

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 10/2022
(Please use this reference in your reply)

3 November 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 43/20, 51/8, 43/4, 51/21, 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 the arrest and detention of Dr. **Şebnem Korur Fincancı**, a leading forensic medical practitioner and anti-torture and human rights expert by the Turkish authorities in connection with her exercise of free expression.

Dr. Fincancı was the subject of a previous communication sent by Special Procedures mandate holders, on 20 May 2021 (AL TUR 9/2021), concerning alleged judicial harassment and misuse of the anti-terrorism law to [arrest and] convict human rights defenders and civil society actors since the failed military coup in 2016. We thank your Excellency's Government for the response, dated 14 July 2021, and regret the lack of information regarding the alleged arbitrary arrest and detention of Dr. Fincancı and other human rights defenders or the pertinence of their prosecution under the anti-terror law.

According to the information received:

On 20 October 2022, Ankara Chief Public Prosecutor's Office announced the launch of an investigation against Dr. Fincancı, under article 7/2 of the Anti-Terror Law No. 3713 ("making propaganda for a terrorist organization") and article 301/2 of the Turkish Penal Code No. 5237 ("publicly insulting the military or public organisations of the State"), allegedly due to a statement she made to a news channel, the day before, where she called for an effective investigation, in accordance with the Minnesota Protocol (United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions), into allegations of use of chemical

weapons and related deaths, by the Turkish military.

The Human Rights Foundation of Türkiye (HRFT) issued a statement, on 21 October, condemning the investigation against Dr. Fincancı and her targeting for her human rights activism. Subsequently, Dr. Fincancı, who was abroad at that moment, informed the Ankara Chief Public Prosecutor's Office that she was ready to give a statement through her lawyers upon her return to Türkiye. Nonetheless, on the morning of 26 October, three days following her return to Türkiye, the police raided the house of Dr. Fincancı, and arrested her, while she was waiting to be called to testify. She was transferred to Ankara Anti-Terror Branch, where she is currently detained.

The next day, on 27 October 2022, the Minister of Justice of Türkiye announced plans to reform the administration of the Turkish Medical Association (TMA) and to remove Dr. Fincancı as its president.

Following her questioning in İstanbul, Dr. Fincancı was transferred to Ankara, for further investigation on terrorism-related charges. In Ankara, the Security Directorate, Anti-Terrorism Branch, interrogated her until after midnight. After spending the night in the jail of the Ankara Security Directorate, Dr. Fincancı and her lawyers were summoned by the Ankara Public Prosecutor's Office, for further questioning at 6 a.m.

On the same day, Ankara Third Magistrate's Judgeship interrogated Dr. Fincancı, and decided to place her in pre-trial detention on the charge of "terrorism propaganda" (article 7/2 of Anti-Terrorism Law, No. 3712). She is currently held in Ankara Sincan Prison.

Dr. Fincancı is the President and founding member of the Turkish Medical Association (TMA) and a Board Member of the Human Rights Foundation of Türkiye (HRFT). The HRFT documents allegations of torture and provides rehabilitation and legal assistance to victims of human rights violations and torture. As a founding member of the TMA, Dr. Fincancı has assisted in developing the Istanbul Protocol (the United Nations' reference standards on the investigation and documentation of cases of torture). Dr. Fincancı has been at the forefront of defending human rights in Türkiye and has conducted investigations into and uncovered incidents of torture in many countries.

Prior to the arrest the subject of this communication, Dr. Fincancı was arrested in 2016 by Turkish authorities in connection with her human rights activism and her suggestion that wars are public health problems. Furthermore, the TMA, presided by Dr. Fincancı has been targeted for several years due to its work as a professional body for protecting and promoting universal human rights norms and values, and good medical practice, and subjected to judicial harassment and intimidation.

While we do not wish to prejudge the accuracy of the information received, we wish to express our serious preoccupation at the arrest and judicial intimidation of Dr. Fincancı, allegedly for her human rights work. Those allegations, if confirmed,

would be in contravention of various articles of the International Covenant on Political and Civil Rights (ICCPR), ratified by Türkiye on 23 September 2003 and potentially also rise to a level of treatment or punishment falling within the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Türkiye on 2 August 1988.

We wish to recall that, in accordance with article 9 of the ICCPR, everyone has the right to liberty and security of person, and no one shall be subjected to arbitrary arrest or detention. In accordance with the jurisprudence of the Working Group on Arbitrary Detention, detaining individuals based on their activities as human rights defenders violates their right to equality before the law and equal protection of the law under article 7 of the Universal Declaration of Human Rights and article 26 of the Covenant. In addition, arresting or detaining an individual as punishment for the legitimate exercise of rights protected under the ICCPR may be arbitrary.

We would like to reiterate our concern that the anti-terrorism law and national criminal law are being used to harass, arrest, detain and convict human rights defenders, who voice dissent against the Government in the exercise of their rights to freedom of expression and opinion, and in violation of the right to participate in public affairs, including Dr. Fincancı.

In line with our previous observations (TUR 3/2022, TUR 2/2022, TUR 10/2022, TUR 9/2021, TUR 4/2021, TUR 13/2020), we reiterate our concern about the vagueness of Turkey's anti-terrorism and national security legislation, in particular, article 301 of the Penal Code and article 7/2 of the Anti-Terrorism Law, which prescribes one to five years imprisonment for those who make "propaganda for a terrorist organisation". Echoing the concerns previously expressed by the Special Procedures Experts, we reiterate that both provisions include overly broad language that makes it open to abuse or arbitrary application. We draw the attention of your Excellency's Government to the principle of legal certainty enshrined in article 15(1) of the ICCPR, which requires that criminal laws be sufficiently precise to make it clear which types of behaviour and conduct constitute an offence and what the legal consequences of committing it would be. A law cannot confer unfettered discretion for restricting the freedom of expression on those charged with its enforcement. We also express our concern regarding the necessity and proportionality of criminalising these categories of speech. The requirement of proportionality implies that restrictions must be "appropriate to achieve their protective function; they must be the least intrusive instrument among those that can achieve their protective function and must be proportionate to the interest to be protected". We recall that broad categories of speech-based offences, coupled with a broad definition of "terrorist organisations", unnecessarily and disproportionately limit the exercise of freedom of expression, including the work of journalists and human rights defenders. We are also concerned that the use of terrorism offences to limit the right of human rights defenders to engage in public affairs without unreasonable restrictions as set out in article 25 of the ICCPR is unduly infringed by the application of article 301 of the Penal Code and article 7/2 of the Anti-Terrorism Law in Türkiye.

This form of targeting of non-governmental and non-political civil society organisations, including the TMA and HRFT, has a chilling effect on civic space in Türkiye. We implore Türkiye to respect the political rights of those within its jurisdiction and allow them to continue carrying out their legitimate and essential human rights work.

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.

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

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 Dr. Fincancı 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 detailed information on the factual and legal grounds for the arrest and detention of Dr. Fincancı and explain the exact charges against her and their relevance to article 7/2 of the Anti-Terror Law No. 3713 ("making propaganda for a terrorist organization") and article 301/2 of the Turkish Penal Code No. 5237 ("publicly insulting the military or public organisations of the State").
3. Please provide detailed information concerning the compatibility of these laws and charges with Dr. Fincancı's human rights under ratified international treaties to which Türkiye is a party.
4. Please provide detailed information on the legal and procedural safeguards granted to Dr. Fincancı, including her right to legal representation and contact with the family, as well as to be informed of the charges against her, to remain silent and not to be interrogated without the presence of her lawyer, in full compliance with international norms and standards.
5. Please provide information on the measures taken by your Excellency's Government to protect the rights of human rights defenders in Türkiye, and ensure that they are guaranteed protection and that they are able to carry out their legitimate work defending human rights in a safe and enabling environment, free from fear of torture and persecution, prosecution, criminalisation and arbitrary deprivation of liberty.

6. Please provide information on the measures taken by your Excellency's Government to ensure that medical practitioners can fully exercise their work, including as medical experts and therefore ensure the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and contribute to the prevention of torture and other forms of ill-treatment.

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

While awaiting a reply, we urge that all necessary interim measures including her release from custody 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 and remedies for Dr. Fincanci.

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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

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

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

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 relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In this regard, we would like to stress the absolute and non-derogable obligation of your Excellency's Government, to prohibit and prevent torture and other cruel, inhuman or degrading treatment or punishment, mental or physical, in accordance with articles 1, 2 and 16 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), ratified by Türkiye on 2 August 1988 and article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Türkiye on 23 December 2003.

Furthermore, we would like to refer your Excellency's Government to articles 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which respectively ensure the right to liberty and security of a person and against arbitrary arrest or detention, humane treatment, the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law, the right to freedom of expression and the right hold opinions without interference.

In respect of article 9 of the ICCPR, we remind that everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. In this context, the legal basis for deprivation of liberty must align with international law.

Article 9(2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. According to article 9(3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pretrial detention is an exceptional measure and must be assessed on an individual basis.

In connection with article 10, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person; while accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as un-convicted persons.

In connection with above alleged facts and concerns, we remind your Excellency's Government of 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, (d) all persons tried must be present and permitted to defend themselves in person or through legal assistance of their own choosing; (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on her behalf under the same conditions as witnesses against her; and (f) not to be compelled to testify against herself or to confess guilt.

We would like to refer your Excellency's Government to General Comment No 35 of the Human Rights Committee, which has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (article 19), freedom of assembly (article 21), freedom of association (article 22) and freedom of religion (article 18). The Human Rights Committee has further stated that arrest or detention on discriminatory grounds in violation of article 2, paragraph 1, article 3 or article 26 is in principle arbitrary. The Working Group on Arbitrary Detention has also confirmed this in its jurisprudence.

In its General Comment No. 32 (2007), the Human Rights Committee noted that the requirement of independence refers, in particular, to the procedure for the appointment of judges; the guarantees relating to their security of tenure; the conditions governing promotion, transfer, suspension and cessation of their functions; and the actual independence of the judiciary from political interference by the executive branch and the legislature. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable, or where the latter is able to control or direct the former, is incompatible with the notion of an independent tribunal (para. 19).

The principle of the independence of the judiciary has also been enshrined in a large number of United Nations legal instruments, including the Basic Principles on the Independence of the Judiciary. The Principles provide, inter alia, that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); that judges shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (principle 2); and that there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision (principle 4).

We would also like to remind your Excellency's Government of its obligation under article 19 of the ICCPR to secure the enjoyment of the right to freedom of opinion and expression, which is one of the essential foundations of a democratic society. 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 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.