

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

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Excellency,

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 the attention of your Excellency's Government information we have received concerning the **alleged forcible return from Azerbaijan to Turkey, of Turkish asylum seekers Mr. [REDACTED] and Mr. [REDACTED]**. We also refer to serious allegations indicating that Mr. [REDACTED] was subjected to torture while in detention in Azerbaijan, prior to his deportation.

According to the information received:

[REDACTED]

On 26 April 2018, Mr. [REDACTED], a Turkish national resident of Batumi, Georgia, was seized in front of the Baku Court on Grave Crimes, located in Baku, Azerbaijan, by four agents of the Azeri State Migration Service and four members of the Azerbaijani intelligence agency using a black Range Rover vehicle. There were witnesses to his abduction.

It is believed that Mr. [REDACTED] abduction was a coordinated action between the Governments of Azerbaijan and Turkey, as Mr. [REDACTED] was then forcefully repatriated to Turkey.

Mr. [REDACTED] had been brought before the Court on 26 April 2018 for a hearing related to charges brought against him in 2017. The events reportedly took place as follows:

Mr. [REDACTED] was arrested on 20 April 2017 at the Kirmizi Kopru (Red Bridge) Border Crossing point between Georgia and Azerbaijan by the Azerbaijani border police, who informed him that his passport was invalid.

He was then charged for unlawful entry and sentenced to one year in prison by the Gazakh District Court in Azerbaijan.

After his arrest, Mr. [REDACTED] applied for asylum in Azerbaijan because he did not want to be extradited to Turkey due to fears of facing torture and ill-treatment there. However, Azerbaijan rejected his asylum application. On 22 April 2017, his lawyer also made an application to the UNHCR in Azerbaijan.

While Mr. [REDACTED] was serving his sentence, however, the Turkish Government lodged a request to Azerbaijani authorities for his extradition to Turkey, on charges of alleged membership to the Hizmet/Gülen Movement, classified as a terrorist organization by Turkey under the assigned names Gülenist Terror Organisation (Fethullahçı Terör Örgütü, FETÖ) or Parallel State Organisation (Paralel Devlet Yapılanması, PDY) since 11 December 2015.

The hearing on 26 April 2018 aimed to determine whether to release Mr. [REDACTED] or to continue to remand him in detention prior to his extradition to Turkey, as requested by the Turkish Government. After hearing arguments from the Azerbaijani Ministry of Justice and the Office of the General Prosecutor Office on the request to extradite Mr. [REDACTED] to Turkey, the court decided to drop the charges against Mr. [REDACTED] and order his immediate release.

After the abduction of Mr. [REDACTED] outside the Court on 26 April 2018, and since no information was provided by the Azeri authorities on his fate or whereabouts, the case was submitted to the Working Group on Enforced or Involuntary Disappearances. The Working Group transmitted the case to the Government of Azerbaijan under its urgent action procedure on 2 May 2018. In accordance with its methods of work, the Working Group also sent a copy of the case to the Governments of Turkey and Georgia.

No information was received from the Government of Azerbaijan concerning this case. However, information submitted by the Government of Turkey confirmed that Mr. [REDACTED] had been transferred "via police cooperation" from abroad and was now in detention in Turkey, on accusations of being a member of an armed terrorist organization.

New information has been received detailing Mr. [REDACTED] abduction, disappearance, and alleged arbitrary detention, including details of being tortured while in detention in Azerbaijan. It is indicated that the torture included electric shocks, as well as threats against members of his family, in an effort to coerce Mr. [REDACTED] to 'voluntarily' return to Turkey.

Mr. [REDACTED]

On 3 November 2018, Mr. [REDACTED], a Turkish national and asylum-seeker in Azerbaijan, was detained at the Minsk airport (Belarus) when travelling from Tbilisi (Georgia) to Belgrade (Serbia), in search for a safe country due to fear of deportation to Turkey as an alleged sympathizer of the Hizmet/Gulen movement, classified as a terrorist organization by Turkey. Based on the information available, he was then forcibly returned to Azerbaijan.

On 21 December 2018, Mr. [REDACTED] was summoned to the Immigration Police Department of Azerbaijan for extension of his residence in Azerbaijan. There, he was informed that he was on Interpol's "wanted" list and would not be released unless a representative from the Turkish Consulate would come to the Directorate. Despite his counsel's intervention, claiming that the authorities had no legal grounds to hold Mr. [REDACTED] due to his family's asylum-seeker status, which was also confirmed by the General Immigration Office, the Immigration Police Department arbitrarily held Mr. [REDACTED] and seized his passport. At around 8.00 p.m., Mr. [REDACTED] was handed over to representatives from the Turkish consulate in Baku, who drove him away in a Turkish diplomatic car, without providing any explanation to his attorney. From that moment on, Mr. [REDACTED] phone went off and his wife could not reach him.

On 22 December 2018 in the afternoon, it was reported that Mr. [REDACTED] was kept in the Kurdexani immigration center. He then appeared before the Office of the Prosecutor in Xatai. His attorney met Mr. [REDACTED] there and learned that a deportation hearing had been scheduled for 24 December 2018.

Although on 24 December 2018 the court ruled for a one-month pre-extradition detention of Mr. [REDACTED], on 28 December his lawyer was unexpectedly summoned for an urgent hearing on Mr. [REDACTED] immediate deportation to Turkey. According to the information received, Mr. [REDACTED] was acquitted and the request for extradition was not accepted. However, as he was leaving the courthouse he was forcefully pushed into a car by individuals believed to be state agents of Azerbaijan and Turkey and was immediately placed under custody of Turkish consular personnel in Baku. Footage of his alleged abduction was distributed widely and became viral, including on social media.

On 29 December 2018, the Turkish president praised Azerbaijan publicly for its "cooperation" in the deportation of Mr. [REDACTED] to Turkey.

On 30 December 2018, Mr. [REDACTED] lawyer met Mr. [REDACTED] at the Turkish Police Headquarters in Ankara. Mr. [REDACTED] told his lawyer that after the court hearing he was taken back to the immigration centre by the Azerbaijani Immigration Police. On 29 December 2018, the Immigration Police handed him over to the Turkish Interpol Police at Baku airport. The latter interrogated him, forcing him to give false confessions.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the forcible returns of Mr. [REDACTED] and Mr. [REDACTED], have resulted in them

being subjected to arbitrary arrest and detention, and possibly torture or other forms of ill-treatment in Turkey. If this information is correct, their deportation would be in contravention to Article 3 of the Convention against Torture (CAT) which stipulates that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." We are also deeply concerned at information indicating that during Mr. Ceyhan's short term enforced disappearance in Azerbaijan, he was tortured in an effort to coerce him to 'voluntarily' return to Turkey. We are all the more concerned that both men were seeking political asylum out of fear of being arrested, detained and possibly tortured in Turkey, given that Azerbaijan ratified the 1951 Refugee Convention and its additional protocol on 12 February 1993; and that in both cases, Azerbaijan courts had turned down Turkey's requests for extradition and had ordered their release.

This is not the first time that Turkish nationals residing in Azerbaijan, and who have been identified as persons seeking/in need of international protection, are being deported to Turkey 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, is being deprived of his or her liberty, detained arbitrarily, and may be exposed to a real risk of torture or other ill-treatment. We thus call on the authorities of Azerbaijan 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 Azerbaijan, and refrain from extraditing or otherwise deporting Turkish asylum seekers and others to any country, including Turkey, where they may be arbitrarily deprived of their liberty and may face the risk of being tortured or otherwise ill-treated.

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 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 basis (whether national security or other measures) that were used to justify the return of these persons to Turkey, and how this is consistent with Azerbaijan's obligations under the international treaties it has ratified, including the Convention against Torture and the the Convention relating to the Status of Refugee.
2. Please provide detailed information as to how comprehensive individual risk assessments, in the context of either refugee status determination or requests for extradition or deportation, are carried out, both in terms of

procedural safeguards and analysis of the country of return situation, so as to ensure that individuals are not subjected to violations of their fundamental rights upon return.

3. Please provide information on measures adopted by Your Excellency's Government to ensure the right of persons to effective remedy for human rights violations, including enforced diapperances, arbitrary arrest and detention, illegal deportation, torture and ill-treatment.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 would like to inform your Excellency's Government that the Working Group on Arbitrary Detention has also transmitted the case of Mr. [REDACTED] through its regular procedure in order to render an opinion on whether his deprivation of liberty was arbitrary or not. The transmission of the present joint allegation letter in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to remind your Excellency's Government of the principle of non-refoulement as codified in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Azerbaijan ratified in 1996. Article 3 of the Convention stipulates that "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." In addition, in its General Comment No. 20, the Human Rights Committee states that in order to fulfill the obligations under Article 7 of the International Covenant on Civil and Political Rights, "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement."

In this regard, we would like to stress that under international human rights law, non-refoulement entails an absolute prohibition on removing a person to a country where they are at risk of torture or cruel, inhuman and degrading treatment or punishment or other serious human rights violations such as en-forced disappearance, risks to life in the absence of necessary medical care and violations of the rights of the child. States should guarantee that all migrants who require protection in this context are not left in a legal limbo, and should ensure that they are granted a legal status.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in **Articles 2 and 16 of the Convention against Torture** and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),

We would like to draw your Excellency's Government attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we would like to recall the prohibition to practice, permit or tolerate enforced disappearance (Article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (Article 3); 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); 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, and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (Article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (Article 12).

We also make reference to Article 8 of the Declaration, which establishes 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. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Furthermore, we would like to draw your Excellency's Government's attention to Articles 9 and 10 of the Universal Declaration of Human Rights, and Articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), guaranteeing the rights not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal.

Additionally, we would like to refer to Article 6 of the ICCPR which guarantees right to life. We would like to further highlight paragraph 4 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats".

