finds his way into the palace, it doesn't make him a king. But the palace becomes a barn – Circassian proverb". In the early hours of 22 January at about 2a.m., police officers reportedly raided the home of

Ms. Sedef Kabaş in Istanbul and allegedly arbitrarily arrested her, on allegations of “insulting the President”.

The following day, Ms. Sedef Kabaş was sent to the Bakırköy Women’s Prison in Istanbul, where she remains detained at the time of writing, and has access to her lawyers. On 26 January 2022, the 58<sup>th</sup> Penal Court of First Instance rejected Ms. Sedef Kabaş’ lawyer’s appeal for her release.

On 2 February 2022, Ms. Sedef Kabaş’ lawyer petitioned the Constitutional Court for her release as an interim measure, pending the review of her application. However, the application was rejected by the Court on 16 February 2022.

The indictment submitted against Ms. Sedef Kabaş on 11 February 2022 by the Chief Public Prosecutor requested a 12 year and 10 month prison sentence – eight years and two months for “insulting the President”, under article 299 of the Penal Code, and four years and eight months for allegedly “insulting public officials”, the Interior Minister, and the Transport and Infrastructure Minister, under article 125 of the Penal Code.

The charges of insulting a public official, not referred to at the time of her arrest, were reportedly filed in relation to comments she made about the two Ministers during *The Arena of Democracy* show on 14 January 2022. Ms. Sedef Kabaş had reportedly commented that the Transport and Infrastructure Minister was pitiful as he relied on “fake news” originating from “trolls” on social media, and that the Interior Minister wrongfully labels many individuals as terrorists, is concerned that such individuals are in politics, and that he betrays the meaning of his surname, which translates to “noble” in Turkish.

On 14 February 2022, the indictment was accepted by the 36<sup>th</sup> Penal Court of First Instance. On the same day, Ms. Sedef Kabaş’ lawyer petitioned a second time for her release before the 36<sup>th</sup> Penal Court of First Instance, which was rejected on 15 February 2022.

Further to this, the national Radio and TV Higher Authority (RTÜK) issued a 5% revenue fine against the network TELE1 on 24 January 2022, in relation to the comments made by Ms. Sedef Kabaş during her appearance on *The Arena of Democracy*. The show itself was also prevented from broadcasting for five episodes. Another 3% administrative revenue fine was issued against TELE1 after journalist Mr. Uğur Dündü criticised the initial fine against the network.

Lawyers for President Erdogan have filed a separate lawsuit against Ms. Sedef Kabaş on 8 February 2022 before the 20<sup>th</sup> Civil Court of First Instance, as well as a lawsuit against the executive chair of the board of the company that owns TELE1. The lawsuit is requesting 250,000 Turkish Liras (18,400 USD) in non-pecuniary damages for the comments made on-air by Ms. Sedef Kabaş.

The first court hearing for Ms. Sedef Kabaş’ case took place on 11 March 2022. She was reportedly sentenced to two years imprisonment.

Without wishing to prejudge the accuracy of the allegations, we are seriously concerned by the arrest and charges against Ms. Sedef Kabaş in retaliation for her critical comments of the President, Interior Minister and the Transport and Infrastructure Minister. By virtue of their position as public figures, and the relevance of their conduct, work and actions to the public interest, it is well established under international human rights law that public figures in the political domain are subject legitimately to public scrutiny and criticism of their conduct. Furthermore, as noted by the Human Rights Committee in its General Comment 34 on the interpretation of article 19 of the International Covenant on Civil and Political Rights, “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.” We are therefore concerned that criminalisation of criticism of politicians, as evidenced in the case of Ms. Sedef Kabaş, is likely to have a detrimental effect on the right to freedom of expression, chilling public discourse and discouraging journalists from carrying out their reporting and expressing their views on issues of public interest.

In this connection, we wish to express our serious concern in relation to the continued invocation of articles 125 and 299 of the Penal Code against journalists for expressing critical views of public figures and recall the report of the former Special Rapporteur on the right to freedom of opinion and expression following his country visit to Turkey, in which he recommended the repeal of both articles due to their incompatibility with international law standards. We note with regret that according to reports, the use of article 299 of the Penal Code has increased since 2014 when H.E. President Erdogan was elected to office, for the apparent purpose of silencing dissent. Further, we wish to express concern regarding the disproportionate sentence established in the indictment against Ms. Sedef Kabaş, which is contrary to the principles of necessity and proportionality set out in international human rights law.

We remind your Excellency's Government that, in a communication dated 26 August 2020 (TUR 13/2020), Special Procedures have raised concern about Turkey's Penal Code, including a number of provisions that criminalise broad categories of speech through ambiguous or broadly defined provisions, including expressions denigrating the Turkish nation (art. 301) and insults to the President (art. 299). Consistent with our previous observations, we recall that the requirement of legality under article 19(3) of the ICCPR, ratified by Turkey, provides that a provision must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Broad categories of speech-based offenses, particularly when considered in combination with the broad definition of terrorism, unnecessarily and disproportionately limit the exercise of freedom of expression, including the work of journalists. We recall that the media play a crucial role in informing the public that their ability to act should not be unduly restricted or criminalized for carrying out their legitimate activities.

We also wish to express serious concern regarding the case filed against TELE1 as the penalisation of television networks for providing a platform for journalists and individuals who express dissent is likely to have a deterrent effect and encourage self-censorship, further endangering media freedom and democratic discourse in Turkey.

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 or comments you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis for the alleged arbitrary arrest, the detention, the charges against, and the conviction of Ms. Sedef Kabaş, and the compatibility with your Excellency's Government's international human rights obligations under the ICCPR.
3. With regard to your Excellency's Government's legislation pertaining to "insults" against the President of the Republic and public officials, please provide information about how such provisions are consistent with your Excellency's Government's obligations under international human rights law, particularly article 19 of the ICCPR.
4. Please indicate how many journalists have been prosecuted for alleged "insults" under articles 125 and 299 of the Penal Code since 2014.

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.

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 would like to refer to articles 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, which respectively guarantee the right not to be deprived arbitrarily of liberty and the right to freedom of opinion and expression.

Article 19 of the ICCPR guarantees 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 his choice”. We would like to remind your Excellency’s Government that any limitation to the right to freedom of expression must meet the criteria established by article 19 (3) of the ICCPR. Any 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.

Article 19 of the ICCPR protects, inter alia, political discourse, commentary on one’s own and on public affairs, discussion on human rights and journalism (Human Rights Committee, General Comment no. 34, CCPR/C/GC/34 para 11). As indicated by the Human Rights Committee, “the function of journalists includes not only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”, CCPR/C/GC/34 para. 44. While all restrictions must comply with the requirements of necessity and proportionality, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, CCPR/C/GC/34 para 42. Furthermore, Human Rights Committee, in its General Comment No. 35 paragraph 53 has stated that detention purely due to peaceful exercise of right protected by the Covenant may be arbitrary. Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists, see CCPR/C/GC/34 para 30. Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with article 19, CCPR/C/GC/34 para. 23.

As stated by the Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of article 19. Such attacks against individuals for exercising their rights to freedom of expression should be “vigorously investigated in a timely fashion, and the perpetrators prosecuted”, CCPR/C/GC/34 para. 23.

In this regard, we would like to refer to the Human Rights Council resolution 45/18 on safety of journalists adopted on 6 October 2020, in which the Council expressed “deep concerns about all attempts to silence journalists and media workers, including by legislation that can be used to criminalize journalism, by the misuse of

overbroad or vague laws to repress legitimate expression, including defamation and libel laws, laws on misinformation and disinformation or counter-terrorism and counter extremism legislation, when not in conformity with international human rights standards, and by business entities and individuals using strategic lawsuits against public participation to exercise pressure on journalists and stop them from critical and/or investigative reporting”. This resolution also recognised that the development of national legal frameworks that are consistent with States’ international human rights obligations are an essential condition for a safe and enabling environment for journalists.

Attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information and, as such, they should be highlighted independently of any other rationale for restriction. Governments have a responsibility not only to respect journalism but also to ensure that journalists and their sources have protection through strong laws, prosecutions of perpetrators and ample security where necessary. (A/HRC/71/373 para. 35). It has indeed long been recognised that “journalism constitutes a necessary service for any society, as it provides individuals and society as a whole with the necessary information to allow them to develop their own thoughts and to freely draw their own conclusions and opinions” (A/HRC/20/17 para 3).

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 any restriction on expression or information that a government seeks to justify on grounds of national security and counterterrorism 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 nonviolent exercise of these rights is not a criminal offence.

Finally, we wish to refer to the country visit report of the former Special Rapporteur on the right to freedom of opinion and expression to Turkey in 2019 (A/HRC/35/22/Add.3), in which he recommended that national legislation on defamation be brought into line with international standards, and specifically to repeal articles 125 (3) and 299 of the Penal Code, which criminalize the defamation of public officials and the President of the Republic. The Special Rapporteur emphasised that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties and that the criminalization of individuals solely for criticism of the Government can never be

considered to be a necessary restriction on freedom of expression. Even in the absence of repeal, the Special Rapporteur urged senior public officials to refrain from the harassing use of such tools to silence criticism in the name of “insult” of public authorities.