

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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, its causes and consequences

REFERENCE:
AL TUR 13/2017

11 December 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 33/30, 34/5, 28/9, 34/18, 31/3 and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **continued infringement upon the right to freedom of expression in the context of the court hearing that began on 5 December 2017, against the signatories of the 11 January 2016 petition, publicly known as "Academics for Peace Petition"**.

On 11 January 2016, more than 1400 academics in Turkey and abroad published a statement led by Academics for Peace entitled "We will not be a Party to this crime". The statement expressed concern for the curfews that have been declared in several cities in South East Turkey, and called for the Government to put an end to the violence and prepare for dialogue. Since the publication of the petition, many of its signatories have been dismissed, suspended or forced to resign and all of them continue to be subjected to administrative and judicial investigations.

Concerns about academic freedom and dismissal of academics following the signing of the "Peace Petition" on the basis of counter-terrorism legislation were raised by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, in his report presented to the Human Rights Council in June 2017 following his official visit to the country (A/HRC/35/22/Add.3). These concerns have also been the subject of three previous communications by several Special Rapporteurs, on 23 January 2017 (TUR 1/2017); on 24 June 2016 (TUR 4/2016); and on 31 March 2016 (TUR 3/2016). We thank your Excellency's Government for the replies of 11 April 2017; of 3 August 2016; and of 18 May 2016, but remain concerned at the continued repression of freedom of expression in the country.

According to the new information received:

According to recent figures, more than 500 academics and researchers have been dismissed, suspended or forced into retirement following their signing of the petition. Four academics were detained for weeks.

Criminal prosecutions have been initiated against a large number of signatories of the petition for “propagandizing for terror” on the basis of article 7(2) of the Anti-Terrorism Law. The public prosecutor has proposed imprisonment of up to seven and a half years.

Charges were first brought against signatories from Istanbul University and Galatasaray University, followed by signatories from Marmara University, Yildiz Technical University, Istanbul Technical University, Özyegin University and Kemerburgaz University. The cases have been distributed to different criminal courts, on different dates and within a few minutes of intervals, reportedly to preempt the academics from standing together.

The hearings have been scheduled to take place between December 2017 and April 2018. The first hearing was scheduled for 5 December 2017.

We reiterate our concern at the use of overbroad counter-terrorism legislation to criminalize the peaceful exercise of freedom of expression.. The language of Article 7 of the Anti-Terrorism Law confers unfettered discretion on the authorities to arrest and prosecute individuals for their public statements, and therefore does not comply with permissible restrictions to freedom of expression under article 19 (3) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003. In this regard, the prosecution of the signatories to the petition cannot be considered lawful under international human rights law.

We also express our concern that these prosecutions seem to contravene the international human rights norms of due process and fair trial, and that they take place in a climate that has become increasingly restrictive for the expression of views deemed critical or dissenting.

While we take note of your Excellency’s Government’s response that the measures taken following the signing of the “Peace Petition” are within permissible restrictions under international human rights law, we reiterate our concern at the conflation of expression of critical views on political and public affairs with the spreading of terrorism and terrorist propaganda. Such conflation cannot in any way be compatible with permissible derogations to the right of freedom of expression under international human rights law.

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 entrusted to us by the Human Rights Council, to seek to clarify all cases of concern brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information you may have on the above-mentioned allegations.
2. Please provide information about measures taken to revise counter terrorism and security related legislation that criminalizes the legitimate exercise of the right to freedom of expression in line with international human rights standards, in particular with article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights; the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354(2017), 2368 (2017) and 2370 (2017); Human Rights Council resolution 35/34; and General Assembly resolution 70/148.
3. Please provide detailed information about the evidence used to support the application of article 7(2) of the Anti-Terrorism Law, and explain how this complies with international human rights law.
4. Please provide information on measures taken to ensure that the trials are conducted in a fair and free manner in compliance with international human rights law.

We would appreciate receiving a response within 60 days.

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.

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.

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 cases through its regular procedure in order to render an opinion on whether the deprivations of liberty were 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.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Michel Forst
Special Rapporteur on the situation of human rights defenders

Karima Bennoune
Special Rapporteur in the field of cultural rights

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
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Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights while countering
terrorism

Dubravka Šimonović
Special Rapporteur on violence against women, its causes and consequences

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, without expressing at this stage an opinion on the facts of the case and on whether the detention of the individuals was arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, ratified by Turkey on 23 September 2003, which provides that "Everyone shall have the right to freedom of expression; 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".

We would like to draw the attention of your Excellency's Government to Principle 3 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which provides that in time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

We would also like to recall that, in accordance with article 27 of the Universal Declaration of Human Rights and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Turkey on 23 September 2003, everyone has the right to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, the right to take part encompasses the right to participate, access and contribute to cultural life. Participation covers in particular the right of everyone — alone, or in association with others or as a community — to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice, to take part in the political life of society, to engage in one's own cultural practices and to express oneself in the language of one's choice. Everyone also has the right to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity. Contribution to cultural life refers to the right of everyone to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. (E/C.12/GC/21, paras. 14 and 15). This right is particularly important for

academics, whose functions include the promotion of debate about issues of importance for society.

In this regards, we would like to refer to the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel, which state that they should not be hindered or impeded in exercising their civil rights as citizens, including the right to contribute to social change through freely expressing their opinion of state policies and of policies affecting higher education. They should not suffer any penalties simply because of the exercise of such rights. Higher-education teaching personnel should not be subject to arbitrary arrest or detention, nor to torture, nor to cruel, inhuman or degrading treatment. In cases of gross violation of their rights, higher-education teaching personnel should have the right to appeal to the relevant national, regional or international bodies such as the agencies of the United Nations, and organizations representing higher-education teaching personnel should extend full support in such cases. (section VI, A).

We would further like to recall that, in its General Comment N° 13, the Committee on Economic, Social and Cultural Rights emphasized that staff and students throughout the education sector are entitled to academic freedom. Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor (E/C.12/1999/10, paras. 38-39). Similarly, the Special Rapporteur in the field of cultural rights stressed that scientific freedom involves respecting the autonomy of higher education institutions and the freedom of faculty and students to, inter alia, express opinions about the institution or system in which they work, and to fulfil their functions without discrimination or fear of repression by the State or any other actor (A/HRC/20/26, para. 40).

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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1, 2, and 6 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, as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring your Excellency's Government's attention to its article 17, which provides that in the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international

obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

We would also like to refer to the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 70/148, which require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

We would like to remind your Excellency's Government that given its treaty obligations under the European Convention on Human Rights and the extensive case law of the European Court of Human Rights mandating the protection of human rights while countering terrorism. All measures taken by the state must be proportionate, legitimate and necessary in a democratic society. We further recall the Guidelines of the Committee of Ministers regarding human rights and the fight against terrorism affirming "that it is not only possible, but also absolutely necessary, to fight terrorism while respecting human rights, the rule of law and, where applicable, international humanitarian law"