

Mandates of the Special Rapporteur on minority issues; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL TUR 6/2022
(Please use this reference in your reply)

16 September 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/8, 43/16 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning information we have received regarding **arrest, detention, criminal prosecution, and subsequent treatment of Bilal Yıldız in state custody, in connection with his activities in support of displaced people, particularly Kurdish and other minorities, in Türkiye.**

According to the information received:

Bilal Yıldız is a human rights defender and social worker. He has been working at the İstanbul Representative Office of the Human Rights Foundation of Türkiye since 2015, providing consultancy services to torture survivors and their relatives for their treatment, rehabilitation and well-being. He continues his peaceful and legitimate human rights advocacy activities in different civil society organizations and specializes in migrant, minority and refugee rights.

GÖÇİZDER is a nongovernmental organization that has been working since its establishment in 2016 to bring visibility to grave human rights violations brought about by forced displacement and to contribute to the reparation processes of those who have been subjected to such violations.

On the morning of 3 June 2022, 22 persons allegedly affiliated with the Migration Monitoring Association (GÖÇİZDER), including Bilal Yıldız, were taken into custody after their homes were raided by law enforcement officers. Forensic medical reports revealed that Bilal Yıldız was kicked in the torso during the police raid, insulted and verbally aggressed while in custody. Bilal Yıldız and 21 others were reportedly taken into custody at the İstanbul Police Department and were not allowed to communicate with their attorneys for the first 24 hours.

Because of the confidentiality order on the investigation file put in place by the authorities, Mr. Bilal Yıldız's lawyers were not at first made fully aware

of the exact scope of the charges brought against their client. Later the lawyers were informed about the context of the charges, and during the pre-trial detention hearing about the specific charge. The confidentiality order is not expected to be lifted until the case proceeds from investigation to prosecution. This is reported as a very common practice for terrorism-related charges in Türkiye, and it seriously restricts the defense rights of the accused human rights defenders.

During his custody, Mr. Yıldız was exposed to constant sound and light, was not provided with adequate food and his objections about the conditions of detention were ignored. Bilal Yıldız is reportedly under intense psychological pressure from the guards in an overcrowded cell in Silivri Prison.

On 3 June 2022, police officers also raided GÖÇİZDER's office in İstanbul. The association's books, documents and computers were confiscated and the association's reports entitled “*Curfews and Violations of Rights Experienced by Women in the Forced Migration Process*”, “*Migration Stories of Non-Muslims Displaced in the 90's*” and “*Migration Stories of Kurds Displaced in the 90's*” were confiscated upon a ban and confiscation order issued on the same day.

Starting from 3 June 2022, the 22 mentioned individuals were held in custody at the İstanbul Police Department for 4 days, and then through an extension decision for 4 days, 8 days in total. On 11 June 2022, 16 people, including Bilal Yıldız, were detained by İstanbul Criminal Peace Judgeships at midnight after their custody period expired. The other six people were released under judicial control. The detention of Bilal Yıldız, who is incarcerated in Silivri Prison at the time of writing this communication, was appealed by his lawyers on 17 June 2022. 15 other GÖÇİZDER human rights defenders have been detained at Bakırköy and Silivri prisons.

As reported, during the investigation, both law enforcement officers and the prosecutor's office asked questions to Mr. Bilal Yıldız about the aforementioned GÖÇİZDER reports, workshops organized by the association and its financial resources. At the same time, Mr. Yıldız's personal phone calls and personal bank transactions were checked. The exact charges that Mr. Yıldız and 21 others under investigation face are not known due to the confidentiality order, however they are reportedly accused of “membership in an illegal organisation” under article 314/2 of the Turkish Penal Code, which carries a prison sentence of between 5 and 10 years.

The charge is based on the alleged actions of the so-called financing of a terrorist organization and terrorism propaganda. They are cumulatively used to allege membership in an armed organization. Lawful and standard financial transactions between the members or the service providers of the GÖÇİZDER Association (such as payment to an attorney, or a graphic designer) have reportedly been portrayed as financing terrorism, without tangibly showing any connection. In case of Bilal Yıldız, even his very small transactions with his relatives are reportedly presented as financing terrorism. Migration,

minority and refugee reports of the GÖÇİZDER Association are reportedly presented as propaganda of terrorism.

The charges brought against Bilal Yıldız reportedly do not establish any connection between his activities and the impugned criminal activities, as after taking part in the founding of the GÖÇİZDER association, Yıldız did not participate further in any of the association's activities. Although Bilal Yıldız personally had nothing to do with the preparation process of the above-mentioned GÖÇİZDER migration, minority and refugee reports, they are reportedly used against him to allege membership in an armed organization.

The 16 human rights defenders are reportedly being held in overcrowded cells and have limited access to medicine and medical assistance.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed that the arrest, detention, criminal prosecution, and subsequent treatment of Bilal Yıldız and the other 15 GÖÇİZDER human rights defenders in state custody may be linked to their human rights activities in support of the members of ethnic, religious and linguistic minorities.

We also express serious concern that the alleged detention, ill-treatment and prosecution of Bilal Yıldız and the other 15 GÖÇİZDER human rights defenders hinder their legitimate human rights defense activities.

Without expressing at this stage an opinion on the facts of this case and on whether the arrest and detention of Mr. Bilal Yıldız are arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 11 of the Universal Declaration of Human Rights.

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

Further, without wishing to prejudge the accuracy of the information received, we express serious concern as to the criminalisation of legitimate human rights activities undertaken by Mr. Bilal Yıldız, which have been equated to membership in an armed terrorist organization. Our concerns arise from the broad definition and wide application of the vague and imprecise charges of "membership of an armed terrorist organization" under article 314/2 of the Turkish Penal Code with no credible evidence provided. We note with concern that this legislation is being misused to target, *inter alia*, human rights defenders critical of the Government and those who defend the rights of minorities in particular. We respectfully remind your Excellency's Government that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that do not comply with international treaty obligations (see A/73/361, para.34). The definition of terrorism in national legislation should be guided by the model definition proposed in

Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly (see General Assembly resolutions 49/60, 51/210, and 72/123). We urge your Excellency's Government to maintain a definition of terrorism consistent with the core legal meanings adopted by States and commends the definition of terrorism developed by this mandate for your consideration (A/HRC/16/51).

We also wish to reiterate our concern regarding the misuse of counter-terrorism legislation to criminalize human rights defenders, journalists and civil society actors in the country. As outlined in the Special Rapporteur's report concerning the effect of counter-terrorism measures on civil society and civic space (A/HRC/40/52) the use of generic and highly broad emergency or counter-terrorism measures to limit association has a profound and detrimental effect on rights of association, assembly and expression as guaranteed by articles 18,19, 21 and 22 of the ICCPR (see A/HRC/40/52). 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 and minority rights defenders or have hindered their work and endangered their safety in a manner contrary to international law. We further reiterate our concern regarding the repeated and continued use of this legislation to shrink civic space in Türkiye, as previously communicated to your Excellency's Government by Special Rapporteurs (see AL TUR 10/2021, AL TUR 9/2021). We recall the States' obligation to take all necessary measures to ensure that the rights of human rights defenders, including those protecting the human rights of minorities, are not impinged upon under the guise of national security in retaliation for their human rights-related activities. 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 (see AL TUR 10/2021).

The above allegations appear to constitute, *prima facie*, a violation of articles 7, 9, 14, 19, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Türkiye on 23 September 2003, articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Türkiye ratified on 2 August 1988, and articles 3, 5, 6, 10 and 11 of the European Convention on Human Rights (ECHR), ratified by Türkiye 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, the prohibition of discrimination on grounds such as ethnic or national origin, religion, and language, and freedom of peaceful assembly and association.

As to Mr. Bilal Yıldız's alleged lack of due process, fair trial, and regular access and contact with his legal representatives, we remind your Excellency's Government that Article 14 of the ICCPR, ratified by Türkiye, provides *inter alia* for the principle of equality before competent, independent, and impartial courts and

tribunals, the presumption of innocence, provision of adequate time and facilities for the preparation of the defense, and the right of accused persons to communicate with counsel of their own choosing. In its General Comment 32 (2007) on article 14, the Human Rights Committee also stressed that the right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. (CCPR/C/GC/32, para 2). The guarantees of a fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights (CCPR/C/GC/32, para 6). We further recall your Excellency's Government that paragraph 7 of resolution A/HRC/RES/42/18 affirms, in the context of counterterrorism, the need to ensure "access to independent and adequate legal representation". And where the detainee has access to counsels, such access must be meaningful.

We also draw your Excellency's Government's attention to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Türkiye 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).

In connection with the above alleged facts and concerns, please refer to the **Annex on References 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 health status, current physical and mental integrity, conditions of detention and treatment while in custody with regard to Mr. Bilal Yıldız, including eventual application of treatments like kicking during the police raid, insults and verbal aggression during his custody, exposure to excessive sound and light, non-provision of adequate food, detention in overcrowded cell.
3. Please provide information concerning the legal and factual grounds for the arrest, detention and prosecution of Mr. Bilal Yıldız, and how these measures are compatible with the international human rights norms and standards. In particular, please provide details about the

evidence used as a basis for the charges against Mr. Bilal Yıldız and how this complies with articles 9, 14 and 26 of the ICCPR and articles 5 and 6 of ECHR.

4. Please provide clarifications on the connection between Mr. Bilal Yıldız and the impugned criminal activities.
5. Please provide clarifications on how the specific activities and/or publications of GÖÇİZDER association could bring the charges against its alleged members and/or affiliates in membership in an armed terrorist organization. In particular, please provide information on why charges related to being a member of a terrorist organisation have been levied against Mr. Bilal Yıldız 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 provide information about the status of the legal process of Mr. Bilal Yıldız, including details about his unhindered access to a legal representation during arrest, detention and criminal investigation.
7. Please provide clarifications on the legal grounds and factual justification for the ban and confiscation of GÖÇİZDER's reports entitled "*Curfews and Violations of Rights Experienced by Women in the Forced Migration Process*", "*Migration Stories of Non-Muslims Displaced in the 90's*" and "*Migration Stories of Kurds Displaced in the 90's*".
8. Please indicate what measures have been taken by your Excellency's Government to ensure that people in Türkiye are able to carry out their legitimate exercise of human rights work 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.

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 waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Bilal Yıldız and the other GÖÇİZDER human rights defenders are fully respected, and, in particular, to prevent any irreparable damage to their life and personal integrity.

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

Fernand de Varennes
Special Rapporteur on minority issues

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

References to international human rights law

In connection with the alleged facts and concerns, we would like to remind your Excellency's Government of its legal obligations under international law applicable to the issues brought forth.

We firstly recall that the 1966 International Covenant on Civil and Political Rights (ICCPR), ratified by Türkiye on 23 September 2003, in article 7 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and in article 9 provides that no one shall be subjected to arbitrary arrest or detention. Further we would like to remind that article 14 of ICCPR provides that all persons shall be equal before the courts and tribunals, and that in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, and that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Also, as per article 15 of ICCPR no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. We would also like to recall article 19 of ICCPR that provides that everyone shall have the right to hold opinions without interference, and that everyone shall have the right to freedom of expression and that this right shall include 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. Further, we would also like to remind that as per article 27 ICCPR in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

We would like to also remind your Excellency's Government of the provisions of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Türkiye ratified on 2 August 1988, in particular of its articles 2 and 3 which provide that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, and that Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment.

Furthermore, we would like to further remind your Excellency's Government of the provisions of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in particular its article 1 which provides that States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity, and that States shall adopt appropriate legislative and other measures to achieve those ends.

Also, as per article 4 of the Declaration, States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

We also wish to further remind your Excellency's Government of the provisions of the Special Rapporteur's report concerning the effect of counter-terrorism measures on civil society and civic space (A/HRC/40/52) the use of generic and highly broad emergency or counter-terrorism measures to limit association has a profound and detrimental effect on rights of association, assembly and expression as guaranteed by articles 18,19, 21 and 22 of the ICCPR (see A/HRC/40/52). 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 and minority rights defenders or have hindered their work and endangered their safety in a manner contrary to international law. We further reiterate our concern regarding the repeated and continued use of this legislation to shrink civic space in Türkiye, as previously communicated to your Excellency's Government by Special Rapporteurs (see AL TUR 10/2021, AL TUR 9/2021). We recall the States' obligation to take all necessary measures to ensure that the rights of human rights defenders, including those protecting the human rights of minorities, are not impinged upon under the guise of national security in retaliation for their human rights-related activities. 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 (see AL TUR 10/2021).

We would like to further remind your Excellency's Government that in its General Comment 32 (2007) on article 14, the Human Rights Committee also stressed that the right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. (CCPR/C/GC/32, para 2). The guarantees of a fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights (CCPR/C/GC/32, para 6). We further recall your Excellency's Government that paragraph 7 of resolution A/HRC/RES/42/18 affirms, in the context of counterterrorism, the need to ensure "access to independent and adequate legal representation". And where the detainee has access to counsels, such access must be meaningful.

We also draw your Excellency's Government's attention to article 12 of the Covenant on Economic, Social and Cultural Rights, ratified by Türkiye 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.

We further respectfully remind your Excellency's Government that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that do not comply with international treaty obligations (see A/73/361, para.34). The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly (see General Assembly resolutions 49/60, 51/210, and 72/123). We urge your Excellency's Government to maintain a definition of terrorism consistent with the core legal meanings adopted by States and commends the definition of terrorism developed by this mandate for your consideration (A/HRC/16/51).

We would also like to bring your Excellency's Government attention to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to the General Assembly on the impact of counter-terrorism measures on civil society, in which the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms 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. (see A/70/371, para 46(c)). This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The broad character of "membership in an armed terrorist organization" could entail that a range of speech and association activities protected under international human rights law is characterized domestically as 'terrorism'. Such a characterization may permit the arrest, detention or harassment of individuals exercising their internationally protected rights, restrictions which could constitute arbitrary deprivations of liberty under international law, and ultimately risk the conflation of domestic protest, dissent, or peaceful defence of human rights with terrorism.