

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL KSV 1/2018

18 May 2018

Dear Mr. Haradinaj,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 36/6, 34/21, 31/3, and 34/19.

In this connection, we would like to bring to your attention information we have received concerning the **allegations of arbitrary arrest and detention in Kosovo¹ and illegal deportation to Turkey, as well as short-term enforced disappearance, of six Turkish nationals working for educational institutions allegedly linked to the Hizmet/Gulen movement.**

Related concerns about the use of counter-terrorism legislation and emergency decrees to conduct allegedly arbitrary arrests and detentions, and the alleged torture and ill-treatment of persons in police custody accused of terrorist offenses or involvement in the attempted coup of 15 July 2016, have been raised by Special Procedures mandate holders in a communication sent on 27 November 2017 (UA KSV 1/2017) concerning the alleged imminent deportation of Turkish national, Mr. Ugur Toksoy from Kosovo to Turkey. We remind you that a reply is awaited and is still of interest.

¹ All references to Kosovo in the present document should be understood to be in compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

According to the information received:

On 29 March 2018, at 8am, six male Turkish nationals, namely Mustafa Erdem, Yusuf Karabina, Kahraman Demirez, Cihan Özkan, Hasan Hüseyin Günakan and Osman Karakaya, whose residence in Kosovo had been irregularly revoked a few days before, were arrested by Kosovo Border Police in Gjakova and Prizren on their way to work at Mehmet Akif schools and brought to the Police station in Pristina. Kosovo Police denied the detainees' access to their attorneys and refused to provide any information on the grounds for detention and further proceedings. On the same date of their arrest, the six Turkish nationals were deported from Kosovo to Turkey, due to allegations of illegal residence in Kosovo.

Previously, on 23 March 2018, the Department of Citizenship, Asylum and Migration of the Ministry of Internal Affairs revoked irregularly the residence permits of the six Turkish nationals, based on a supposed threat to national security, as established by art. 6 of the Law No. 04/L-219 on Foreigners.

For two days, the six Turkish nationals were held incommunicado, with their attorneys and families not being able to receive credible information about their whereabouts. On 31 March 2018, the families received information from their relatives in Turkey that the six Turkish nationals had been deported to Turkey on 29 March 2018 and were at the Police department of terrorist crimes in Istanbul. The relatives in Turkey have managed to see them.

High-level authorities in Kosovo stated not knowing about the deportation of the six Turkish nationals. On 30 March 2018, the Prime Minister of Kosovo dismissed the director of the Kosovo Intelligence Agency and the Minister of Internal Affairs. In response, the President of Turkey accused the Prime Minister of Kosovo of "protecting those who work to stage a coup against the Turkish Republic". On 31 March 2018, the Prime Minister of Kosovo announced an investigation of all structures that were involved in arresting and deporting the six Turkish men. On 4 April 2018, the Kosovo Assembly launched a parliamentary inquiry into the deportation of the six Turkish nationals, i.e. to determine whether it complied with the Kosovo Constitution and applicable laws.

In addition, on 29 March the Ombudsperson in Kosovo (OiK) initiated an ex officio investigation into the deportation of the six Turkish nationals. According to the findings of OiK, contained in its report released on 27 April, the six Turkish citizens were deprived of their rights to be heard and tried by a competent public authority, and denied the right to exercise legal remedies, in violation of the Kosovo Constitution. OiK concluded that Kosovo authorities failed to conduct an assessment on guarantees against torture and ill-treatment in Turkey, and therefore Kosovo authorities exposed the six Turkish citizens to real risk of being tortured, by forcibly removing them from Kosovo territory to Turkey. In its recommendations, the OiK advised the Ministry of Internal Affairs and Ministry of Justice to enforce all guarantees and procedures provided by the Kosovo

Constitution when assessing the status of foreigners. Moreover, the OiK recommended the government of Kosovo to allocate appropriate non-material compensation as recognition of human rights violations committed in this case in line with Art. 41 of the European Convention on Human Rights.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the alleged arbitrary arrests and illegal deportations of the six Turkish nationals are linked to the crackdown by Turkish authorities against the Hizmet/Gulen movement, which has been accused of plotting the 15 July 2016 failed coup d'état in Turkey. We are concerned that the six Turkish nationals were arrested and deported to Turkey for their alleged connection to Hizmet/Gulen movement, as part of a secret joint operation of the Turkish National Intelligence Organization and the Kosovo Intelligence Agency, reportedly without any due process guarantees.

We are also concerned that in five of the six cases, according to multiple sources, the arrests seem to have been conducted based on the irregular revocation of legal residence permits, citing national security threat concerns, without providing justification and without ensuring access to justice (e.g. access to a competent administrative or judicial authority) for the victims to challenge the revocation. Furthermore, detention for migration purposes must be the exception, and in order to uphold the absolute and non-derogable principle of *non-refoulement*, an in-depth individual risk assessment must be conducted in order to determine the protection needs of persons concerned, to ensure *inter alia* that there are no reasonable grounds to believe that the persons will be subjected to torture and other inhuman or degrading treatment in the country where they are sent to.

We are further concerned by the fact that the six Turkish nationals did not have access to legal representation while detained in Kosovo to challenge the grounds for and the legality of their detention and immediate deportation. The notion of national security threat cannot be used to deny access to legal aid and does not justify arbitrary nor incommunicado detention. Moreover, the fact that high-ranking representatives of the Executive in Kosovo were not aware of the arrests and deportations, which were conducted by intelligence agents, raises serious concerns as to the lawfulness and due process guarantees of the operation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations;

2. Please provide information on the legal grounds for the arrest and deportation of the six individuals, and how these measures, and similar operations for the arrest and deportation of Turkish nationals residing in Kosovo, are compatible with international norms and standards;
3. Please indicate if legal guarantees are provided to them to ensure access to a fair procedure, i.e. access to timely and adequate consular assistance, legal representation/lawyer, family and a doctor, among others;
4. Please provide detailed information about the measures taken by your Government to effectively protect, in law, procedures and practice, individuals from ill-treatment and torture while in police custody;
5. Please provide detailed information as to how comprehensive individual risk assessments are carried out, 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 upon return.
6. Please provide information on any safeguards in place and measures taken to avoid deportation, or forcible return of these individuals, in particular those holding an asylum seeker certificate, to countries where their personal security, integrity and lives may be at risk.
7. Please provide information on measures adopted by Kosovo authorities to ensure the right of persons to effective remedy for human rights violations, including arbitrary arrest, illegal detention and deportation, torture and ill-treatment.

We would appreciate receiving a response within 60 days. Your response will be made available in a report to be presented to the Human Rights Council for its consideration.

While waiting a reply, we urge authorities concerned to stop and prevent the deportation of individuals to countries where they may be at risk of being subjected to torture and other cruel, degrading or inhumane-treatment or other serious human rights violations, without a proper individual assessment of the risks they may face in respect of their rights under international human rights law.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) 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 Government to clarify the issue/s in question.

We would like to inform that after having transmitted this allegation letter, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure, in order to render an opinion on whether a deprivation of liberty was arbitrary or not. This communication in no way prejudices any opinion the Working Group may render. A separate response for the urgent appeal procedure and the regular procedure will be required.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Felipe González Morales
Special Rapporteur on the human rights of migrants

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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

Annex
Reference to international human rights law

We would like to remind Kosovo its obligation of ensuring the absolute protection against torture as entailed in articles 2 and 16 of the Convention against Torture (CAT), as well as Article 7 of the International Covenant on Civil and Political Rights (ICCPR). Even though Kosovo is not a party to any of the international conventions of human rights, Article 22 of its Constitution foresees the direct applicability of international human rights conventions. By incorporating these instruments into the Constitution, the legal system and the authorities of Kosovo shall be obliged to adhere to them. The universal prohibition of torture and other ill-treatment has become a peremptory norm of international customary law. It is non-derogable and, therefore, continues to apply in situations of internal political instability or any other public emergency. No justification whatsoever may ever be invoked to justify its perpetration.

In this regard, we recall Article 3 of CAT, according to which no State Party shall expel, return (“refouler”) or extradite a person to another State, when there are substantial grounds for believing that he or she would be in danger of being subjected to torture, inhuman or degrading treatment or other serious human rights violations. Furthermore, we would like to draw your attention to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33 of the 1951 Convention stipulates that no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

We would also like to refer to article 13 of ICCPR, which provides that “an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” In its General Comment XV, the Human Rights Committee reaffirms this principle (Paragraphs 9 and 10).

In addition, we would like to bring to your attention articles 9, 14, 19 and 22 of ICCPR, which establish the right not to be deprived arbitrarily of liberty, the guarantees of due process, and the protection of the rights to freedom of opinion and expression, as well as freedom of association, respectively, and which note that no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (“ordre public”), the protection of public health or morals or the protection of the rights and freedoms of others.

We would also like to bring to your attention the revised deliberation No. 5 of the Working Group on Arbitrary Detention, which states that any form of administrative detention or custody for migrants must be used as an exceptional measure of last resort,

for the shortest period and only if justified by a legitimate purpose. Moreover, persons detained in the course of migration proceedings enjoy as a minimum the same rights as those detained in the criminal justice or other administrative context.

We also refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, which require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

The Declaration on the Protection of All Persons from Enforced Disappearances establishes that no State shall practice, permit or tolerate enforced disappearances (Article 2) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). It also proclaims that each State shall ensure the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest (Article 10). In addition, Article 8 provides that no State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.