

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on violence against women and girls, its causes and consequences

Ref.: AL TUR 4/2024
(Please use this reference in your reply)

15 August 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolutions 52/7, 49/10, and 50/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged torture and other cruel, inhuman or degrading treatment or punishment suffered by Ms. **Mizgin Atabey**, Ms. **Lale Kabişen** and Ms. **Nazlican Barişer**, three female members of the Kurdistan Workers' Party (PKK), while they were detained in the Patnos Prison.

According to the information received:

Ms. Mizgin Atabey (32 years old), Ms. Lale Kabişen (51 years old) and Ms. Nazlican Barişer (23 years old), three female members of the PKK, were arrested on 29 July 2018, 4 December 2018, and 28 October 2022 respectively, and detained in Patnos Prison, an L-type prison in the district of Ağrı.¹

The three individuals were arrested on charges of being members of an armed organisation according to article 314 of the Turkish Penal Code and article 7 of Law 3713 on counterterrorism relating to leaders and members of armed organisations.²

On 31 August 2023, it is alleged that the three women were subjected to torture and/or ill-treatment, including that they were: battered over a period of approximately 40 minutes by about 40 correctional officers and a gendarmerie unit, hog-tied for four hours in their cells and dragged by their hair on the floor, and insulted by a director of the prison who allegedly told them their mistreatment was because they had made a complaint about the conditions in the prison.

After the beating, the three female prisoners were allegedly dragged by their hair to the prison vehicle and transported, hog-tied, to a hospital. They were

¹ The L-type prisons designate, among others, prisons where individuals who are suspected and/or sentenced for terrorism-related offences are incarcerated.

² Law No. 3713, adopted in 1991 and amended in 1995, 1999, 2003, 2006, 2010, 2018 and 2019. Available at www.ecoi.net/file_upload/1226_1335519341_turkey-anti-terr-1991-am2010-en.pdf.

returned to the prison on the same day.

According to the information received, a medical examination of the three women reported that there were signs of having been hogtied on their necks and wrists, that they had cuts on their heads, that they experienced difficulty when walking and moving their bodies as well as pain as they sat down and stood up, and that there was ecchymosis and scarring on their bodies.

It is reported that after the three women were brought back to the prison, the prison administration decided to stop hospital transfers for detainees in need of medical attention; visits to prisoners and phone calls were halted; and personal letters, complaints and petitions were confiscated and thrown away.

On 14 September 2023, Ms. Lale Kabişen was released on bail. On 21 September 2023, Ms. Mizgin Atabey was transferred from the Patnos Prison to the Women's Closed Prison in the district of Bünyan, province of Kayseri, while Ms. Nazlican Barişer was transferred to the Women's Closed Prison in the district of Tarsus, province of Mersin. Currently, Ms. Mizgin Atabey and Ms. Nazlican Barişer are still being held in prison.

Several Turkish human rights organisations and bar associations have called on the Turkish authorities to launch an investigation into these allegations. However, it is reported that to date no investigation has been opened into the allegations.

Without prejudging the accuracy of the above information, we are concerned about the above-mentioned allegations of torture and/or ill-treatment alleged to have been suffered by Ms. Mizgin Atabey, Ms. Lale Kabişen and Ms. Nazlican Barişer, as well as the failure to carry out investigations into those allegations.

Should these allegations be confirmed, they would likely constitute violations of the absolute prohibition on torture and/or other cruel, inhuman or degrading treatment or punishment, reflected in articles 7 and 10 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Türkiye on 23 September 2003, and articles 1 and/or 16, 2, 12 and 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Türkiye on 2 August 1988.

We further refer your Excellency's Government to our previous communications regarding our concern with the framework of anti-terrorism laws,³ in particular, the Anti-Terror Law No. 3713 and Turkish Penal Code under which Ms. Mizgin Atabey, Ms. Lale Kabişen, and Ms. Nazlican Barişer have been charged. While we do not have information about the reasons for the charging of the three aforementioned individuals, we reiterate the concern that articles 1, 2 and 7, respectively define "terrorism", "terrorist offender", and "terrorist organization" in a manner that is overly broad and imprecise. The drafting of these provisions amplifies our concerns with article 314/2 of the Turkish Penal Code which established the offence of "being a member of an armed terrorist organization" and has been the

³ See communications sent on: 11 December 2017 (ref no. 13/2017); 26 October 2017 (ref no. TUR 11/2017); 22 February 2018 (ref no. TUR 3/2018); 4 May 2018 (ref no. TUR 7/2018); 1 October 2018 (ref no. TUR 14/2018); 22 October 2018 (ref no. 15/2018); 23 April 2020; (ref no. 4/2020), and August 2020 (ref no. 13/2020).

subject of past communications to your Excellency's Government.⁴ It is our view that the provisions ostensibly permit the arrest and detention of individuals exercising their internationally protected rights, and may be misapplied within the context of ongoing discrimination directed at religious and other minorities, human rights defenders, and political dissidents.

Moreover, we express concerns regarding the restricted access of detainees to medical treatment and communication with their family and legal counsel. Should these allegations be confirmed, they would likely constitute violations of articles 9 and 14 of the ICCPR, as well as the right to health (article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Türkiye on 23 September 2003), humane conditions of detention (article 10, ICCPR), the right to legal counsel (article 14(3)(b), ICCPR), and principles 15, 18(1), 18(3), 19, and 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

We are disturbed that all three individuals have faced protracted periods of pre-trial detention. Ms Atabey has been detained for over six years without trial; Ms. Kabişen was detained for almost five years from December 2018 to September 2023; and Ms. Barişer has been held for almost two years since October 2022. Such prolonged pre-trial detention appears to violate the right to be tried without undue delay (article 14(3)(c), ICCPR)⁵ and the failure to release them in such circumstances violates the prohibition on arbitrary detention (article 9, ICCPR) and jeopardizes the presumption of innocence (article 14(2), ICCPR).⁶

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide updated information on the current conditions of Ms. Mizgin Atabey and Ms. Nazlican Barişer, as well as on the measures taken to protect their physical and mental integrity, their rights to health and humane conditions of detention, and their right to legal counsel and to communicate with family members.
3. Please provide information as to any investigation and/or prosecution undertaken, in respect of the above-mentioned allegations of torture and/or cruel, inhuman or degrading treatment or punishment, as well as in respect of the denial of certain procedural rights and medical attention of Ms. Mizgin Atabey, Ms. Lale Kabişen and Ms. Nazlican Barişer. If no such investigation has yet been launched, please explain

⁴ See for example UA TUR 9/2020.

⁵ See Human Rights Committee, General Comment No. 32, para. 35.

⁶ See Human Rights Committee, General Comment No. 35, para. 37.

why.

4. Please provide information on the factual and legal basis for the arrests and protracted pre-trial detentions of Ms. Mizgin Atabey, Ms. Lale Kabişen and Ms. Nazlican Barişer, including specific charges and the current status of their legal proceedings. Please indicate how such charges comply with the prohibition on arbitrary detention, the right to trial without undue delay, and a strict understanding of terrorism as put forth in international legal norms including, but not limited to, United Nations Security Council resolution 1566 (2004).

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.

Alice Jill Edwards

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

Ben Saul

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

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to bring to your Excellency's Government's attention the following relevant international human rights standards, which are at issue in respect of the reported allegations:

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is a jus cogens norm, and found in article 5 UDHR, article 7 of the International Covenant on Civil and Political Rights, as well as in multiple articles of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). No exceptional circumstances whatsoever (including a state of war or threat thereof, internal political instability or any other public emergency, any threat of terrorist acts or violent crime, armed conflict, international or non-international) may be invoked by a State party to CAT to justify acts of torture in any territory under its jurisdiction (article 2(2)).

States have obligations to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible, to protect victims from reprisals and intimidation, and to provide remedies to victims⁷. Such investigations are recommended to be carried out in line with the United Nations Manual on the Effective Investigations and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol" revised 2022 edition)⁸.

States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have explicit treaty duties to establish all acts of torture as offences under domestic law (art. 4 CAT), to exercise jurisdiction over said offences (art. 5), to receive complaints and examine them promptly and impartially (art. 13), and to investigate those allegations promptly and impartially (art. 12). Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (art. 2 (3) and 2. (2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition. Amnesties provided at domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction. Prosecutors and courts have a duty to refuse evidence obtained through torture or other illicit means (art. 15). Victims are to be protected from reprisals or intimidation during said investigations (art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (art. 14). States are to establish jurisdiction over all acts of torture on territoriality, flag State, active nationality, passive nationality, and universal jurisdiction principles (art. 5).

⁷ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([A/HRC/52/30](#)).

⁸ https://www.ohchr.org/sites/default/files/documents/publications/2022-06-29/Istanbul-Protocol_Rev2_EN.pdf.

Concerning the conditions of detention, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules⁹) set out the internationally accepted standards. According to rule 22(1) and (2), food of nutritional value adequate for health and strength and of wholesome quality should be served to every prisoner, and drinking water shall be available to prisoners whenever they need it. Rule 43 states that in no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment, which includes the practice of reducing a prisoner's diet and access to drinking water (rule 43(1)(d)). Rule 58 establishes that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals by correspond in writing and using, where available, telecommunication, electronic, digital and other means (para. 1, lit. a); and by receiving visits (para. 1, lit. b). According to rule 43(3), disciplinary sanctions or restrictive measures shall not include the prohibition of family contact, and the means of family contact may only be restricted for a limited time period and strictly required for the maintenance of security and order. In addition, rule 56(3) states that every prisoner shall be allowed to make a complaint, without censorship, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power, and rule 53 provides that prisoners shall have access, or to be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.

Protection of female detainees from violence

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules¹⁰), in particular rule 31, prohibits the use of force by prison staff and focuses on women's gender specific needs of protection from varying forms of violence, and rule 25 (1), which states that women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality.

In addition, article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women (adopted by General Assembly resolution 48/104 on 20 December 1993)¹¹, provides that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

Reference is further made to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on Current Issues and Good Practices in Prison Management (A/HRC/55/52), which contains a section on meeting the needs of detainees who are women and girls (paragraphs 64-77).

Access to medical services

In accordance with article 10 of the ICCPR, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. The denial of medical assistance constitutes a violation of the right to

⁹ See https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

¹⁰ See https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

¹¹ See https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21_declaration%20elimination%20vaw.pdf.

health (article 12 of the International Covenant on Economic, Social and Cultural Rights), rules 18, 22, 24, 25, 27, 30 and 42 of the Nelson Mandela Rules, and principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Access to communication with family, legal counsel, and the outside world

Principles 15, 18(1), 18(3) and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provide that a detained or imprisoned person shall be entitled to communicate with, and be visited by, his or her legal counsel, family, and the outside world. The right to legal counsel is further enshrined by article 14(3)(b) ICCPR. Principle 15 of the Body of Principles provides that this entitlement shall not be denied for more than a matter of days and is subject to the exhaustive exceptions contained in principles 16(4) and 18(3).

Human rights while countering terrorism

We remind your Excellency's Government that States must 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 (Human Rights Council Resolution 22/6-A/HRC/RES/22/6)¹².

Definition of Terrorism

Although there is no agreement on a multilateral treaty on terrorism which, inter alia, defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,¹³ the definition found 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.¹⁴ We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.¹⁵ Those elements include:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,

¹² See [A/HRC/RES/22/6](#), para 10(a).

¹³ See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; E/CN.4/2006/98 paras. 25-50.

¹⁴ S/RES/1566; A/RES/51/210.

¹⁵ A/59/565 (2004), para. 164 (d).

- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act,
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.¹⁶

We also bring your Excellency's Government attention to the "principal of legal certainty" under article 15(1) of the ICCPR, which requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to ensure that their counterterrorism and national security legislation, is sufficiently precise in order to comply with the principle of legal certainty, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.¹⁷

Trial without delay

We further emphasize that the right to be tried without undue delay (article 14(3)(c), ICCPR)¹⁸ and the failure to release a detainee in such circumstances violates the prohibition on arbitrary detention (article 9, ICCPR) and jeopardizes the presumption of innocence (article 14(2), ICCPR)¹⁹.

¹⁶ E/CN.4/2006/98, para 37.

¹⁷ [A/70/371](#), para. 46(b).

¹⁸ See Human Rights Committee, General Comment No. 32, para. 35.

¹⁹ See Human Rights Committee, General Comment No. 35, para. 37.