

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 35/11 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of torture and ill-treatment of former Turkish diplomats and staff from the Turkish foreign ministry in the Ankara Police Headquarters

According to the information received:

On 20 May 2019, the Turkish police issued arrest warrants against 249 former diplomats and foreign ministry personnel, in 42 cities, over alleged cheating during recruitment exams which, according to the authorities, is linked to the Gülen Movement.

Since 20 May 2019, around 100 individuals have been kept in custody in the Investigation Department of Financial Crimes in the Ankara Police Headquarters.

The exact number of detainees linked to these allegations remains uncertain, as their file is under a confidentiality order. The detention order has been extended through a court order until the 31st of May.

According to the allegations received, a number of detainees have been exposed to systematic torture in the Ankara Police Headquarters at the hands of the National Intelligence Agency in order to coerce confessions and collaboration under the effective remorse law, or sign previously produced depositions. Acts of torture allegedly include, threats, blindfolding, forced kneeling and crawling, beating and knocks with truncheons to the head, harassment and insults, intimidation, forced nudity, sexual abuse and rape with police batons.

Additionally, medical examinations of detainees are allegedly carried out in the presence of a police officer which impedes the victims from revealing the acts of torture and the doctors from documenting alleged violations for fear of reprisals.

Furthermore, it is alleged that judges from the Criminal Judgeship of Peace have dismissed all allegations of torture presented by the victims at the moment of the hearing claiming that this information was not within their competence, and proceeded to extend the detention period of the defendants.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our grave concern regarding the safety and security of the above mentioned individuals and our dismay at the alleged ill-treatment of the detainees since their arrest. If confirmed, these allegations would constitute a violation of the absolute prohibition of torture as per Article 2 and 16, of the Convention against Torture that Turkey ratified on 2 August 1988 and a violation of Article 15 of that Convention that prohibits the use of evidence obtained under torture in proceedings. These acts would also constitute a violation of Article 7 (prohibition of torture), 9 (right to liberty and security of person), 10 (treatment in detention) and 14 (fair trial rights) of the International Covenant on Civil and Political Rights (ICCPR) to which Turkey became a State Party on 23 September 2003.

We are further concerned about the physical and mental integrity, and security of the above mentioned individuals whilst detained, and the remaining individuals who have not yet been detained and who are named in the list of arrest warrants.

In its General Comment No. 32 (2007), the Human Rights Committee observed that article 14 requires States to adopt appropriate measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. It also raised that States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. (para. 19).

Without expressing at this stage an opinion as to whether the detention of the above-mentioned person is arbitrary or not, we appeal to your Excellency's Government to take the necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and, if they are to remain in detention, that they be granted fair trial proceedings before an independent and impartial tribunal, in accordance Articles 9 and 14

of the ICCPR, so that they can challenge the legality and the possible arbitrariness of their deprivation of liberty.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal grounds of the arrest and continued detention of the above-mentioned individuals, and how these measures are consistent with the ICCPR, which Turkey has ratified.
3. Please provide information about the number of suspects currently kept in custody in the Ankara Provincial Police headquarters Investigation department of financial crimes, and the measures taken to avoid that their declaration be completed at the police headquarters but rather at the prosecutor's office
4. Please provide the details, and where available the results, of any additional investigation, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Turkey's domestic and international human rights obligations under the ICCPR and the CAT.
5. Please provide details on measures taken to ensure that medical examinations are conducted in accordance with the Istanbul Protocol, by an independent medical doctor, and without the presence of law enforcement officers during the examination.
6. Please provide information on the measures taken by judges when presented with allegations of torture, in order to exclude evidence obtained under torture. Please provide detailed information on the guarantees put in place by Turkey to protect and promote judicial independence; including

legal means that judges may use to defend themselves against any threat to their independence.

7. In the event that torture or ill-treatment has occurred and the perpetrators of these alleged acts have been identified, please provide the full details of any penal, disciplinary, or administrative sanction that has been taken against them, and the suspension measures that are applied until the investigation is completed.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person 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 urgent appeal to the Government, the Working Group on Arbitrary Detention 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 urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

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