

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 situation of human rights defenders

REFERENCE: UA TUR 4/2016.

24 June 2016

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arrest on 20 June 2016, of Ms. Sebnem Korur Fincanci, an academic and Chairperson of Human Rights Foundation of Turkey, and two journalists, Mr. Erol Önderoglu and Mr. Ahmet Nesin**. The issue of press freedom and academic freedom was the subject of previous communications sent to your Excellency's Government on 8 and 31 March 2016 (TUR 2/2016 and 3/2016). We acknowledge the receipt of the replies from your Excellency's Government of 1 April 2016 and of 17 May 2016. We remain concerned at the continued use of terrorism charges against the exercise of the right to freedom of expression by journalists and academics.

According to the information received:

Ms. Sebnem Korur Fincanci is a professor at Istanbul University's forensic medicine department and head of the Human Rights Foundation of Turkey. Mr. Ahmet Nesin is a writer and journalist. Mr. Erol Önderoglu is a journalist with the news website Bianet and the Turkey representative of Reporters Without Borders. On 3 May 2016, Ms. Fincanci, Mr. Önderoglu and Mr. Nesin participated in a solidarity campaign for the journal *Özgür Gündem*, a pro-Kurdish publication. It is reported that the newspaper is perceived as hostile by the government, and that it therefore is subject of multiple investigations and lawsuits. The solidarity campaign consisted of 44 journalists, writers and activists campaigning for media freedom by acting as symbolic co-editors of the publication. It is reported that Turkish authorities perceived the campaign as terrorist propaganda and subsequently opened 37 criminal investigations into participants involved in the campaign.

On 20 June 2016, an Istanbul court ordered the pre-trial detention of Ms. Fincanci, Mr. Önderoglu and Mr. Nesin over charges of disseminating "terrorist propaganda" after their participation in the solidarity campaign. It is reported that

all three individuals testified before the public prosecutor with the state judiciary's Terrorism and Organized Crime Bureau. Mr. Nesin and Mr. Önderoglu are currently being held in Metris prison, while Ms. Fincanci is being held in Bakirkoy prison.

We express grave concern at the arrest of Ms. Fincanci, Mr. Önderoglu and Mr. Nesin and the charges of terrorist propaganda brought against the legitimate exercise of their right to freedom of expression. This measure is incompatible with international human rights norms, including article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003.

In particular, we express concern at the allegation that the government conflates expression in support of issues relating to Kurdish rights with the spreading of terrorist propaganda. The use of national security and counter-terrorism as justifications to restrict the right to freedom of expression without meeting the strict threshold established by article 19(3) of the ICCPR represents a measure that is incompatible with Turkey's obligations under international human rights law. We express concern at the shrinking space for civil society resulting from the growing use of anti-terror legislation, in particular against the work of journalists, making difficult any kind of critical reporting and thereby limiting the right to freedom of expression and access to information.

In this regard, we would like to address some of the issues that arise from your Excellency's Government's reply dated 17 May 2016. In that reply, your Excellency's Government states that Turkey's limitations on the right to freedom of expression are in compliance with its obligations under international human rights law. More precisely, the reply offers the argument that when freedom and security balance is in question, many democratic states have started to act more favourably towards security considerations and that a margin of appreciation should be afforded to the state. In this connection, your Excellency's Government state that the offence of making propaganda for a terrorist organization as defined in Article 7/2 of the Counter-Terrorism law, amended by the Fourth Judicial Package is in line with international and regional human rights standards.

We acknowledge the responsibility of every government to protect national security and to counter terrorism. However, we would highlight that national security and counter terrorism must not be abused as excuses to limit fundamental rights, such as the right to freedom of expression, whether exercised by ordinary persons or journalists in performing the duties of their profession. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The state has to demonstrate that it is necessary to do so to achieve a legitimate objective. In this connection, we cannot see that the argument offered in the reply from your Excellency's Government satisfies this requirement. The overbroad article 7/2 of the Counter-Terrorism law does not meet the strict threshold of article 19(3) of the ICCPR. Its enforcement in the case of Ms. Fincanci, Mr. Önderoglu and Mr. Nesin falls clearly outside of the standards of international human rights law. We find it difficult to see how

their participation in the campaign can amount to and justify charges of terrorist-propaganda. We reiterate the statement by the Human Rights Committee in General Comment 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34). We regret to see that article 7/2 of the Counter-Terrorism law is repeatedly used in contravention of this, leading to unnecessary and disproportionate interference with the right to freedom of expression.

Moreover, with respect to your Excellency's Government's reply we would like to underline that the question in this regard is not about a balance between freedom of expression and security. The right to freedom of expression and national security do not need to be balanced because they are not in opposition to each other.

We would like to refer to Human Rights Council Resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 the above-mentioned person(s) 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/or comments you may have on the above-mentioned allegations.
2. Please provide detailed information about the charges brought against Ms. Fincanci, Mr. Önderoglu and Mr. Nesin. In particular, please provide detailed explanation about how the solidarity campaign they participated in qualifies as "propaganda for a terrorist organization".
3. Please provide information about measures taken to bring article 7/2 of the Counter-Terrorism Law and its enforcement into line with Turkey's obligations under international human rights law, in particular with article 19(3) of the ICCPR.

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 responsible of the alleged violations.

We intend to 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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders