

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA TUR 4/2022
(Please use this reference in your reply)

22 March 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 41/18 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged imminent deportation of Mr. [REDACTED] from Turkey to the Islamic Republic of Iran where he may risk the death penalty.

According to the information received:

Mr. [REDACTED] fled the Islamic Republic of Iran for Turkey in 2019. In 2020, he registered as an asylum seeker [REDACTED]. During the asylum proceedings, he was allegedly discriminated against by Turkish authorities [REDACTED]. It is reported that he was exposed to excessive waiting, was not authorized to apply jointly with his partner, and was subjected to insensitive and inaccurate questioning about his [REDACTED]. His asylum claim was eventually denied.

On 5 April 2021, Mr. [REDACTED] was arrested by the police in Denizli. In the absence of a lawyer or a translator, he was allegedly coerced into signing a document in Turkish that subsequently revealed to be a confession according to which he attended an unauthorized rally in support of human rights. He was placed in detention for 33 days. Despite the reported lack of evidence of his participation in the rally, Mr. [REDACTED] was convicted by a Turkish court on the ground of disturbing public order and participating in an unlawful demonstration.

On 2 February 2022, a Turkish court sentenced Mr. [REDACTED] to deportation to the Islamic Republic of Iran.

Mr. [REDACTED] filed an application to the Constitutional Court on the grounds that his fundamental human rights had been denied. On 28 February 2022, he also sought a temporary injunction to prevent his deportation pending the Court's decision as an interim measure. The Court rejected the interim measure request, reportedly emphasizing that there was no finding that

Mr. [REDACTED]'s life and integrity would face a serious danger if deported.

On 2 March 2022, a Turkish court rejected Mr. [REDACTED]'s appeals against the denial of his asylum claim.

According to information at our disposal, Mr. [REDACTED] is at imminent risk of deportation to the Islamic Republic of Iran where he is risking the death penalty [REDACTED].

We express grave concerns that, if deported back to the Islamic Republic of Iran, Mr. [REDACTED] may face the death penalty, [REDACTED] is punishable by death in his country of origin. In this regard, we urge your Excellency's Government not to deport Mr. [REDACTED] to a country where the disclosure of his identity could lead to the death penalty and ensure that his human rights are respected in compliance with international law, in particular the absolute and non-derogable international principle of non-refoulement.

While we do not wish to prejudge the accuracy of these allegations, the facts alleged would be in contravention of the rights of every individual to life, physical integrity, the absolute prohibition of torture and other cruel, inhuman or degrading treatments or punishment, and equal recognition before the law, as laid down, inter alia, in articles 3, 5, 6, and 14 of the Universal Declaration of Human Rights (UDHR), as well as articles 7, 9, and 16 of the International Covenant on Civil and Political Rights (ICCPR), and articles 1, 2 and 16 of the Convention against Torture (CAT), ratified by your Excellency's Government on 23 September 2003, and 2 August 1988, respectively.

We recall your Excellency's Government that the right to self-determination, the ability to determine one's own identity, including with regard to [REDACTED], is central to the right to equal recognition before the law established in article 6 of the UDHR, article 16 of the ICCPR, and in other universal human rights treaties and regional human rights instruments.

We remind your Excellency's Government of its obligation, "not [to] 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" (Human Rights Committee, General Comment No. 20, para. 9). The principle of non-refoulement is codified in the CAT. Article 3 of the Convention provides that no State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that the person would be in danger of being subjected to torture, ill-treatment or other irreparable harm. As an inherent element of the prohibition of torture and other forms of ill-treatment, the prohibition of refoulement under international human rights law is stronger than the protections afforded under refugee law insofar as it applies to any form of removal or transfer of persons, regardless of their status or grounds for seeking protection, and is characterized by its absolute nature without any exception. Therefore, persons may not be returned even when they may not otherwise qualify for refugee or asylum status.

We further wish to refer to the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, in particular Principle 5, stating that “no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become victim of extra-legal, arbitrary or summary execution in that country” (Economic and Social Council, resolution 1989/65). In this regard, we highlight 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 the ICCPR would be violated and that it would be contrary to article 6 to extradite an individual from a country that abolished the death penalty to a country in which he or she may face the death penalty (Human Rights Committee, General Comment No. 36 para. 34). In this context, the Special Rapporteur on extrajudicial, summary or arbitrary executions recalled that the implementation of the death penalty for [REDACTED] amounts to arbitrary killings (A/HRC/35/23, para. 45). In this regard, we recall the obligation of your Excellency's Government to ensure the right to life of everyone within your jurisdiction including by offering adequate protection.

In any event, deportation cannot be lawfully carried out without due process of law. In this connection, under international law, the decision to expel, remove or deport a non-national may only be taken after an examination of each individual's circumstances and in accordance with the law and when procedural guarantees have been respected. In this connection, individuals facing deportation/repatriation are to have access to a fair, individualized examination of their particular circumstances, and to an independent mechanism with the authority to appeal negative decisions. Moreover, a risk assessment should be carried out to determine whether there is a risk of violation in the receiving State. In this context, an analysis of the legal and public policy framework in the receiving State must be taken into consideration (A/HRC/37/50, para. 36-42).

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 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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information as to whether or not a comprehensive individual risk assessment was carried out by relevant Turkish authorities, both in terms of procedural safeguards and analysis of the country of return situation, to ensure that Mr. [REDACTED]

██████████ will not be subjected to serious violations of his fundamental human rights. If that assessment was carried out, please inform us of its conclusions.

3. Please provide information on the safeguards that are in place and the measures taken to protect the right to life and the physical and psychological integrity of Mr. ██████████, and in particular on the measures considered to prevent his deportation or transfer to a place where his personal security and integrity may be at risk.
4. Please provide detailed information on the existing legal procedures in Turkey ensuring the possibility for foreign nationals to challenge extradition orders against them and the safeguards applied in that regard.

While awaiting a reply, we urge that all necessary interim measures be taken to protect the physical and psychological integrity of Mr. ██████████, halt his alleged forcible repatriation to Iran, and ensure a thorough and individualized assessment of the risks he may face upon repatriation, including of torture, ill-treatment, and the death penalty.

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.

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

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Special Rapporteur on extrajudicial, summary or arbitrary executions

Victor Madrigal-Borloz
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Nils Melzer
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