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The Permanent Mission of the Republic of Serbia to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, in reference to the Office's Joint Urgent Appeal from special procedures (Ref: UA SRB 4/2022), has the honor to enclose herewith the response from the Ministry of Justice of the Republic of Serbia.

The Permanent Mission of the Republic of Serbia to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 24 March 2023

Office of the High Commissioner for Human Rights
Special Procedures Branch
Palais de Nations, 1202 G E N E V A

REPUBLIC OF SERBIA
MINISTRY OF JUSTICE
Sector for International Cooperation
Ref.: 713-01-2142/2021-08
Date: 26 January 2023
Belgrade
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UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION; SPECIAL RAPPORTEUR
FOR MINORITY ISSUES AND SPECIAL RAPPORTEUR FOR THE PROMOTION
AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN
THE FIGHT AGAINST TERRORISM

REFERENCE: Your number: UA SRB 4/2022

Regarding the letter addressed to the previous Minister of Foreign Affairs of the Republic of Serbia, Mr. Nikola Selaković, which is an **appeal from several special procedures** (Working Group on Arbitrary Detention; Special Rapporteur for Minority Issues and Special Rapporteur for the Promotion and Protection of Human Rights and Fundamental Freedoms in the Fight against Terrorism), based on the information you received regarding the alleged arbitrary arrest and detention of Mr. Ecevit Piroğlu in the Republic of Serbia, we are submitting the following response:

On the basis of the international warrant issued by INTERPOL Ankara, on June 25, 2021, Mr. Ecevit Piroğlu, born on October 27, 1974, a citizen of the Republic of Turkey, was deprived of his liberty in Belgrade and brought before the judge for preliminary proceedings of the High Court in Belgrade. By the decision of the judge for the preliminary proceedings of the High Court in Belgrade no. KRE 12/21 of June 26, 2021, extradition custody was ordered for the said person.

The international warrant for Ecevit Piroğlu has been issued for two criminal proceedings: on the basis of the order of the Criminal Court in Silopi, number: 2018/760 D.IS dated 04.03.2018, for the criminal offense of participating in a terrorist organization and based on the order of the Third Higher Criminal Court in Istanbul Anadolu, number: 2017/15 ESAS dated 04.03.2018, for the purpose of conducting criminal proceedings for the criminal offense of aggravated theft.

The Ministry of Justice of the Republic of Serbia informed the competent Turkish authorities through diplomatic channels about the deprivation of liberty of Ecevit Piroğlu and requested the submission of an extradition request in accordance with the deadlines stipulated in the Treaty between the Republic of Serbia and the Republic of Turkey on extradition dated 05.06.2013.

Turkish authorities, first through the channels of INTERPOL, and then with a note from the Embassy of the Republic of Turkey in Belgrade dated July 30, 2021, submitted the request of the competent Turkish authorities for the extradition of the mentioned person.

The request for extradition with accompanying documentation was, in accordance with the provisions of the Law on International Legal Assistance in Criminal Matters of the Republic of Serbia, along with letters from the Ministry of Justice dated 30.07.2021 and 10.08.2021, submitted for competent proceedings to the High Court in Belgrade, before which extradition proceedings were initiated.

The High Court in Belgrade later transferred the case files to the High Court in Belgrade - Special Department for Organized Crime.

According to the regulations of the Republic of Serbia, the extradition procedure is carried out in two stages: before the court and before the Minister of Justice.

The judge for preliminary proceedings, after arresting a person for whom an international warrant has been issued or a request for extradition has been received, informs that person about the reason for arrest and teaches him about his rights: that he is not obliged to declare anything, that he can hire a defence attorney, that the defence attorney attends his hearing, that he can consent to being extradited under a simplified procedure. The public prosecutor is informed about the bringing of the person whose extradition is requested.

If the person whose extradition is requested waives the right to a lawyer or if he does not provide one within 24 hours of being informed of this right, an ex officio lawyer will be appointed.

The judge for the preliminary proceedings hears the person whose extradition is requested about all the circumstances important for establishing the existence of prerequisites for extradition, especially about personal circumstances, citizenship, relationship with the requesting state and the request for extradition. The hearing is attended by the public prosecutor and the defence attorney, who can ask questions to the person whose extradition is requested. After the hearing, the judge may order detention if there are circumstances indicating that the person whose extradition is requested will hide or flee in order to hinder the decision-making process on the request for extradition or the implementation of extradition, or if there are circumstances indicating that the person whose extradition is requested will interfere with the collecting of evidence in the extradition proceedings or in the criminal proceedings before the court of the requesting state.

In the extradition procedure, the judge for the preliminary procedure undertakes appropriate actions in order to determine whether there are prerequisites for extradition. After the completed actions, the case file is submitted to a panel composed of three judges (non-trial panel). The non-trial panel determines whether the prerequisites for extradition are met and issues a decision on refusal of extradition or a decision on fulfilment of the prerequisites for extradition.

If the court determines that the prerequisites for extradition have not been met, the non-trial panel of the court issues a decision on refusal of extradition and submits the decision to the ministry responsible for justice after it becomes final. In such a case, the Minister of Justice does not make a decision, but the requesting state is informed of the court's decision.

In the second case, if the non-trial panel of the court determines that the conditions for extradition are met, it will issue a decision on this and after the decision becomes legally binding, it is obliged to submit the same and the complete files of the case to the Minister of Justice for decision.

When deciding on an extradition request, the Minister of Justice makes a final decision - a decision allowing or not allowing extradition.

The minister's decision is delivered to the requesting state, the person whose extradition is requested, the court that conducted the extradition procedure and, if the extradition is approved, to the ministry responsible for internal affairs for implementation.

The decision on refusal of extradition is made by the minister if the prerequisites from Article 7, paragraph 1, items 4) and 5) of the Law are not met (if the request refers to a political criminal offense or an offense related to a political criminal offense, i.e. to a criminal offense consisting exclusively of violation of military duties; if the provision of international legal assistance would violate sovereignty, security, public order or other interests of essential importance for the Republic of Serbia) and if the person whose extradition is requested was not guaranteed a fair trial during the trial in absentia (Article 33).

The Ministry of Justice of the Republic of Serbia, in a letter from the High Court in Belgrade - Special Department for Organized Crime dated 10.05.2022. was notified that in the case of that court Kre Pol I no. 12/22, on 20.04.2022, a decision was made which established that the legal prerequisites for the extradition of Piroğlu Ecevit to the competent authorities of the Republic of Turkey have been met. An appeal was filed against the aforementioned decision and the case was forwarded directly to a higher court - the Court of Appeal in Belgrade for the purpose of deciding on the appeal. The Court of Appeal can confirm, cancel, or modify the first-instance decision.

The court did not assess whether the criminal prosecution against Mr. Piroğlu has a political background and whether it faces the risks of acting contrary to Articles 2 and 3 of the Convention against Torture. Those risks were highlighted in the appeal submitted to the Court of Appeal. Nor were the risks of expulsion or return assessed.

According to the regulations of the Republic of Serbia, a person whose extradition is requested can be in custody for a maximum of one year from the day of detention, and as Mr. Ecevit Piroğlu was ordered to be detained on 25.06.2021, in this particular case he could have been in custody until 24.06.2022 at the latest.

Bearing in mind that the decision of the High Court in Belgrade, Special Department for Organized Crime Kre no. Pol 12/22, Kv. no. Pol 218/22 of 20.04.2022 has not become legally binding, that is, that the extradition procedure has not been legally concluded, and that the maximum duration of extradition detention in the specific case has expired, by the decision of the judge for the preliminary proceedings of the High Court in Belgrade, Special Department for Organized Crime number: Kre-Pol no. 12/22 of 24.06.2022 it was decided in paragraph 1 that the detention of the person whose extradition is requested, Piroğlu Ecevit, should be terminated and that he should be released, and paragraph 11 of the decision determines the measure of prohibition of leaving the place of residence – the territory of the city of Belgrade, his travel document is temporarily taken away and he is ordered to be accommodated in the Reception Centre for Foreigners in Padinska Skela. According to the above, Mr. Ecevit Piroğlu was placed in the Reception Centre for Foreigners on 24.06.2022. The above-mentioned measure was imposed in order to ensure his presence until the end of the procedure on the request of the Republic of Turkey for extradition, thereby limiting his movement and determining his stay under increased police supervision, which is in no way the same as staying in prison.

By decision of the non-trial panel of the High Court in Belgrade - Special Department Kre Pol 12/22 Kv. Pol 381/22 of 14.07.2022, the decision of the judge for the preliminary proceedings of 24.06.2022, on the basis of which he should have been dismissed from the premises of the institution, was revoked. Thus, there was a real danger that Piroglu, who, by cancelling the ban on leaving his place of residence, and bearing in mind that he has no other legal basis for staying in the Republic of Serbia, would be faced with the danger of being ordered, in accordance with Article 77 of the Law on Foreigners of the Republic of Serbia to leave the territory of the Republic of Serbia. However, the Ministry of Internal Affairs of the Republic of Serbia made a decision that, for security reasons, Ecevit Piroglu will continue to be housed in the Reception Centre for Foreigners in Padinska Skela.

The proceedings before the Court of Appeal were postponed on several occasions. The Court of Appeal in Belgrade - Special Division, with its decision KŽ-Pol No. 8/22 of 05.10.2022, revoked the decision of the High Court in Belgrade - Special Department for Organized Crime Kre Pol No. 12/22-Kv Po 1 No. 218/22 of 20.04.2022 for procedural reasons, and returned the case files to the court for a new decision-making procedure on the fulfilment of the legal prerequisites for the extradition of Piroglu Ecevit to the judicial authorities of the Republic of Turkey. Among other things, the aforementioned decision ordered the accurate and high-quality translation of the submitted documents from the Republic of Turkey, since the defence's argument that the documents submitted from Turkey were not properly translated was accepted. The Ministry of Justice of the Republic of Serbia provided a new translation of the documentation and, with a letter dated November 24, 2022, submitted it to the High Court in Belgrade - Special Department for Organized Crime, which will conduct a new decision-making procedure at the request of the Turkish authorities for the extradition of Piroglu Ecevit.

During the extradition proceedings, Piroglu Ecevit sought asylum in the Republic of Serbia, stressing that he was facing persecution in Turkey and that he wanted political asylum. He submitted his application for asylum on 16.07.2021. in the premises of the District Prison in Belgrade, in front of the officials of the Asylum Office. On July 28, 2021, his hearing was held in connection with the submitted request. The Asylum Office issued decision number: 26-1247/21 of November 3, 2021, which rejected the asylum request as unfounded. Ecevit Piroglu, through [REDACTED] filed an appeal to the Asylum Commission against the decision in question. In the appeal procedure, the Asylum Commission rejected the appeal by decision number AŽ-27/21 of 23.12.2021 and confirmed the decision of the Asylum Office. The decision of the Asylum Office became legally binding on May 1, 2022, since a lawsuit against the final decision of the Asylum Office was not filed with the Administrative Court within the legally prescribed period (30 days from the receipt of the decision). On August 22, 2022, he submitted a subsequent application for asylum, which was rejected as inadmissible by the decision of the Asylum Office dated August 30, 2022.

The extradition proceedings against Piroglu Ecevit are still in the judicial decision-making phase. There is no danger that the defendant Ecevit Piroglu will be extradited to the Republic of Turkey before the conclusion of the ongoing court proceedings. This would violate the European Convention on Extradition, the Law on International Legal Assistance in Criminal Matters and the decision of the United Nations Committee against Torture. In the event that the proceedings before the court are legally concluded with the decision that the

prerequisites for extradition have been met, the final decision is made by the Minister of Justice.

1. Regarding the comments on the allegations presented in the joint letter of several special procedures (Working Group on Arbitrary Detention; Special Rapporteur for Minority Issues and Special Rapporteur for the Promotion and Protection of Human Rights and Fundamental Freedoms in the Fight against Terrorism – hereinafter: “the joint letter”), we state that one cannot unconditionally accept the statement made in the joint letter that, quoting: “*Considering the general prevailing circumstances in Turkey, and the special treatment of members of the Kurdish minority and Kurdish political activists there, Mr. Piroğlu has a well-founded fear that he will suffer severe human rights violations if he is forcibly returned there*”.

The Republic of Serbia has friendly relations with all countries and therefore will not evaluate and characterize any government as dictatorial, and for these reasons, it does not want to enter into the risk assessment of “serious violations of human rights”, nor will it do so in the future for any country with which it cooperates. And not only that – the Republic of Serbia will never, regardless of the recommendations of certain institutions, not even the United Nations itself, allow itself to accuse any country *a priori*, that its judiciary is under political pressure, which can always lead to reconsideration of court decisions.

Furthermore, it is inadmissible to express a superficial and arbitrary assessment of the work of the competent authorities of the Republic of Serbia in the joint letter, we quote: “*When deciding on the fulfilment of the legal prerequisites for extradition, the judicial and executive authorities of Serbia, it seems, did not take into account the risks he would face in the event of his return to Turkey, nor did they carry out an appropriate assessment of these risks. As a common practice, these extradition request authorities do not appear to feel obliged to carry out such a risk assessment*”.

2. Detailed information on the factual and legal grounds for the deprivation of liberty of Mr. Piroğlu, as well as the answer to the question of how his detention is compatible with the norms prohibiting arbitrary deprivation of liberty under international law, is presented in the first part of this letter.

3. A question about that **why Mr. Piroğlu was charged with being a member of a terrorist organization** and requesting that the Republic of Serbia declare that this is in accordance with United Nations Security Resolution 1373, by a strict understanding of the definition of terrorism as clarified by the norms of international law, including but not limited to United Nations Security Council Resolution 1566 (2004), it is not a question to which the Republic of Serbia should provide an answer. The Ministry of Justice of the Republic of Serbia is not, nor will it be, involved in analysing the merits of initiating criminal proceedings in any country, especially when it comes to a criminal offense that is characterized in modern legal systems as one of the most serious threats to the survival of civilized society and the foundations on which it rests.

It is sufficient to mention here that the Republic of Serbia and the Republic of Turkey, in the pursuit of further development and strengthening of bilateral relations, concluded the

Extradition Treaty, according to which the **obligation of extradition was assumed**, i.e. that, in accordance with the terms and conditions stipulated in that contract, they will extradite to each other all persons who are being prosecuted for a committed crime, or are wanted for the execution of a sentence or detention order, for all criminal acts for which, according to the legislation of the requesting party and the requested party, the penalty of deprivation of liberty is prescribed for a period of at least one year or a more severe penalty. Despite the above, the Republic of Serbia **did not extradite** Mr. Piroğlu to the Republic of Turkey, but took a number of other measures aimed at respecting the legal guarantees of the abovenamed person.

4. Regarding the request to provide detailed information on **the steps taken by the judicial and other relevant authorities of Serbia** in order to assess **the risks of violation of his rights to life, liberty, personal security**, if Mr. Piroğlu is forcibly returned to Turkey, and as it is in accordance with the obligation of the State of Serbia from Article 3 of the *Convention against Torture* not to forcibly return anyone to their country of origin if there is a risk of torture, we present the following position:

Any person accused of the crime charged against Ecevit Piroğlu could invoke *the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. If terrorists are allowed to invoke their "**human rights**", they can act with the intention of turning the situation to their advantage, that is, to the advantage of crime, terrorism and those who support it. In this case, the issue of "**violation of the right to life, liberty and personal security**" must be taken into consideration with great reserve, because it represents a "**thin line**" that must be determined by each individual state in the fight against terrorism. In this sense, the state has the right, but above all the obligation to protect every individual citizen, who has entrusted his right to life, freedom and personal security to the state institutions of the country in which he/she resides.

5. Regarding information on the legal and procedural protection measures that exist in Serbian criminal procedural law in order to provide asylum seekers with legal guarantees regarding their rights to legal representation, to access, contact and communicate with their families, we inform you that the asylum procedure is regulated by the provisions of the *Law on Asylum and Temporary Protection*. In the specific case, on 08.07.2021, Turkish citizen Ecevit Piroğlu was issued a Certificate of Registration of a Foreigner who expressed his intention to apply for asylum. The request for asylum was submitted on 16.07.2021, after which an oral hearing was held on 28.07.2021 and on November 3, 2021, the Asylum Office issued a decision rejecting the asylum request.

On 18.11.2021, the abovenamed person filed an appeal against the decision on the rejection of the request for asylum, which was rejected by the Asylum Commission on 23.12.2021 as unfounded. The administrative dispute has not been initiated.

On August 19, 2022, the abovenamed submitted a subsequent request for asylum through an attorney, which the Asylum Office rejected with its decision on August 30, 2022. The attorney filed an appeal against the aforementioned decision to the second-instance authority, i.e., the Asylum Commission, on September 12, 2022, and the appeal procedure is ongoing. Bearing in mind all of the above, **all legal guarantees in the asylum procedure were provided, in accordance with Articles 48 and 56 of the Law on Asylum and Temporary Protection.**

6. Regarding the question related to **detailed information about the conditions of detention of Mr. Piroğlu**, regarding his access to food, water, sanitation, health care and access to his lawyer and the outside world, we inform you that **accommodation in the Reception Centre for Foreigners in Padinska Skela** (which is not a detention unit of the Republic of Serbia) is regulated by the Rulebook on house rules and rules of stay in the shelter for foreigners. In accordance with the same, **in relation to the abovenamed, all the rights prescribed in the mentioned sub-legal act, which refer to legal guarantees, accommodation conditions, health care and contact with the outside world, have been respected.**

The Turkish citizen, while in extradition custody, started a hunger strike (from June 4, 2022) and then continued during his stay in the Reception Centre for Foreigners in Padinska Skela. In connection with this, i.e., in order to perform health examinations, the named was taken about 15 times by the police officers of the Reception Centre for Foreigners in Padinska Skela for health examinations to the competent health institutions. In order to check the state of health on September 6, 2022. Ecevit Piroğlu was placed in the Emergency Centre in Belgrade. After providing medical assistance, the person on 09.09.2022. was discharged from the Emergency Centre in Belgrade and returned to the Reception Centre for Foreigners in Padinska Skela, and then regular controls were carried out to monitor the situation. Also, on 20.10.2022, he started with a special diet and then, after adjustment, with a normal diet.

Please note that the person's attorney has regular contact with the named person, as well as other family members, who visit him in the Reception Centre. He is also allowed regular telephone communication both with the attorney and with family members.

7. Regarding the issue related to the conclusion that **Mr. Piroğlu represents a threat to the national security of the State of Serbia** and that there is a risk of flight, which the Serbian authorities call upon to, as stated in the joint letter, "justify" the deprivation of liberty pending extradition, we inform you that on July 14, 2022, the Security Information Agency submitted a document to the Ministry of Internal Affairs of the Republic of Serbia str.pov.12-88535 in which it was stated that the citizen of Turkey, Ecevit Piroğlu, represents a danger to the security of the Republic of Serbia, and that it is necessary for the named person to be placed in the Reception Centre for Foreigners in Padinska Skela, in accordance with Article 87 of *the Law on Foreigners*, until the end of the security checks.

In accordance with the above and in connection with the question, we inform you that Article 9, paragraph 1 of *the Law on Foreigners* prescribes that **in the process of deciding on the rights and obligations of a foreigner in connection with entry and stay in the territory of the Republic of Serbia the authority responsible for protecting the security of the Republic of Serbia and its citizens assesses whether the stay of foreigners on the territory of the Republic of Serbia represents an unacceptable security risk.**

Bearing in mind that the act of the Security Information Agency states that the named citizen of Turkey poses a threat to the security of the Republic of Serbia and that it is necessary for him to be placed in the Reception Centre for foreigners in Padinska Skela until the end of all security checks, as well as the provisions of Article 9, paragraph 8 of the Law on Foreigners, where there is an **obligation of the competent authority, in the specific case of the Ministry of Internal Affairs, to make a decision in accordance with the assessment**, which in this particular case was done by the decision of the Police Administration for the City of Belgrade - Administration for Foreigners 03.15.52 No. 26.2-13/22 of 14.07.2022 which

determined the stay in the Reception Centre for Foreigners in Padinska Skela and it was extended by the decision of the Border Police Administration No. 26-367/22 of September 30, 2022.

In the specific case, there is no deprivation of liberty, but rather the placement of the person in the Reception Centre for Foreigners, which is a facility for the accommodation of foreigners who are not allowed to enter the country or for which a decision has been made on their expulsion, removal from the country or on return, but it is not possible to remove them immediately and who, in accordance with the law, have been ordered to stay under increased police supervision.

8. In connection with the request for the submission of information on the measures taken by the Government of the Republic of Serbia to protect the rights of political activists in the Republic of Serbia, the possibility to guarantee protection and that they are able to perform their legitimate work in a safe and suitable environment, without fear of torture and persecution, criminal prosecution, criminalization and arbitrary deprivation of liberty, we state that the Republic of Serbia affirms its commitment to respect for human rights and fundamental freedoms, with the purpose of which the Convention against Torture and Other Cruel, Inhuman and Degrading Actions or Punishments was adopted.

However, with all due respect to the jurisdiction of several special procedures (Working Group on Arbitrary Detention; Special Rapporteur for Minority Issues and Special Rapporteur for the Promotion and Protection of Human Rights and Fundamental Freedoms in the Fight against Terrorism), who announced their joint letter, we note that their decisions are not legally binding.

Also, the Ministry of Justice respects the activities of non-governmental organizations, human rights activists, but cannot support their intention to engage in evaluating the actions of the current government in the Republic of Turkey.

Based on all of the above, we emphasize that the Republic of Serbia applied all the rules of legal procedure to Ecevit Piroğlu, in a legal manner, as well as to any other person, i.e., he was not discriminated against in any way, nor was any of his rights violated.

MINISTER

Maja Popović

Belgrade, 16 March 2023
Doc.No.129/23

END OF TRANSLATION

I CERTIFY HEREWITH, that the above document is a true translation of the original which was submitted to me in Serbian language.

Predrag Momirović
Court Interpreter for English and Arabic
Decision on Appointment 740-06-298/2003-04

