

**Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolution 40/16.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged impending forcible return from Hungary to the Syrian Arab Republic of Mr. [REDACTED], who is currently being held in the Nyírbátor Immigration Detention Centre in Hungary. Mr. [REDACTED] is a legal resident of Cyprus and the family member of a British-Cypriot citizen. I also refer to serious allegations indicating that if Mr. [REDACTED] is forcibly returned to Syrian Arab Republic, he will be at risk to be subjected to torture or killing.

According to the information received:

Mr. [REDACTED] is a citizen of the Syrian Arab Republic, who resided in Cyprus on a Cypriot residence permit since 2006 and married a British-Cypriot citizen in 2008. He is a father to two daughters aged six and nine. In August 2015, he learned that members of his family – his elderly parents among them – were fleeing Syria to seek refuge in Europe. In order to provide support for his family, Mr. [REDACTED] left Cyprus in late August 2015 to assist them with their journey.

On 15 September 2015, the Hungarian authorities closed and erected a fence at the Serbian-Hungarian border crossing, resulting in the amassing at the border of hundreds of refugees and migrants seeking entry into or safe passage through Hungary.

On 16 September 2015, Mr. [REDACTED] and his family arrived at that same border crossing. Based on publicly available videotape, Mr. [REDACTED] asked the Hungarian police stationed at the border for safe passage, using a megaphone and speaking in English. He sought to calm the crowd as they grew restless and spoke directly to the Hungarian police about allowing the refugees and migrants to pass. Clashes subsequently broke out between the Hungarian police and the refugees and migrants, resulting in multiple injuries and arrests.

On 19 September 2015, Mr. [REDACTED] was arrested in Hungary and charged with an "act of terrorism" for allegedly attempting to induce the Hungarian police to open the border fence and for throwing some objects during the disturbance. Of the eleven people charged for alleged criminal conduct related to the disturbance on

16 September 2015, Mr. [REDACTED] was the only person charged with a terrorism-related offence.

On 30 November 2016, Mr. [REDACTED] was convicted for committing an “act of terrorism” as defined under Section 314 of the Criminal Code of the Republic of Hungary and was sentenced to 10 years in prison plus post-sentence exclusion from Hungarian territory for 10 years. On 15 June 2017, an appeals court annulled the verdict and ordered a retrial.

In October 2017, the Hungarian authorities launched an alleged vilification campaign against Mr. [REDACTED], including through the 2017 “National Consultation” survey that was sent to the households of all eligible voters in Hungary (about eight million people) by the government. Contrary to the June 2017 verdict of the appeal court, the survey falsely described Mr. [REDACTED] as a convicted criminal who attacked the Hungarian border. This public incrimination continued through Mr. [REDACTED]’s retrial, with, for example, the official Hungarian government Facebook page creating an album of photos entitled “[REDACTED] is a terrorist” before he was convicted.” Allegedly, the authorities purposely labelled Mr. [REDACTED] as a convicted criminal for political gain in its quest to turn public opinion against refugees and migrants. Such official public statements have violated the fairness of the proceedings; in particular, Mr. [REDACTED]’s right to be presumed innocent.

On 20 September 2018, with strong influence being brought to bear on the trial Court by the alleged vilification campaign against Mr. [REDACTED], his retrial ended with conviction for “complicity in an act of terror” under Section 315 of the Criminal Code of the Republic of Hungary, a sentence of five years’ imprisonment, and exclusion from Hungary for a period of 10 years. While delivering that final judgment, the judge acknowledged that Mr. [REDACTED] had in fact tried to calm the crowd and mediate between the police and the refugees and migrants.

Furthermore, given that the Hungarian statutory definition of terrorism contains an overbroad and vague offence of an “act of terrorism” the retrial court applied a disproportionate and vague standard against Mr. [REDACTED]. The definition and its application violates the human rights treaty requirements to which Hungary is bound that an offence must be clearly defined in law and that laws must be sufficiently clear for individuals to regulate their conduct. Accordingly, Mr. [REDACTED]’s conduct cannot reasonably be considered complicity in an “act of terrorism”.

According to Section 314(1) of the Criminal Code of the Republic of Hungary, “terrorism” is defined as follows:

(1) Any person who commits a violent crime against the persons referred to in Subsection (4) or commits a criminal offense that endangers the public or involves the use of arms in order to:

a) coerce a government agency, another State or an international body into doing, not doing or countenancing something;

b) intimidate the general public;

c) conspire to change or disrupt the constitutional, economic or social order of another State, or to disrupt the operation of an international organization; <sup>SEP</sup> is guilty of a felony punishable by imprisonment between ten to twenty years or life imprisonment.

“Complicity in an act of terrorism” under Section 315(1) of the Hungarian Criminal Code is defined as follows:

(1) Any person who instigates, suggests, offers, joins or collaborates in the commission of any of the criminal acts defined in Subsection (1) or (2) of Section 314 or any person who is involved in aiding and abetting such criminal conduct by providing any of the means intended for use in such activities is guilty of a felony punishable by imprisonment between two to eight years.

(2) Any person who is engaged in the conduct referred to in Subsection (1) or in the commission of any of the criminal acts defined in Subsection (1) or (2) of Section 314 in a terrorist group, is punishable by imprisonment between five to ten years.

On 19 January 2019, Mr. [REDACTED] was conditionally released after he had served 3.5 years of a five-year prison sentence. Upon release, he was subjected to a deportation order expressly naming Cyprus as the country to which Mr. [REDACTED] should be transferred post-sentence. As noted above, Mr. [REDACTED] was previously a legal resident of Cyprus as the family member of a Cypriot national. His spouse and two minor children are nationals of Cyprus and currently reside in Limassol.

On 6 February 2019, the Ambassador of Cyprus to Hungary, informed the Hungarian authorities by letter that the Cypriot Minister of Interior “... taking into consideration the reports on Mr. [REDACTED]’s personal character and past action, has decided, for reasons of national security, to declare Mr. [REDACTED] [REDACTED] an illegal immigrant, whose entry into the Republic of Cyprus is henceforth prohibited.”

This denial of entry to Cyprus appears to constitute a violation of Mr. [REDACTED]’s and his family to the right to family life and ignores his many links with Cyprus, including the following facts: he has been legally residing in a lawful manner in Cyprus for more than decade, notwithstanding that his Cypriot residence permit

expired while he was deprived of liberty in Hungary; he owned and operated businesses in Cyprus; and his wife and two minor children are Cypriot citizens and currently reside in Limassol. Moreover, throughout the criminal proceedings in Hungary and his subsequent imprisonment, a positive responsibility by Cyprus in this case was evidenced by both the former and current Cypriot Ambassadors to Hungary visited Mr. [REDACTED] in detention.

On 1 March 2019, the Hungarian immigration authority stated, in a letter to Mr. [REDACTED]'s lawyer, that both Cyprus and Germany refuse to allow him entry due to a lack of valid travel document, and that they have contacted the Syrian embassy in Vienna to ask them for a travel document.

On 9 April 2019, two Hungarian immigration officers visited Mr. [REDACTED] in the detention centre. They asked if he would voluntarily return to Syria. Mr. [REDACTED] told them that he did not want to go to Syria and had profound fear of being ill-treated if he were returned. They left without any further explanation of the ongoing procedure, after he told them he wants to go to Cyprus where his family is. In these circumstances, as Mr. [REDACTED] is being held in immigration detention in the Nyírbátor Immigration Detention Centre, he is in imminent risk of forcible return to Syria.

While I do not wish to prejudge the accuracy of these allegations, I express serious concerns that the potential forcible return of Mr. [REDACTED] to the Syrian Arab Republic will expose him to torture, inhuman and degrading treatment in contravention of the principle of non-refoulement provided by article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by the Republic of Hungary on 15 April 1987, and articles 6 and 7 of International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Hungary on 17 January 1974. The ICCPR was ratified by the Republic of Cyprus on 2 April 1969, and the CAT on 18 July 1991. Moreover, it appears that Mr. [REDACTED]'s right to fair trial and the presumption of innocence has been substantially prejudiced by legal proceedings

Furthermore, I express serious concern that forcible removal of Mr. [REDACTED] to the Syrian Arab Republic will violate his right private and family life provided in articles 17 and 23 of ICCPR and article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), ratified by the Republic of Hungary on 5 November 1992 and by Cyprus on 6 October 1962,

Equally, I express serious concerns about the legal basis for the criminalization of Mr. [REDACTED]'s alleged conduct as complicity in an act of terrorism, and the prejudice that appears to be demonstrated by political conduct and opinion directly related to Mr. [REDACTED]'s case. In my view, the aforementioned provisions of Criminal Code of the Republic of Hungary on terrorism and complicity in an act of terrorism do not meet the requirements of legal certainty under international human rights law in violation of article 15(1) of ICCPR and article 7(1) of ECHR. The terrorism related charges against Mr. [REDACTED] likewise appear to reflect their misapplication to conduct that cannot

objectively be justified as constituting an act of complicity in terrorism, either with respect to mens rea (intent) or actus reus (conduct). I am particularly concerned that based on the stated factual allegations, it appears that Mr. [REDACTED] was convicted for "complicity in an act of terror" under Section 315 of the Criminal Code of the Republic of Hungary because he: 1) used a megaphone to induce Hungarian law enforcement actors to open the border and permit the refugees and migrants amassed there the ability to enter Hungarian territory and 2) subsequently threw some objects during the ensuing unrest. Such actions cannot be objectively described as 'terrorist' in substance and raise my deep concern that terrorism related provisions are being misused and misapplied in this case.

Furthermore, I am concerned that your Excellency's Government's prior position that Mr. [REDACTED] constituted a threat to national security, apparently is a result of his conviction on terrorism-related charges in Hungary. There are grave concerns that this conviction is not soundly based and may violate international human rights protections to fair trial, and therefore derivative action affecting Mr. [REDACTED]'s human rights based on this conviction is not securely grounded. I respectfully encourage reconsideration of the conclusion that Mr. [REDACTED] does pose such a threat if a flawed criminal process in Hungary has resulted in his exclusion from Cyprus on national security grounds. As an imperative matter, both Governments should be aware that any action to return Mr. [REDACTED] to Syria is in violation of the non-refoulement principle. Mr. [REDACTED] has been separated from his wife and children for over three years and it is in all their best interest that they be reunited as soon as possible.

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.

**Given the seriousness and urgency of the case. I respectfully urge your Excellency's Government to reconsider its denial of Mr. [REDACTED]'s request to be returned to Cyprus to reside with his wife and children. I respectfully request your Excellency's Government to reconsider its decision to prohibit Mr. [REDACTED] from re-entering the country and enabling his family re-unification.**

**Please note that I have written to the Government of Hungary to recommend that it will not forcibly remove Mr. [REDACTED] to Syria given the concerns outlined in this communication.**

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

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



2. Please provide information on any measures taken to ensure protection of Mr. [REDACTED] from being subjected to the violation of the principle of non-refoulement.
3. Please provide the details and the results of any investigation, and judicial or other inquiries carried out in relation to the above-mentioned allegations.
4. Please provide information on any measures taken to ensure Mr. [REDACTED]'s and his family's right to respect for family life in accordance with the international human rights law.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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.

I may publicly express my concerns in this case in the near future as, in my view, the information upon which my concerns are based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential human rights implications of the above-mentioned allegations. Any public expression of concern on my part will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, I 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.

I would like to remind your Excellency's Government of the principle of non-refoulement as codified in article 3 of CAT. It 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 paragraph 9 of its General Comment No. 20, the Human Rights Committee stated that in order to fulfil the obligations under article 7 of ICCPR, "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."

Furthermore, I would like to draw your Excellency's Government's attention to paragraph 30 of the Human Rights Committee's General Comment No. 36 that states that "the duty to respect and ensure the right to life requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under article 6 of ICCPR would be violated." If Mr. [REDACTED] is forcibly removed to Syria as a convicted terrorist, he will be highly likely exposed to the real risk of well documented human rights violations by Syrian authorities by the Independent International Commission of Inquiry on the Syrian Arab Republic, in its report "Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic" (A/HRC/31/CRP.1).

In this regard, I 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 enforced disappearance, arbitrary killing and summary executions in detention. States should guarantee that all migrants who require protection in this context are not forcibly returned and not left in a legal limbo, and should ensure that they are granted a legal status.

I also make reference to Article 8 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, 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.

While the non-refoulement obligation currently rests with the Hungarian authorities, the Government of Cyprus is in a position to provide an alternative to removal to Syria by facilitating Mr. [REDACTED]'s return to Cyprus to be reunited with his family. The non-refoulement obligation is a *jus cogens* norm, one that all States should seek within their scope and capacity to ensure.

With regard to Mr. [REDACTED]'s conviction for "complicity in the act of terrorism", I would like to draw your Excellency's Government attention to the "principle of legal certainty" under international law (ICCPR Article 15(1); ECHR Article 7(1)) which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. In my September 2018 report to the UN General Assembly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para.34).

With regard to fair trial and due process violations, in particular the presumption of innocence, I would like to remind your Excellency's Government article 14(2) of ICCPR and article 6(2) of ECHR, both of which state that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law". Furthermore, the aforementioned public statements made in the broader context of Hungarian Government's rhetoric and action that, according to a September 2018 statement by seven of Special Rapporteurs of the UN Human Rights Council, "fuels hostility, xenophobia and incites discrimination against migrants, asylum seekers, refugees and all those trying to provide them support." (see here: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=23533&LangID=E>).

Finally, I would like to underscore the scope of obligations in relation to respect for family life. In this regard, I draw your Excellency's Government attention to the right to private and family life enshrined in articles 17 and 23 of ICCPR and in article 8 of ECHR. Article 17(1) of ICCPR requires that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Article 23(1) of ICCPR stipulates that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Article 8(1) of ECHR requires that "everyone has the right to respect for his private and family life, his home and his correspondence." Article 8(2) of ECHR stipulates permissible limitation of the exercise of the right to respect for family life. In particular it states that "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."



International human rights law requires that limitations on derogable rights must be legally grounded, proportionate, necessary and proportionate. As the above information indicates, the process leading to Mr. [REDACTED]'s imprisonment in Hungary was in my view potentially tainted by serious violations of his human rights. In particular, I note my profound concern at the unfounded application of terrorism charges for alleged conduct that did not meet the threshold for an act of terrorism or complicity in such an act. Thus, it appears that this case would not fall within the national security exception that permits the limitation of the human right to private and family life.

