

Mandates of 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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA TUR 6/2016:

28 July 2016

Excellency,

We have the honour to address you in our capacity as 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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, 25/18, and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a series of repressive measures taken following the attempted coup on 14 July 2016, hereunder the arrest of human rights lawyer, journalist, and former President of the Human Rights Agenda Association, **Mr. Orhan Kemal Cengiz**, and his wife, **Ms. Sibel Semira Hurtas**, a journalist writing on issues of women's rights and state crimes. Mr. Cengiz was the subject of a previous communication sent on 19 February 2008 (A/HRC/11/4/Add.1, case no. TUR 1/2008).

Over the past year, we have engaged with your Excellency's Government through a number of communications concerning the criminalization of expression in Turkey and severe measures against any form of criticism, in ways that are incompatible with international human rights law. We have raised concern over the shutdown of critical media outlets, the harassment, arrest and detention of an alarmingly high number of journalists, and the severe compromise of academic and educational freedoms. Most recently, the issue of press freedom and academic freedom was the subject of communications sent to your Excellency's Government on 8 and 31 March 2016 (see above, case no. TUR 2/2016 and TUR 3/2016), as well as on 24 of June 2016 (case no. TUR 4/2016). We acknowledge with appreciation the receipt of the replies from your Excellency's Government of 1 April and 17 May 2016. We refer to our extensive response to your Excellency's Government's replies in our communication of 24 June 2016 (case no. TUR 4/2016).

More recently, we raised concerns related to the measures taken following the attempted coup in our public statement of 19 July 2016. We remain concerned and increasingly alarmed by the criminalization of expression and the clampdown on dissent in the wake of the attempted coup on 15 July 2016.

According to the information received:

Measures taken in the wake of the attempted coup d'État on 15 July 2016 and the imposition of the State of Emergency on 21 July 2016

On 15 July 2016 the Government announced that an attempt to overthrow the Government was underway by an army fraction. On 16 July 2016, the Government announced that the attempted coup d'État was over and accused the cleric Fetullah Gülen to have orchestrated the coup. Mr. Gülen has, since 2013, been accused by the Government for attempting to create a parallel State within the country.

On 19 July 2016, the Ministry of Education reported that 15,200 ministry personnel had been suspended and that they are under investigations for links to Mr. Gülen. According to pro-Government media, on the same date, 1577 university deans were asked to resign by the Council of Higher Education. The Ministry of Education has also suspended the right of academics to conduct research abroad until further notice and has called back academics presently working abroad.

In the first week following the attempted coup, authorities arrested, detained or placed under investigation more than 60,000 soldiers, police, judges, prosecutors, teachers, civil servants, lawyers and others.

On 21 July 2016, a State of Emergency Bill was passed allowing rule by decree. The Bill was approved by Parliament by 346 to 115 votes. It establishes a state of emergency for a period of three months.

On 23 July 2016, the Government issued its first decree under the state of emergency. The decree authorizes the closure of 1043 private schools, 1229 charities and foundations, 19 trade unions, 15 universities and 35 medical institutions over suspected links to the Gülen movement. Moreover, under the decree, the period in which some suspects can be detained was extended from four days to a maximum of 30 days. The decree offers counter-terrorism as justification for its measures.

Since the attempted coup, at least 2745 judges and prosecutors have reportedly been suspended, 2277 judges and prosecutors have been detained of which 1270 are in pre-trial detention and 730 are in pre-charge detention. Authorities have moreover blocked access to more than 20 news websites; revoked the licences of 25 media houses; 34 journalists have had their press cards cancelled, and at least one journalist has had an arrest warrant issued against her for covering the attempted coup.

On 25 July 2016, authorities ordered the arrest of another 42 journalists.

The case of Mr. Orhan Kemal Cengiz and Ms. Sibel Semira Hurtas

On 17 July 2016, a blacklist was released with the names of more than 70 journalists and writers, allegedly to be detained soon, on the allegation that they have links to the Gülen movement and therefore had been involved in the attempted coup. The list includes many names that have no known affiliation to the Gülen movement but are well-known for their opposition to the Government, including a number of high profile journalists, columnists and dissidents working on opposition parties. Mr. Cengiz's name was mentioned on this list.

On 21 July 2016, at Istanbul's Ataturk International Airport, Mr. Cengiz and Ms. Hurtas were arrested before boarding on a plane to London to attend a conference promoted by the Tahir Elçi Foundation. They were both placed in police custody. Ms. Hurtas was released on the same day, but Mr. Cengiz remained detained in Istanbul Security Directorate until 24 July 2016, when he was provisionally released and a travel ban was issued against him pending the end of the investigation. No grounds were provided for their arrest.

In addition to Mr. Cengiz and Ms. Hurtas, numerous other journalists have been detained in recent days.

We express serious concern at the alarming escalation of detentions and dismissals in the wake of the coup, evidently on grounds of opinion and expression. We express concern at the Government's purging of state institutions of what it perceives as being dissenting and critical voices, in ways that represent clear breaches of the right to freedom of expression, the right to liberty and security of the person, and the fundamental principle of presumption of innocence and the right to a fair trial, as guaranteed under articles 19, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003. We express concern at the denial of access to information through the blocking of media channels and social media in attempts to obstruct the free flow of information about the coup and its aftermath, hindering the media and the public to ensure Government accountability for the measures taken in reaction to the coup, including the mass arrests. We express concern about the use of emergency measures that, in targeting dissent and criticism, do not comply with the requirement that state of emergency measures be necessary and proportionate in scope and duration and only used to counter genuine security threats to the nation. They must, moreover, be carefully monitored, temporary and employed judiciously under lawful supervision. We express further concern at the arrest of Mr. Cengiz and Ms. Hurtas as it seems to have targeted their rights to freedom of expression and human rights activities. We also reiterate our concern in relation to the severe crackdown on civil society and human rights defenders in the country over the past months.

We appeal to your Excellency's Government to take all necessary steps to secure the rights to freedom of opinion and expression, and freedom of association and assembly in accordance with fundamental principles as set forth in articles 19 and 22 of the ICCPR.

The rights of judges, prosecutors and lawyers are also enshrined in the Basic Principles on the Independence of the Judiciary, the Guidelines on the Role of Prosecutors and the Basic Principles on the Role of Lawyers.

We furthermore refer to the conditions for the declaration of state of emergency as set forth in article 4 of the ICCPR. Before a State moves to invoke article 4, the two fundamental conditions of the provision must be met: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. Measures derogating from the obligations under article 4 must not go beyond what is strictly required by the exigencies of the situation, nor must such measures be inconsistent with other obligations under international law. As interpreted by the Human Rights Committee in General Comment 29, this requires States to provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such proclamation. Article 4(2) prohibits derogations from articles 6, 7, 8, 11, 15, 16, and 18. The fact that some of the provisions of the Covenant have been listed in article 4(2), as not being subject to derogation does not mean that other articles in the Covenant may be subjected to derogations at will, even where a threat to the life of the nation exists. The legal obligation to narrow down all derogations to those strictly required by the exigencies of the situation establishes a duty to conduct a careful analysis under each article of the Covenant based on an objective assessment of the actual situation (CCPR/C/21/Rev.1/Add.11). We moreover highlight that it is inherent in the protection of rights explicitly recognized as non-derogable in article 4(2) that they must be secured by procedural guarantees. Procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights (CCPR/C/21/Rev.1/Add.11).

We would also like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of Mr. Cengiz and Ms. Hurtas not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and articles 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR).

We would also like to refer to 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 articles 1, 2, 5, 6 and 8. We appeal to your Excellency's Government to take all necessary steps to secure a safe and enabling environment for human rights defenders and civil society in which they can operate without fear of harassment or criminalization of any kind.

In addition, we would like to draw your Excellency's Government's attention to paragraph 23 of the methods of work of the Working Group on Arbitrary Detention, according to which, "after having transmitted an urgent appeal to the Government, the Working Group may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent action procedure and the regular procedure.

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 persons 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 one the above-mentioned allegations.
2. Please provide detailed information about how the measures undertaken since 15 July 2016, comply with international human rights law, in particular with the conditions for derogations under state of emergency as established under article 4 of the ICCPR.
3. Please provide information about the legal ground for the arrest of Mr. Cengiz and Ms. Hurtas and explain how this is compatible with international human rights law.
4. Please provide detailed information about measures taken to ensure that actions taken under the state of emergency are brought into line with the international human rights obligations of Turkey.

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 attached 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 attached 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.

Sètondji Roland Adjovi Chair-Rapporteur of the Working Group on Arbitrary Detention

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