



March 20, 2020

Mr. Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mr. José Guevara, Chair-Rapporteur

UN Working Group on Arbitrary Detention

EXTREMELY URGENT

Re: Urgent appeal to release of prisoners in Turkey due to an outbreak of the viral disease **COVID-19**

Dear Madame, Dear Sir,

We write you to request an **URGENT ACTION** from Special Procedures mechanisms, with the support of the Office of the High Commissioner for Human Rights in order to get the release of prisoners in Turkey, due to an outbreak of the viral disease **COVID-19**.

On January 30, 2020, the World Health Organization (WHO) announced that the COVID-19 outbreak was a Public Health Emergency of international concern and on March 11, WHO described the COVID-19 situation as a pandemic. Then, citing concerns with *“the alarming levels of spread and severity”*, the WHO called on governments to take urgent and aggressive action to stop the spread of the virus. As of March 14, 2020,



hundreds of thousands cases of COVID-19 have been reported in 136 countries¹. One of those countries exposed to this dangerous pandemic is Turkey, as well.

If we look at the situation, some of countries like Italy and Iran have been badly affected because of late governmental measures². According to the latest statistics, Italy is in the 2nd position, after China, with 35713 cases and Iran is in the 3rd position with 17361 cases³. On the other hand, as stated in the Interim Guidance (March 16, 2020) of *Critical Preparedness, Readiness and Response Actions for COVID-19* published by WHO, several countries have demonstrated that **COVID-19** transmission from one person to another can be slowed or stopped. These actions can save lives and have provided the rest of the world with more time to be prepared for the arrival of **COVID-19** such as emergency response systems, increasing capacity to detect and care for patients etc. For that reason, it is crucial for all the countries to take some very important and urgent measures **NOW**.

Some Governments have urgently taken almost all necessary measures to slow further spread and to avoid that their health systems become overwhelmed due to seriously ill patients with **COVID-19**. For instance, within the United States, Administrative Judge Brendan Sheehan, said that “*The goal of this is to protect the community and the safety of the inmates*” and decided to release of hundreds of inmates amid concerns about the spread of the coronavirus within the facility⁴. Also, Norwegian Government decided to free prisoners to minimize outbreaks of incarceration among inmates and staff⁵. On the other hand, after an early bitter experience, Iran temporarily decided to release around 85,000 prisoners including political detainees in a bid to stop the spread of coronavirus⁶

¹WHO/COVID-19/Community_Actions/2020.2

²<https://inews.co.uk/news/health/coronavirus-italy-why-so-bad-cases-deaths-lockdown-pandemic-explained-2444517>

³<https://experience.arcgis.com/experience/685d0ace521648f8a5beeee1b9125cd>

⁴<https://www.foxnews.com/us/ohio-jail-releases-hundreds-inmates-coronavirus>

⁵<https://www.vg.no/nyheter/innenriks/i/P9AB0X/kriminalomsorgen-vil-loeslate-innsatte-med-kortere-dommer>

⁶<https://www.dailymail.co.uk/news/article-8120389/Iran-lets-85-000-prisoners-temporary-release-coronavirus-fears.html>

upon the call of the United Nations Special Rapporteur on the Situation of Human Rights in Iran, Javaid Rehman⁷.

International human rights law guarantees everyone the right to the highest attainable standard of health and obligates governments to take steps to prevent threats to public health and to provide medical care to those who need it. Human rights law also recognizes that in the context of serious public health threats and public emergencies threatening the life of the nation, restrictions on some rights can be justified when they have a legal basis, are strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application, of limited duration, respectful of human dignity, subject to review, and proportionate to achieve the objective.

All of them can be assessed under the right to life. The “*right to life*” has been described at times as “*the supreme right*”, “*one of the most important rights*”⁸, “*the most fundamental of all rights*”⁹, “*the primordial right*”¹⁰, “*the foundation and cornerstone of all the other rights*”¹¹, the “*prerequisite for all other rights*”¹² and a right which is “*basic to all human rights*”¹³. It is deemed to be a norm of customary international law and is an indispensable element of human rights treaties, at the international and the regional level. The *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly on December 10, 1948, declares the right to life in its Article 3: “*Everyone has the right to life, liberty and security of person*”. The International

⁷<https://www.ncr-iran.org/en/news/157-human-rights/27539-un-special-rapporteur-urges-iran-regime-to-release-all-prisoners-as-coronavirus-spreads-across-country-taking-lives-of-over-3-300>

⁸Stewart v. United Kingdom (App. No. 10044/82), (1985) 7 EHRR 453.

⁹Theo C. Van Boven, ‘The Need to Stop Deliberate Violations of the Right to Life’, in Daniel Premont, ed., *Essais sur le concept de ‘droit de vivre’ en memoire de Yougindra Khushalani*, Brussels: Bruylant, 1988, pp. 285–292, p. 285.

¹⁰Bertrand G. Ramcharan, ‘The Concept and Dimensions of the Right to Life’, in Bertrand G. Ramcharan, ed., *The Right to Life in International Law*, Dordrecht/Boston/Lancaster: MartinusNijhoff, 1985, pp. 1–32, p. 12; René Brunet, *La garantie internationale des droits de l’homme d’après la Charte de San-Francisco*, Geneva: Grasset, 1947, p. 211.

¹¹Inter-American Commission of Human Rights, *Diez Años de Actividades, 1971–1981*, Washington, D.C.: Organization of American States, 1982, p. 339; Annual Report of the Inter-American Commission on Human Rights, 1986–1987, OAS Doc. OEA/Ser.L/V/II.71 doc. 9 rev. 1, p. 271.

¹²‘Initial Report of Uruguay’, UN Doc. CCPR/C/1/Add.57.

¹³General Comment 14(23), UN Doc. A/40/40, Annex XX, UN Doc. CCPR/C/SR.563, para. 1

Covenant on Civil and Political Rights, to which Turkey is a State Party, recognizes and protects the right to life of all human beings. It is the supreme right from which no derogation is permitted,¹⁴ even in situations of armed conflict and other public emergencies. The right to life has crucial importance, both for individuals and for the society, as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right¹⁵, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed (?) and infused by other human rights. European law underwent an evolution parallel to that of the United Nations. At the regional level, relevant for the case of Turkish prisoners, the European Convention on Human Rights specified, in 1950, that *“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”*.

The right to life also entails positive obligations for States. Therefore, they are not only obliged to refrain from violating the right to life, in any circumstance. States are thus required to:

- Adopt legislative, judicial, administrative and other measures to ensure that no one is arbitrarily deprived of his or her life.
- Ensure adequate conditions of detention for all those in custody, which includes providing access to food and water in sufficient quantities and of adequate quality, as well as to medical care, and guaranteeing their safety and security.
- Conduct a prompt and independent official investigation whenever a person dies in custody.

¹⁴General Comment 6, para. 1; Communication No. R.11/45, Suarez de Guerrero v. Colombia, Views adopted on 31 March 1982, para. 13.1; Communication No. 146/1983, Baboeram Adhin v Suriname, Views adopted on 4 April 1985, para. 14.3.

¹⁵CCPR General Comment 14, para. 1. Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f4723&Lang=en

- Take appropriate measures to protect the lives of persons detained by Non-State actors whose acts or omissions are not attributable to the State and who operate within its jurisdiction.

Nowadays, at least 300,000 inmates and detainees are deprived of their liberty in Turkey¹⁶. Besides, 2,500 of them are children between 6 and 18 years old. Also, there are more than 750 babies between 0-6 years-old, staying with their mothers in prison. And, there are approximately 4,000 women imprisoned for political reasons¹⁷. The trouble is that according to Turkish statistics institute records 21.1% of the inmates are constituted by the detainees.

In fact, as a fundamental principle of law “The accused is innocent until proven guilty” and article (9.3) of the International Covenant on Civil and Political Rights states that “It shall not be the general rule that persons awaiting trial shall be detained in custody.”. In addition, rules (5, 6, 8 & 9) of the Tokyo Rules state that “Pretrial detention shall be used as a means of last resort in criminal proceedings...”. However, in Turkey, pretrial detention has become a tool of punishment against defendants by violating their rights stipulated by law.

We know that it is obvious that the conditions of prisons to overcome coronavirus **COVID-19** are insufficient in Turkey. Based on the information provided by the Ministry of Justice, General Directorate of Prisons and Detention Houses, currently there are 368 penitentiary institutions prisons, with a total capacity of 235,431 individuals¹⁸. So, firstly, people have been staying in prisons exceeding their normal capacity. Secondly, it is seriously concerned that those deprived of their liberty face significant obstacles. For example, required medical personnel and equipment are not available. In this

¹⁶<https://www.birgun.net/haber/cezaevleri-koronavirus-alarmi-veriyor-tedbirler-ihlal-yaratabilir-291810>

¹⁷<https://www.birgun.net/haber/cezaevleri-koronavirus-alarmi-veriyor-tedbirler-ihlal-yaratabilir-291810>

¹⁸<http://www.cte.adalet.gov.tr/Home/SayfaDetay/cik-genel-bilgi>

connection, a recent study from the Human Rights Association of Turkey (IHD) found that there are 1,333 sick prisoners in Turkey's prisons, among them 457 seriously ill, meaning that they are at greater risk of death, including from **COVID-19**¹⁹.

Some authorized persons and institutions have declared manifestations to draw attention to that serious situation. According to attorney Gökmen Yeşil, *"Turkey's prisons are overcrowded, with prisons in major cities such as Istanbul, Ankara and Izmir having three to four times more inmates than their capacity, which would intensify the spreading risk of the virus. This situation is a problem in itself. For example, inmates sleep under stairs"*²⁰. *"Even if such a disease exists in prisons, there is no sufficient medical equipment to identify this"*, he adds. Destina Yıldız, from the Prisons Committee of the Libertarian Lawyers Association, stresses that the prisoners are more vulnerable against the disease especially the ill ones.. She also reports of Inmates, stating that it happens that they are not taken to the infirmary or the hospital and doctors examine them while they are handcuffed²¹. Furthermore, from all over Turkey, 33 Bars have declared a manifestation urging the government freeing of the detainees, stating that prisons in Turkey are overcrowded; wards and common areas lack of fresh air and hygiene; getting hot water, cleaning products and other sanitizers is impossible; as long as not releasing the inmates, it would carry very high risk²².

Recent news show that shortly, according to the situation in the country, the virus has spread into the Turkish prisons. It was learned that quarantine practice has been started in Edirne and Balıkesir Kepsüt prisons due to coronavirus²³. As it has already been done in many countries, it must be considered as an obligation by Turkish Government

¹⁹<http://bianet.org/english/human-rights/221243-lack-of-precautions-for-coronavirus-in-prisons-may-cause-grave-consequences>

²⁰<http://bianet.org/english/human-rights/221243-lack-of-precautions-for-coronavirus-in-prisons-may-cause-grave-consequences>

²¹<http://bianet.org/english/human-rights/221243-lack-of-precautions-for-coronavirus-in-prisons-may-cause-grave-consequences>

²²<http://www.cumhuriyet.com.tr/haber/33-barodan-cezaevlerine-koronavirus-cagrisi-tutuklular-tahliye-edilmeli-1728100>

²³<https://www.tr724.com/korkulan-oldu-koronavirus-cezaevlerine-de-bulasti/>



to evacuate the people especially the detainees from the prisons. Without doing so, it seems impossible to impede **COVID-19** outbreaks in Turkish prisons.

We, the International Association for Human Rights Advocacy in Geneva, reiterate our deep appreciation for the prompt and professional assistance provided by United Nations bodies so far. We duly request, in accordance with your mandate, your support at this critical juncture. We further request your respective mandates to take **IMMEDIATE ACTION URGING THE STATE PARTY TO EVACUATE THE PRISONS** against **COVID-19** virus outbreaks and not to cause thousands of deaths.

The International Association for Human Rights Advocacy in Geneva takes this opportunity to convey its best wishes.

Yours sincerely,