

Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA KSV 1/2017

27 November 2017

Dear Mr. Haradinaj,

We have the honour to address you in our capacity as Special Rapporteur on the human rights of migrants and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/21 and 34/19.

In this connection, I would like to bring to your attention information we have received concerning the alleged imminent deportation of Turkish national, Mr. **Ugur Toksoy** from Kosovo to Turkey where he is likely to face detention, prosecution and, potentially, serious human rights violations.

According to information received:

On 27 October 2017 at 17:30 pm, the Prizren Regional Investigation Unit arrested Mr. Ugur Toksoy, a Turkish citizen, born in 1977 in Prizren, Kosovo. Mr. Toksoy is an employee of the Atmosfera Educational Foundation Prizren.

The arrest was carried out on the basis of a Turkish arrest warrant issued on 22 September 2017 under the criminal offense of “Membership in an Armed Terrorist Organization” and transmitted to the Regional Police Headquarters of Prizren by the Kosovo Police Liaison Office for International Cooperation in the Field of Law Enforcement (ILECU). The on call prosecutor issued a detention decision for 48 hours, starting from 27 October 2017, at 17:30 pm.

A court hearing was scheduled for 28 October 2017, at 11 am at the Prizren Basic Court to consider the Turkish authorities’ request to extradite Mr. Toksoy to Turkey for the criminal offence mentioned above and for his subsequent trial in Turkey. Mr. Toksoy was represented by a lawyer, and the judge ordered a prolongation of detention for another 10 days.

Mr Toksoy has subsequently filed an asylum claim in Kosovo.

It has also been reported that 25 Turkish citizens currently residing/working in Kosovo are on the list of Turkish authorities for request of their extradition to Turkey.

While we do not wish to prejudge the accuracy of these allegations we are concerned that the forcible return of Mr. Tuksoy to Turkey may result in serious violations of his human rights to liberty, security, integrity and fair trial in contravention to the Universal Declaration of Human Rights (UDHR, Articles 3, 5, 9, 14) and the International Covenant on civil and political rights (ICCPR, Articles 7, 9, 13, 14, 18, 19 and 22) and the Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT, in particular Article 3), which are applicable in Kosovo and part of its international human rights obligations.

We are drawing your attention to the fundamental international protection principle of non-refoulement, which is enshrined in several key human rights treaties, in particular CAT (Article 3) and the Convention on the status of refugees (Article 33). In our assessment, should Mr. Tuksov be returned to Turkey, there is a serious risk for him to be subjected to arbitrary detention, to a trial falling short of internationally recognized judicial guarantees, and possibly to torture or other forms of ill-treatment.

We are also drawing your attention to the absolute and non-derogable nature of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as well as the recognition of the prohibition of torture as an international norm of jus cogens in a wide range of international instruments including, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. Likewise, the principle of non-refoulement is universally recognized as a principle of international customary law and, as such, constitutes an indispensable component of the customary prohibition on torture and other cruel, inhuman and degrading treatment or punishment.

Paragraph 16 of the Resolution A/RES/65/205 of the United Nations General Assembly urges States “not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture”. Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States “not to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, [...]”

Finally, we would like to recall the thematic report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/25/60), which states that the non-refoulement obligation is a specific manifestation of the more general obligation of States to ensure that their actions do not lead to a risk of torture anywhere in the world.

The full texts of the human rights instruments and standards referred to 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 to safeguard the rights of Mr. Toksoy in compliance with applicable international standards.

As it is our responsibility, under the mandates bestowed upon 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 detailed information on how the assessment of the risks faced by persons who are the subject of extradition requests is undertaken, both in terms of procedural safeguards, and analysis of the country of return situation, so as to ensure that individuals will not be subjected to violations of their fundamental rights and freedoms upon return.
3. Please provide detailed information on how this assessment is conducted with regard to Mr. Toksoy and other Turkish nationals currently residing in Kosovo.
4. Please provide information regarding any legal, procedural and other safeguards to prevent forcible deportations from Kosovo towards any country or territory where the deportee may be at risk of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

While awaiting your reply, we respectfully urge that Mr. Toksoy, and all other Turkish nationals residing in Kosovo are not forcibly returned to Turkey, pending the proper assessment of the risks they may face if deported.

Given the seriousness of the risks faced by Mr. Toksoy and other Turkish nationals should they be deported by Kosovo to Turkey, we may express our concerns publicly in the near future as we are of the view that the information in our possession on the basis of which our concerns are expressed in this letter, is sufficiently reliable to indicate a matter warranting immediate attention. Any public statement on our part will indicate that we have been in contact with you to clarify the case and seek assurances that the rights of Mr. Toksoy are effectively protected.

Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Haradinaj, the assurances of our highest consideration.
Felipe González Morales
Special Rapporteur on the human rights of migrants

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