



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 19 July 2018

A/TO: UNMIK

Mr. Zahir Tanin

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REF: UA KSV 2/2018

PAGES: 6 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

OBJET/SUBJECT: **JOINT URGENT APPEAL FROM SPECIAL PROCEDURES**

Please find attached a joint urgent appeal sent by the Working Group on Arbitrary Detention; 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.

We would be grateful if this letter could be transmitted at your earliest convenience to Kosovo authorities.

Mandates of the Working Group on Arbitrary Detention; 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:
UA KSV 2/2018

19 July 2018

Dear Mr. Haradinaj,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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, 34/21, 31/3 and 34/19.

In this connection, we would like to bring to your attention information we have received concerning the **alleged imminent deportations of two Turkish nationals from Kosovo¹ to Turkey, where they are likely to face detention, prosecution and, potentially, torture or other cruel, inhuman or degrading treatment, for their perceived affiliation to the Hizmet/Gulen movement.**

Related concerns about the reported deportations of Turkish nationals from Kosovo to Turkey have been raised by Special Procedures mandate holders in two communications sent on 18 May 2018 (AL KSV 1/2018) and 27 November 2017 (UA KSV 1/2017). We regret that we did not receive any response to these communications to date and reiterate that a reply is awaited to each of them.

According to the information received:

Case of Mr. Hasan Huseyin Demir

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.

On 29 March 2018, the General Police Directorate of the Ministry of Internal Affairs in Kosovo issued deportation orders against six Turkish nationals, whose residence permits were previously revoked by the Department of Citizenship, Asylum and Migration of the Ministry of Internal Affairs on 23 March 2018, because they were considered to be threats to the national security of Kosovo.

Mr. Hasan Huseyin Demir, Deputy Director General of Gulistan Educational Institutions in Kosovo, was listed amongst the individuals to be deported.

On the same day, six Turkish citizens were arrested by Kosovo Border Police forces and forcibly removed to Turkey. However, instead of Mr. Hasan Huseyin Demir, another person was mistakenly arrested and subsequently deported to Turkey because his name resembled Mr. Demir's.

Mr. Demir appealed against the decision of revocation of the resident permit and the order for deportation. However, the Commission of the Ministry of Internal Affairs refused the appeal on 4 May 2018. In parallel, Mr. Demir filed an asylum claim with the Department of Citizenship, Asylum and Migration of the Ministry of Internal Affairs. Asylum was granted on 6 April 2018.

Despite having been granted asylum, Mr. Demir remains at high risk of being forcibly returned to Turkey.

Case of Mr. Ugur Toksoy

Mr. Toksoy was the subject of a communication sent to the authorities of Kosovo on 27 November 2017 (UA KSV 1/2017). According to the latest information received, Mr. Toksoy and his family were granted asylum on 28 March 2018. However, in the morning hours of 29 March 2018, police and intelligence officers reportedly attempted to arrest Mr. Toksoy at his residence in order to deport him to Turkey together with the six Turkish nationals mentioned above. However, Mr. Toksoy was not at home and his arrest could not be carried out. Mr. Toksoy allegedly also remains at high risk of being forcibly returned to Turkey.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the risk of imminent forcible returns of Mssrs. Demir and Toksoy to Turkey may place them at serious risks of being subjected to arbitrary arrest and detention, and possibly torture or other forms of ill-treatment.

As indicated in our previous communications mentioned above, this is not the first time that Turkish nationals residing legally in Kosovo, and who have furthermore been granted political asylum, are being reported to be deported to Turkey, allegedly at the request of Turkish authorities. Beyond these specific cases, we are seriously concerned

that any Turkish national suspected of supporting or being associated with the Hizmet/Gulen movement, if deported to Turkey, may be exposed to a real risk of torture or other ill-treatment. We thus call on the authorities of Kosovo to promptly carry out a thorough review of their current policy of forcible return of Turkish nationals to Turkey, so as to bring it in conformity with fundamental norms of international human rights law applicable in Kosovo.

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Orders of deportation seem to have been issued based on the irregular revocation of legal residence permits, citing national security threat concerns without providing evidence justifying these measures of expulsion. The forcible return of Mssrs. Demir and Toksoy to Turkey may result in serious violations of their human rights to liberty, personal security, integrity and fair trial in contravention of the Universal Declaration of Human Rights (UDHR, Articles 3, 5, 9 and 14), 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 underscore the fundamental international protection principle of non-refoulement, which is enshrined in several key human rights treaties, in particular CAT (Article 3) and the 1951 Convention on the status of refugees (Article 33).

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 of torture and other cruel, inhuman or degrading treatment or punishment.

Finally, we would like to refer to the thematic report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/37/50, paras. 38-44), which outlines the substantive and procedural obligations arising from the non-refoulement principle with a view to ensuring that the actions of States do not lead to a risk of torture anywhere in the world.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate your response on the initial steps to safeguard the rights of Mssrs. Demir and Toksoy in compliance with international instruments.

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 factual and legal grounds for revocation of the resident permit and order for deportation of Mssrs. Demir and Toksoy, and how these measures are compatible with international human rights norms binding on Kosovo.
3. Please provide information on the factual and legal basis (whether national security or other measures) that are being used to justify the order of deportation of these persons.
4. 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.
5. 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.
6. 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 and detention, illegal deportation, torture and ill-treatment.

While awaiting a reply, we urge the authorities concerned to stop and prevent the deportation of Mssrs. Demir and Toksoy and all other Turkish nationals residing in Kosovo to Turkey without a proper individual assessment of the risks they may face in respect of their rights under international human rights law.

We would like to inform you that after having transmitted an urgent appeal, the Working Group on Arbitrary Detention may eventually transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render.

This communication and your response will be made publicly 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.



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



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

