

**Mandates of the Working Group on Enforced or Involuntary Disappearances; 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 ALB 2/2020

30 December 2020

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; 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 45/3, 42/22, 43/6, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Mr. Selami Şimşek**, who is reportedly facing an imminent transfer from Albania to Turkey during which he may be at risk of enforced disappearance. We remain concerned that he is likely to face detention, prosecution and, potentially, torture or other cruel, inhuman or degrading treatment upon arrival in Turkey for his actual or perceived affiliation to the Hizmet/Gülen movement.

Mr. Şimşek's case was the subject of a joint urgent appeal UA/ALB 1/2020 transmitted to your Excellency's Government on 20 March 2020. We thank Your Excellency's Government for the reply received on 11 August 2020. In response to the reply, the mandates of the Special Rapporteur on the human rights of migrants and the Working Group on Enforced or Involuntary Disappearances transmitted a follow-up letter on 8 September 2020, which has yet to be addressed by Your Excellency's Government.

According to the information received:

On 8 July 2019, Mr. Şimşek Selami was arrested by the Border and Migration Police at the Tirana Rinas airport in Albania over the alleged possession of a forged Canadian visa. He was remanded in custody at the Tirana Central Prison shortly after the arrest.

The High Court in Tirana convicted Mr. Şimşek for attempting to cross the border with the counterfeit visa. On 9 March 2020, the Court of Appeals ordered his immediate release, given that he had served the sentence in pre-trial

detention. On the same day, Mr. Şimşek submitted an asylum application to the Albanian authorities.

Allegations are made that instead of being released Mr. Şimşek was subjected to short-term enforced disappearance, as his whereabouts and state of health were unknown to his lawyer and family members for approximately 24 hours on 9 March 2020. As of 10 March 2020, he has been detained in the Closed Centre for Foreigners on the basis of Detention Order No. 475 dated 10 March 2020. A copy of the order has never been transmitted to either the lawyer or Mr. Şimşek. On the basis of information contained in the letter submitted by the Albanian authorities in response to the joint appeal (UA ALB 1/2020), the lawyer requested that the copy be provided without delay in order to legally challenge Mr. Şimşek's detention.

It is further indicated that Law No. 108/2013 "On Foreigners" contains several provisions that the authorities may have employed to justify his detention, but all of those provisions seemingly require that Mr. Şimşek has already been subjected to an expulsion order. The Albanian authorities have yet to provide any information concerning an active expulsion order to the lawyer, Mr. Şimşek or international bodies monitoring the case.

Separately, on 2 July 2020, the lawyer learned from local media about the decision 08/03 issued by the Directorate of Asylum and Citizenship at the Ministry of Interior in March 2020, according to which Mr. Şimşek's asylum request had been rejected. The appeal of this decision, which was prepared shortly after the lawyer learned about it, is based on the claim that neither Mr. Şimşek nor his lawyer had received a copy of the decision. On 29 September 2020, the National Commission for Asylum and Refugees rejected the appeal citing delays in receiving it, all of which was outlined in a notice transmitted to Mr. Şimşek. In turn, he refused to sign the notice because it was not accompanied by an official translation into Turkish or English.

On 20 November 2020, the Administrative Court of First Instance of Tirana rejected Mr. Şimşek's request for suspension of his deportation from Albania until a decision had been taken by the competent court. By rejecting this particular request, Mr. Şimşek can be expelled to Turkey at any moment, regardless of the final court decision.

On Monday 21 December 2020, the Administrative Court of Tirana finally dismissed Mr. Şimşek's asylum procedure appeal against the earlier decision of the National Commission for Asylum and Refugees. This decision can be appealed to the Administrative Appeal Court within 30 days, which is the last domestic avenue of redress in the national asylum procedure. While the lawyer has indicated that the decision would be appealed within the stipulated timeframe, there are no interim measures in place that would prevent Mr. Şimşek's deportation leading up to or during this final instance procedure.

It is feared that Mr. Şimşek may indeed be facing an imminent deportation, mindful of similar patterns surrounding the case of Mr. Harun Çelik, another Turkish national who was allegedly subjected to short-term enforced disappearance in the run up to his transfer to Turkey during the holiday season on 1 January 2020. Concerned by these allegations, Avokati i Popullit (the Ombudsperson's Institution of Albania) initiated an investigation and subsequently concluded that Mr. Çelik's request for asylum was not received, registered and assessed and that the authorities violated the principle of non-refoulement. Similarly, it observed that the issuance of the Expulsion Order ran contrary to the Law "On Foreigners", as regards the lack of lawful reasons for expulsion and the execution of the order. It also added that relevant procedures and legal deadlines in executing the expulsion order were not observed and that Mr. Çelik was not afforded the right to challenge it.

Further information indicates that no investigation into these violations, including the allegations of enforced disappearance of Mr. Şimşek in March 2020, has been initiated by the authorities.

According to information received, Mr. Şimşek has been granted residence rights in a third country, which is ready to receive him as soon as he is allowed to travel.

While we do not wish to prejudge the accuracy of these allegations, we remain concerned that the imminent deportation of Mr. Selami Şimşek may place him at serious risks of being subjected to arbitrary arrest and detention, and possibly enforced disappearance and torture or other ill-treatment in transit and upon arrival in Turkey. We are equally concerned that the ostensible impunity associated with Mr. Harun Çelik's earlier expulsion may encourage the authorities to expel Mr. Şimşek in a similar manner during the holiday season when the state institutions generally operate with limited capacity.

We are also particularly alarmed by reports that the authorities have repeatedly violated the respective provisions of the Law No. 108/2013 "On Foreigners" and the Law No. 119/2014 "On the Right to Information" in failing to provide essential documents that would allow Mr. Şimşek and his lawyer to challenge his ongoing detention at the Closed Centre for Foreigners. This may constitute violations of 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 that guarantee the right not to be deprived arbitrarily of liberty, including the right to challenge the legality of detention, and the right to a fair trial and due process.

We also express our serious concern regarding the imminent deportation of Mr. Selami Şimşek, without an individual assessment of his protection needs and procedural guarantees, in violation of the principle of non-refoulement. Furthermore, we are concerned that in the absence of an individual assessment, Mr. Şimşek may be subject to persecution if returned. Forced returns of migrants should be suspended during the pandemic to protect the health of migrants and communities, and uphold the

human rights of all migrants, regardless of their migration status. In this regard, we would like to refer your Excellency's Government to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the UN Special Rapporteur on the human rights of migrants.<sup>1</sup>

In this connection, we would also like to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly, which 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, the prohibition of a return to a place where individuals are at risk of torture and other ill-treatment applies at all times, and it is enshrined in the absolute and non-derogable right in article 5 of the UDHR and as an international customary norm of jus cogens. In this regard, we would also like to draw your Excellency's Government's attention to the provisions set out in the Global Compact for Safe, Orderly and Regular Migration (A/CONF.231/3) that your Excellency adopted on 10 December 2018, which sets out in its Objective 7 the commitment of States to respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with their obligations under international law.

We remain concerned at the apparent lack of independent, impartial and thorough investigations into allegations of short-term enforced disappearances perpetrated against Messrs. Şimşek and Çelik.

We reiterate that Mr. Şimşek's forcible return to Turkey may result in serious violations of his rights to liberty, personal security, integrity and fair trial in contravention of articles 3, 5, 9, 10 and 14 of the Universal Declaration of Human Rights (UDHR), articles 7, 9, 13, 14, 18, 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), as well as the Convention against torture and other cruel, inhuman or degrading treatment or punishment, which Albania duly ratified. Further, we remind Your Excellency's Government of the fundamental international protection principle of non-refoulement, which is enshrined in several key human rights instruments ratified by Albania, in particular the Convention against Torture (article 3), International Convention for the Protection of All Persons from Enforced Disappearance (article 16), the 1951 Convention on the status of refugees (article 33). Equally so, 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 and punishment.

With reference to the allegations that Mr. Şimşek has been granted residence rights in a third country, we wish to underscore that the right to leave a country is

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<sup>1</sup> [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants.](#)

guaranteed notably in article 12 of the International Covenant on Civil and Political Rights.

Furthermore, we again draw your Excellency's Government's attention to the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by Albania in 2010, as well as the Declaration for the Protection of All Persons from Enforced Disappearance, which establish that no State shall practice, permit or tolerate enforced disappearances. The Convention and Declaration each proclaim that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, we recall that the Convention and Declaration set out the necessary protection by the State, in particular the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, 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; and to the maintenance in every place of detention of official up-to-date registers of all detained persons, including information related to any transfers.

In this connection, we reiterate that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitutes an enforced disappearance, even if it is of a short duration.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 by your Excellency's Government to safeguard the rights of the above-mentioned person(s) 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 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 for Mr. Şimşek's detention. Please clarify as to why a copy of Detention Order No. 475 dated 10 March 2020 has not been shared with Mr. Şimşek and his lawyer and how this is compatible with Albania's human rights obligations.
3. Please provide detailed information as to how comprehensive individual risk assessments were carried out by relevant Albanian authorities in this

case, both in terms of procedural safeguards and analysis of the country of return situation, so as to ensure Mr. Şimşek will not be subjected to violations of his fundamental rights in transit and upon return to Turkey.

4. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen, into the aforementioned allegations of short-term enforced disappearance perpetrated against Mr. Şimşek. If no such enquiries have been conducted, please explain why, and how this is compatible with the international human rights obligations of Albania.
5. Please confirm whether a third-country reallocation for Mr. Şimşek has been considered and approved by the Albanian authorities. If so, please outline the measures taken to allow him to leave the country.
6. Please provide information on measures adopted by the authorities to ensure the right to effective remedy for human rights violations perpetrated against Mr. Harun Çelik. Please also provide information on the steps taken to follow up on the findings and the recommendations issued by the Avokati i Popullit (Ombudsperson's Institution of Albania) for this particular case.

We respectfully urge your Excellency's Government to comply with the Human Rights Committee's ruling for interim measures and refrain from deporting Mr. Selami Şimşek to Turkey, pending the consideration of his case.

We may 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 Excellency's Government to clarify the issue/s in question.

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.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may 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. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Tae-Ung Baik  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Felipe González Morales  
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