

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

REFERENCE:
AL TUR 8/2021

17 May 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, pursuant to Human Rights Council resolutions 43/20 and 46/18.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning the arrest and deportation order against **Mr. Afshin Sohrabzadeh**, from Turkey to his native country of the Islamic Republic of Iran, despite the risk of persecution and his refugee status.

According to the information received:

Mr. Afshin Sohrab Zadeh is a 31-year-old Iranian political activist from Kermanshah province. He also belongs to the Kurdish minority. On 8 June 2009, when he was 19-years-old, Mr. Sohrabzadeh was reportedly arrested in the Islamic Republic of Iran during protests contesting the results of the presidential elections. He spent nine months in pre-trial detention, during which he was allegedly subjected to acts of torture, including physical assault and prolonged solitary confinement. He was subsequently convicted in an expedited trial that lasted only a few minutes, by the Second Branch of the Iranian Islamic Court and sentenced to death on charges of *moharebeh* (taking up arms to take lives or property or to create fear in the public) for his membership in a banned Kurdish opposition group. On appeal, his sentence was commuted to 25 years imprisonment.

Mr. Sohrabzadeh spent seven out of the 25 years in prison, where he was held in different locations, namely Rajai Shahr Prison in Karaj, Evin Prison in Tehran, and prisons in Sanandaj, Kermanshah, Bandar Abbas, and Minab. During his imprisonment, he suffered from several diseases, including colon cancer. In 2016, after severe internal bleeding and misdiagnosis in the hospital, he was released from prison on health grounds. Mr. Sohrabzadeh seized this opportunity to flee to Turkey.

In Turkey, Mr. Sohrabzadeh applied for international protection, and was recognised as a refugee by the United Nations High Commissioner for Refugees (UNHCR).

On 5 April 2021, Mr. Sohrabzadeh was arrested by security forces in the Turkish city of Kayseri, during a visit to the police station to issue travel documents, and was reportedly accused of being a threat to national security by the Turkish authorities. He was subsequently transferred to the removal centre (Geri Gönderme Merkezi, GGM) in Kayseri, where he is currently held in administrative detention awaiting deportation. At the GGM, Mr. Sohrabzadeh was reportedly subjected to coercion to sign a form accepting his deportation, which he refused to sign. He was further informed that he would be deported soon.

As of February 2021, about 27,000 Iranian refugees live in Turkey, according to the United Nations High Commissioner for Refugees (UNHCR)¹. However, it is reported that in recent years, Turkey has been increasingly expelling Iranian dissidents. According to the information received, at least seven Iranian refugees have been deported from Turkey, since 2017, and five others are currently awaiting deportation.

Mr. Sohrabzadeh's lawyer submitted an appeal against the deportation order, and another against his administrative detention. On the week of 17 April, the appeal against his administrative detention in the removal centre was initially rejected, and appealed again by his lawyer based on Mr. Sohrabzadeh's health condition. On 26 April, he was released on the basis of a decision by the Criminal Court of Peace, and returned to his house in Eskisehir with a signature duty twice a week. In this context, the legal status of Mr. Sohrabzadeh remains uncertain, as the appeal against his deportation order is still pending.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern at the arrest and imminent deportation of Mr. Sohrabzadeh to the Islamic Republic of Iran, where he will be at high risk of ill-treatment and torture. We are concerned that Turkish authorities seek to deport Mr. Sohrabzadeh despite his recognition as a refugee by the UNHCR in Turkey. It is of additional concern that this case falls into what appears to be a pattern of similar cases in recent years of deportation of Iranian dissidents with refugee status in Turkey.

Should these allegations be confirmed, the deportation of Mr. Sohrabzadeh would be in violation of Article 3 of the Convention against torture which was ratified by Turkey on 2 August 1988. This convention requires that "[n]o 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"; and that, "[f]or 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".

¹ <https://data2.unhcr.org/en/documents/download/85590>

In this respect, the cardinal principle of international human rights and refugee law protecting individuals against such deportation (i.e. “non-refoulement”), which is recognized as a principle of customary international law must be upheld by all states regardless of the status of the persons concerned. This is fundamental principle of international protection. In upholding this principle, states have the duty to assess independently from refugee or asylum status determinations, that the fundamental right to be free from torture or other ill-treatment is respected. Accordingly, involuntary returns of individuals to their country of origin cannot be legally carried out without due process, and such individual risk assessment.

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 any comment you may have on the above-mentioned allegations.
2. Please explain the factual and legal grounds for the arrest, administrative detention and deportation order to the Islamic Republic of Iran against Mr. Sohrabzadeh despite his refugee status. Please explain how those legal measures are compatible with Turkey’s obligations under international human rights law and international refugee law.
3. Please provide detailed information on the assessment, if any, carried out by the Turkish authorities to ascertain the risk Mr. Sohrabzadeh may face upon return to Iran, including the risk of being tortured or subject to cruel, inhuman or degrading treatment or punishment as well as to the death penalty, and how this assessment is compatible with the international norms of CAT and the refugee convention, which are binding on Turkey as a ratifying state.
4. Please provide detailed information on the existing legal procedures in Turkey ensuring the possibility for foreign nationals who have been recognized as refugees by UNHCR to challenge deportation requests against them, as well as allowing for their resettlement in a third country, and existing safeguards to prevent violations of their fundamental rights to life, liberty, personal security, and physical and mental integrity.

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.

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

Nils Melzer

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

Javaid Rehman

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer 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 wish to remind your Excellency's Government of the absolute and non-derogable prohibition on returning an individual to a place where they risk being exposed to torture or other ill-treatment. Accordingly, Article 3 of the CAT provides that "[n]o 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"; and that, "[f]or 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".

In this respect, we would like to underline that the scope of this principle under human rights law is broader than that contained in international refugee law, which means that individuals cannot be returned even if they do not qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed. In addition, the principle of non-refoulement is universally recognized as a principle of customary international law applying to everyone, regardless of their status, including those who have been criminally convicted and those suspected of having committed criminal acts. In all cases, involuntary returns cannot be legally carried out without due process.

We would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee (HRC) in which it states that State 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 extradition, expulsion or refoulement." The HRC also stated in its General Comment No. 31 (para. 12): "Moreover, the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with the Covenant obligations in such matters."

Furthermore, we stress that the decision to expel, remove or deport a non-national may be taken only after an examination of each individual's circumstances and

in accordance with law and when procedural guarantees have been respected. In this connection, all individuals facing deportation are to have access to a fair, individualised examination of their particular circumstances, and to an independent mechanism with the authority to appeal negative decisions. Moreover, a risk assessment in the event of extradition should also be carried out to determine whether there is a risk of violation in the receiving State. In this context, an analysis of the general human rights situation in that State must be taken into consideration.

Finally, we would 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, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."