

SCHOLARS AT RISK
NETWORK
&

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Office of the High Commissioner for Human Rights

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Re: “Asking for Peace Is Not a Crime” – Dr. Şebnem Korur Fincancı and Other Signatories to the Academics for Peace Declaration

Lawyers’ Rights Watch Canada (“LRWC”) and Scholars at Risk (“SAR”) appeal to the Special Procedures of the Human Rights Council to request that the Government of the Republic of Turkey (“Turkey”) immediately vacate charges against Dr. Fincancı and all other signatories to the “We will not be party to this crime!” declaration, cease all related prosecutions, and make reparations required by international law.

It is not a crime to ask for peace.¹ It is not terrorism to peacefully call attention to human rights violations. International law protects such expression. Turkey has criminalized the lawful exercise of internationally-protected rights by prosecuting people for being signatories to a peaceful declaration and for engaging in human rights advocacy.

Background

On January 10, 2016, a declaration entitled “We will not be party to this crime!” (the “Declaration”) and signed by 1,128 academics was released. The Declaration was

¹ On 19 December 2018, in response to the charges against her, Dr. Şebnem Korur Fincancı replied in her defence, “Asking for peace is not a crime. I request my acquittal.” (See below.)

prepared by the Academics for Peace initiative. With subsequent participation, the total signatories reached 2,212.

The Declaration drew attention to violations in the southeast region of Turkey of both international law and the Turkish Constitution. The Declaration opposed violations of rights by state agents (through violence, curfews, and deportation) and called for all to work towards a peace in the region. The Declaration specifically called on Turkey to: end rights violations against citizens by state agents; ensure accountability of those responsible; and work towards creating peace in the region. Turkey has treated lawful calls for peace, cessation of violence, and accountability for perpetrators as “propagandizing for a terrorist organization”, a criminal offence under Article No. 7/2 of the Anti-Terror Law No. 3713, punishable with imprisonment from one to five years.

Since December 2017, at least 533 signatories based in Istanbul have stood trial and 151 have been sentenced to imprisonment, ranging from 15 months to three years. While many received suspended sentences, several academics now face imprisonment.

Twenty-eight of the signatories have appealed their convictions.² The Court of Appeal decision upholding the 15-month sentence given to a signatory, Professor Zübeyde Füsün Üstel, sets a worrying precedent.

Dr. Şebnem Korur Fincancı

Among those prosecuted for signing the Declaration was Dr. Şebnem Korur Fincancı, President of the Human Rights Foundation of Turkey.³ Dr. Fincancı is a prominent and well-respected academic and human rights defender. On December 19, 2018, the Istanbul 37th Heavy Penal Court convicted and sentenced Dr. Fincancı to two and half years in prison for the “crime” of signing the Declaration. Evidence of her human rights advocacy, including multiple interviews online and in newspapers, was counted as an aggravating factor to justify a lengthy prison term. It appears that Dr. Fincancı has been given one of the harshest sentences because of her human rights work and prominence as a human rights defender. Her case is currently under appeal.

Turkey’s International Human Rights Law Obligations

a. Violation of the Right to Peaceful Protest

The international human right of individuals and groups to peacefully protest and express their dissent, individually and collectively, involves a number of internationally-protected rights, including: freedom of expression, opinion, and belief; freedom of association; and peaceful assembly. States have an obligation to ensure all persons enjoy these

² Those who received suspended sentences do not have a right of appeal; the delayed pronouncement of judgment may only be subject to opposition, not appeal.

³ LRWC has previously written regarding Dr. Fincancı. See LRWC letter dated 12 January 2019, online: www.lrwc.org/turkey-release-of-sebnem-korur-fincanci-from-arbitrary-detention-letter.

fundamental rights equally and without discrimination of any kind, including based on political or other opinion.

These fundamental rights and freedoms are guaranteed under the *Universal Declaration of Human Rights* (the “UDHR”) and the *International Covenant on Civil and Political Rights* (the “ICCPR”).⁴ These rights are also protected by the *European Convention on Human Rights* (the “ECHR”).⁵ These international and regional treaties are binding on Turkey. Turkey’s Constitution also provides for these same rights.⁶

The individual rights comprising the right to peaceful protest are also critical to the effective exercise of the right of everyone, individually and in groups, to promote and protect internationally-protected human rights, as reflected in their reproduction in the various provisions of 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* (the “UN Declaration on Human Rights Defenders”).⁷

The conviction of Dr. Fincancı, as well as all other signatories to the Declaration, on vague and ambiguous charges is a violation of the right to peaceful protest, including freedom of expression, which requires that restrictions or limitations must be provided by law and necessary for limited purposes.⁸ Laws imposing restrictions or limitations on freedom of expression must be accessible, concrete, clear, and unambiguous, such that they can be understood by everyone and applied to everyone.⁹ “Propagandizing for a terrorist organization” pursuant to Article No. 7/2 of the Anti-Terror Law No. 3713 as applied to the act of signing the Declaration is an impermissible restriction, neither necessary for its aims nor provided by law with sufficient clarity.¹⁰

Restrictions to freedom of expression must not be arbitrary or unreasonable and must not be used as a means of political censorship or of silencing criticism of public officials or

⁴ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948), arts 2, 18, 19, and 20; *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, art 2, 18, 19, 21, and 22 (entered into force 23 March 1976).

⁵ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 2889 UNTS 222, arts 9, 10, 11, and 14 (entered into force 3 September 1953), as amended by Protocols Nos 11 and 14.

⁶ *Constitution of the Republic of Turkey*, arts 10, 25, 26, and 33.

⁷ *Promotion of 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*, GA Res 66/164, UNGAOR, 66th Sess, UN Doc A/RES/66/164 (2012).

⁸ ICCPR, art 19(3).

⁹ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue*, UNHRCOR, 14th Sess, UN Doc A/HRC/14/23 (2010) at para 79(d); United Nations Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc CCPR/C/GC/34 (2011) at para 25.

¹⁰ See also Violation of the Principle of Legality below.

public policies.¹¹ “[A]ll public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”¹² In particular, under ICCPR Article 5, restrictions on the right to peaceful protest may not put in jeopardy the right itself.¹³

While Dr. Fincancı and the other signatories were convicted of “propagandizing for a terrorist organization,” the prohibition of war propaganda and advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence under ICCPR Article 20 cannot save or legitimize the use of Article No. 7/2 of the Anti-Terror Law No. 3713. The Declaration calls for peace and the end to discrimination, hostility, and violence, through peaceful means; its subject matter does not fall within Article 20. Moreover, a limitation that is justified on the basis of Article 20 must also comply with Article 19, which is not the case for Article No. 7/2 of the Anti-Terror Law No. 3713.¹⁴

Turkey’s violation of the right to peaceful protest is an impermissible restriction to the rights, individually and collectively, of all signatories to the Declaration, including Dr. Fincancı. Article No. 7/2 of the Anti-Terror Law No. 3713 is being used to silence the legitimate and protected work of human rights defenders.

b. Violation of the Principle of Legality

The UN Working Group on Arbitrary Detention has characterized the principle of legality as “a cardinal principle of international human rights law”¹⁵ and of “modern criminal law”¹⁶ that is “required by the rule of law.”¹⁷ It is a fundamental guarantee of due process in criminal proceedings.¹⁸

Turkey’s application of vague and ambiguous charges pursuant to Article No. 7/2 of the Anti-Terror Law No. 3713 violates the principle of legality under ICCPR Articles 9(1)

¹¹ *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue*, UNHRCOR, 14th Sess, UN Doc A/HRC/14/23 (2010) at para 79(f).

¹² United Nations Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc CCPR/C/GC/34 (2011) at para 38.

¹³ United Nations Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc CCPR/C/GC/34 (2011) at para 21.

¹⁴ United Nations Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of opinion and expression*, UN Doc CCPR/C/GC/34 (2011) at para 50.

¹⁵ WGAD, Opinion No 61/2016 (Saudi Arabia), UNHRCOR, 77th Sess, UN Doc A/HRC/WGAD/2016/61 (2016) at para 49.

¹⁶ WGAD, Opinion No 27/2011 (Bolivarian Republic of Venezuela), UNHRCOR, 61st Sess, UN Doc A/HRC/WGAD/2011/27 (2011) at para 38.

¹⁷ WGAD, Opinion No 32/2016 (New Zealand), UNHRCOR, 76th Sess, UN Doc A/HRC/WGAD/2016/32 (2016) at para 62.

¹⁸ WGAD, Opinion No 10/2018 (Saudi Arabia), UNHRCOR, 81st Sess, UN Doc A/HRC/WGAD/2018/10 (2018) at para 50.

and 15(1), which prohibits arrest, detention, and conviction on grounds that are not clearly established in pre-existing law. A criminal provision violates the principle of legality if the law is neither sufficiently foreseeable in its effects nor sufficiently accessible to the public at the time of the alleged offence, such that an individual cannot regulate his or her conduct accordingly.¹⁹ On its face, “propagandizing for a terrorist organization” is so overly broad as to prevent foreknowledge. It creates an unrestricted and standardless sweep that allows automatic and arbitrary conviction for any act, utterance, or declaration that is determined—after the fact—to constitute the impugned propaganda.

Foreseeability is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation of it, what acts and omissions will make him or her criminally liable.²⁰ However, the court cannot interpret existing law beyond the reasonable limits of acceptable clarification.²¹ The resultant development in law must be reasonably foreseeable and consistent with the essence of the offence.²² The courts in Turkey in prosecutions of Declaration signatories have not interpreted Article No. 7/2 of the Anti-Terror Law No. 3713 in accordance with the principle of legality, choosing instead to arbitrarily interpret the provision as capturing the lawful exercise of protected rights by individuals who are actually or potentially critical of state action, inaction, and/or policy.

Since 2010, Turkey has undertaken several reforms of its judicial system that permanently curtail judicial independence and provide increased control of the government over the judiciary.²³ Such reforms jeopardize full recognition of the principle of legality by an independent and impartial judiciary.

c. Violation of Freedom from Arbitrary Detention

Detention as punishment for the legitimate exercise of the rights guaranteed by the ICCPR is arbitrary.²⁴ Detentions are also considered arbitrary when there has been total

¹⁹ *Prosecutor v Milutinović*, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, Case No IT-99-37-AR72 (ICTY Appeals Chamber, 21 May 2003) at paras 37, 41; *GIEM SRL and Others v Italy*, Judgment (Merits), Applications Nos 1828/06, 34163/07, and 19029/11 (ECHR Grand Chamber, 28 June 2018) at para 242.

²⁰ *GIEM SRL and Others v Italy*, Judgment (Merits), Applications Nos 1828/06, 34163/07, and 19029/11 (ECHR Grand Chamber, 28 June 2018) at para 242.

²¹ *Prosecutor v Milutinović*, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise, Case No IT-99-37-AR72 (ICTY Appeals Chamber, 21 May 2003) at para 38.

²² *SW v The United Kingdom*, Judgment, Application No 20166/92 (ECHR Chamber, 22 November 1995) at para 36.

²³ The Law Society of England and Wales, the Bar Human Rights Committee of England and Wales, & the International Bar Association Human Rights Institute, *Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches Concerning the Independence of Legal Profession in Turkey* (18 September 2018) at para 23.

²⁴ United Nations Human Rights Committee, *General Comment No. 35, Article 9: Liberty and Security of Person*, UN Doc CCPR/C/GC/35 (2014) at para 17.

or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR and the ICCPR, and the violation is of such gravity as to give the deprivation of liberty an arbitrary character.²⁵ Detention that lacks any legal basis, in violation of the principle of legality, is also arbitrary.²⁶

Turkey's prosecution of the signatories to the Declaration has resulted in, or has the potential to result in, arbitrary detention, and further convictions are anticipated. Turkey has violated its international law duties to ensure the right to peaceful protest, including freedom of expression; to protect the right of individuals to engage in human rights advocacy; to ensure adherence to the principle of legality; and to promote, ensure, and protect the rights and duty of jurists to conduct their professional duties free from interference from state and non-state actors. In particular, the silencing of Dr. Fincancı has the hallmarks of government reprisal against a human rights defender, resulting in the arbitrary and impermissible criminalization of her work.

Conclusion

Under international law, everyone is entitled to an adequate, effective, and prompt remedy determined by a competent authority having the power to enforce remedies for a violation of their human rights.²⁷ The right to a remedy is guaranteed notwithstanding that the violation may have been caused by persons acting in an official capacity and is available equally to all persons, without discrimination.²⁸

LRWC and SAR request the Special Procedures, in accordance with their mandates, urge Turkey to immediately and unconditionally vacate charges against Dr. Fincancı and all other signatories to the Declaration, cease all related prosecutions, and make reparations required by international law. In pursuing these charges, Turkey has violated its international human rights obligations.

It is not, and can never be, a crime to peacefully promote and protect human rights, particularly as those human rights are protected by Turkey's own Constitution and by international treaties and conventions to which Turkey is signatory; the fundamental freedoms that support peace and human rights and guard against their violation must

²⁵ WGAD, Opinion No 1/2017 (Turkey), UNHRCOR, 78th Sess, UN Doc A/HRC/WGAD/2017/1 (2017) at paras 3(c), 56.

²⁶ United Nations Human Rights Committee, *General Comment No. 35, Article 9: Liberty and Security of Person*, UN Doc CCPR/C/GC/35 (2014) at para 11; WGAD, Opinion No 1/2017 (Turkey), UNHRCOR, 78th Sess, UN Doc A/HRC/WGAD/2017/1 (2017) at para 3(a).

²⁷ *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, UNHRCOR, 31st Sess, UN Doc A/HRC/31/66 (2016) at para 89; United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) at para 15.

²⁸ United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligations Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004) at para 18.

never be the object of government reprisals. We call on Turkey to respect its international commitments and end the persecution of these academics.

All of which is respectfully submitted:

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[Lawyers' Rights Watch Canada](#) (LRWC) is a committee of lawyers and others who promote international human rights laws and the rule of law through advocacy, research, and education. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations.

[Scholars at Risk](#) (SAR) is an international network of higher education institutions and individuals working to protect threatened scholars, prevent attacks on higher education, and promote academic freedom and related values. As part of this work, SAR coordinates advocacy activities on behalf of scholars and students wrongfully imprisoned — as well as against widespread threats to an entire faculty, university, or system.

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