

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

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

24 November 2022

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 51/8, 43/8 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegations of arbitrary arrest and detention against Mr. **Ecevit Piroglu** in Serbia, as well as of his possible extradition to Türkiye, based on a red notice by Interpol, where he may be at serious risk of suffering irreparable harm to his personal liberty, security and integrity, among other human rights violations.

Mr. Ecevit Piroglu, born on 27 October 1974, is a Turkish national and member of the Kurdish ethnic minority. He is a Kurdish political activist and one of the founders and member of the central committee of the Socialist Democratic Party, established in Türkiye in August 2002. He was also a member and head of the Izmir branch of Human Rights Association, a prominent human rights association in Türkiye dealing with questions of criminal justice and human rights, bringing together people of Kurdish, Turkish and Armenian origin.

According to the information received:

Mr. Piroglu was arrested on 25 June 2021, by the Border Police authorities of Serbia at the Nikola Tesla International Airport in Belgrade, in cooperation with Interpol. The authorities showed a warrant at the moment of the arrest.

After the arrest, Mr. Piroglu was taken for preliminary proceedings before the Higher Court of Belgrade and was informed that his arrest was based on an Interpol Red Notice issued upon request of Türkiye. The reason for the arrest was a criminal proceeding initiated against him in Türkiye, for purportedly belonging to a terrorist organisation.

Mr. Piroglu was subjected to detention pending extradition due to the risk of absconding, in the Country Prison in Belgrade, from 25 June 2021 until the expiry of the extradition detention on 24 June 2022. This was imposed under articles 22 and 26 of the Law on International Legal Assistance in Criminal Matters. The judge for the preliminary procedure of the Higher Court in Belgrade issued the decision of placing Mr. Piroglu in detention on 25 June

2021, which was subsequently extended until 24 June 2022 by the Higher Court in Belgrade and Appellate Court in Belgrade.

On 20 April 2022, the Higher Court in Belgrade rendered decision no. 218/22, stating that all the requirements for the extradition of Mr. Piroglu were met. Concerning the risks of refoulement, the Court only stated that Mr. Piroglu applied for political asylum since he feared that he would be psychologically and physically tortured in Türkiye. The Court dismissed that concern noting that Türkiye is a State party to the European Convention of Human Rights. The judge deeming itself not competent to assess the risks involved in the refoulement, nor to decide on the question raised by Mr. Piroglu's lawyers with regards to the politically staged criminal procedure and arbitrary detention.

From 24 June to 14 July 2022, the Higher Court in Belgrade ordered Mr. Piroglu to be held on a place of temporary residence, which is a measure of limitation of the freedom of movement and not the right to liberty and security. However, he was instead held in the Immigration Detention Centre for Foreigners, in Padinska Skela, which is a place of deprivation of liberty designated for irregular migrants and pursuant to the article 87 of the Foreigners Act.

From 14 July 2022 onwards, Mr. Piroglu has been detained by the Ministry of Interior on the basis of article 87 of the Foreigners Act, as a result of the execution of the Turkish extradition warrant due to his alleged threat to national security. He is detained at the Immigration Detention Centre for Foreigners in Padinska Skela, which is a form of administrative detention designated for irregular migrants under forcible removal procedure. However, Mr. Piroglu, is not an illegal migrant but he is held pending extradition in connection with criminal proceedings in the country he fled. This form of detention cannot be used against persons subject to criminal proceeding in their home country. Such persons have a lawful stay in Serbia as long as the extradition proceeding is ongoing. This continuation of the detention is due to the incapacity of extradition authorities to examine the risks of *refoulement* in the extradition proceeding. The Ministry of Interior reportedly intends to extradite Mr. Piroglu to Türkiye, regardless of the risk to his rights to life, not to be subjected to torture and other forms of ill-treatment, to liberty and security and to a fair trial.

On 19 August 2022, Mr. Piroglu filed an asylum application, with the aim to once again highlight the risk of persecution in Türkiye. This request was dismissed and an appeal against the denial was filed, which is still pending before the Asylum Commission.

The detention of Mr. Piroglu can last at least until 14 January 2023, which is a maximum period for immigration detention pursuant to article 88 (2) of the Foreigners Act. The case is awaiting additional translations of Turkish case-files. However, there are well founded fears that Mr. Piroglu will be extradited before that time and that he could continue to be detained under other unconstitutional and unlawful measures. A procedure before the United

Nations Committee against Torture is pending, which has issued interim measure recommending to Serbia not to extradite Mr. Piroglu in the meantime. However, the extradition procedure is continuing.

During his detention Mr. Piroglu has been prohibited normal communication with his family and friends, and detained in fenced buildings under the watch of CCTV cameras and armed guards.

*Background and legal protections:*

Given general prevailing circumstances in Türkiye, and the particular treatment of members of the Kurdish minority and Kurdish political activists there, Mr. Piroglu has a well-founded fear of suffering severe human rights violations should he be forcibly returned there. This was outlined in the Request for Interim Measures granted by the UN Committee against Torture, given the risks of violations of the prohibitions of torture, ill-treatment and arbitrary detention against Mr. Piroglu and the risks for his rights to life, to liberty and security, to integrity, to a fair trial with due process guarantees, as well as the violations of his rights to freedom of opinion, expression, assembly and association and to participate in public affairs.

Upon deciding on the fulfilment of the legal preconditions for the extradition, the Serbian judicial and executive and authorities do not seem to have taken into account the risks that he would be subjected to in the event of return to Türkiye, and to conduct a proper assessment of these risks. It is understood that as a usual practice, these authorities acting upon an extradition request do not consider having an obligation to conduct such a risk assessment. This has been outlined by the UN Committee against Torture, which recommended Serbia to undertake institutional and legal reforms to avoid a wrongful extradition.

Precedents have unfortunately been reported of individuals who were granted interim measure by the Committee against Torture and still were extradited in the context of inter-state political cooperation.

The declaration of incompetence by Serbian judicial authorities on 20 April 2022 is contrary to Serbia's obligations pursuant to both domestic and international law. The Serbian Constitution, in article 18, obliges the courts, as well as the prosecutors, to protect the rights guaranteed by it. Provisions on human and minority rights are interpreted in favour of promoting the values of a democratic society, in accordance with valid international standards of human and minority rights, as well as the practice of international institutions that supervise their implementation.

These protections are reflected in the work of the judiciary, as well as in other types of proceedings before domestic institutions. Reportedly, in the 14-year-old history of the Serbian asylum procedure, not a single Turkish political activist has ever been granted asylum, regardless of the grounds of persecution they invoked.

In this context, it is feared that the authorities in charge of deciding on the extradition of Mr. Piroglu have been detaining him since 25 June 2021 pending his handing over to Turkish authorities. The latter are likely to arrest, detain and prosecute him as a Kurdish political activist invoking the criminal offence of belonging to a “terrorist organization”, under article 314 of Criminal Code of Türkiye, which is often used against political opponents. In this context, there is high risk that Mr. Piroglu may be subjected to torture or ill-treatment.

Mr. Piroglu's detention imposed from 14 July 2022, on the basis of article 87 of the Foreigners Act, is for the purpose of the execution of his forcible removal due to him constituting a threat to national security. However, in the decision issued by the Foreigners Department, no insight is provided into neither the reasoning nor the content of the document on which such a national security claim is made. There is no justification made available to Mr. Piroglu as to why he constitutes a national security threat, this allegedly violates his procedural right to be informed of the reasons for being subjected to such a measure. In the extradition proceedings led against him before domestic authorities, there is no evidence of a thorough assessment on the criterion that there is in fact a reasonable doubt that Mr. Piroglu had committed the criminal acts imputed to him by Turkish authorities. It can only be concluded that the threat to national security is construed and unfounded, directly against the principles safeguarding the right not to be arbitrarily detained.

**While we do not wish to prejudge the accuracy of the information received, we express our serious concern that Mr. Piroglu may be detained arbitrarily and that he may face serious violations to his rights to life, liberty, security and integrity, for the peaceful expression of his rights to freedom of opinion, expression, and association, and that he may be denied the most fundamental judicial guarantees for fair trial should he be extradited to Türkiye.**

Should these allegations be confirmed, Mr. Piroglu would be victim of violations of his human rights under articles 3, 5, 9, 10, 14, 19 and 22, of the Universal Declaration of Human Rights, articles 7, 9, 10, 13, 14, 19 and 22 of the International Covenant on Civil and Political Rights, , and articles 2 and 3 of the Convention against torture and other cruel, inhuman or degrading treatment or punishment, all of which were ratified by Serbia. More immediately, his current detention pending his possible extraditions, appears to violate both domestic and international human rights law binding on Serbia, relating to the universal prohibition of arbitrary detention.

In this regard, we draw the attention of Your Excellency's Government to the fundamental international protection principle of non-refoulement, which is enshrined in several key human rights treaties, in particular article 3 of the Convention against Torture and article 33 of the Convention on the Status of Refugees. Furthermore, as highlighted in [AL SRB 2/2022](#), we wish to remind Your Excellency's Government that international extradition law provides procedures that countries must follow when arresting, detaining and returning persons for criminal prosecution in another country,

and which are intended to guarantee respect for the right of such persons to a fair trial, in accordance with article 14 of the International Covenant on Civil and Political Rights (ICCPR), and article 6 of the European Convention on Human Rights (ECHR).

**We also draw your attention to the cardinal importance of article 3 of the Convention against Torture, which 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”. The same article specifies that “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.”**

Article 7 of the Covenant provide the same protection also against the risk of other forms of ill-treatment, according to the Human Rights Committee. This prohibition against refoulement, which is derived from the prohibition of torture and other ill-treatment, is absolute and non-derogable. In particular, persons may not be returned to face the risk of torture or other forms of ill-treatment even if they are considered to pose a threat to national security or otherwise not to qualify for refugee or asylum status, under article 33 of the 1951 Refugee Convention. We would like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (OP 10).

The European Court of Human Rights has established “that the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment”<sup>1</sup>.

Last, under article 9 of the International Covenant on Civil and Political Rights, everyone has the right to liberty and security of person and no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Arrest or detention on discriminatory grounds or as punishment for the legitimate exercise of the rights guaranteed by the Covenant is arbitrary. **The deprivation of liberty may be authorized by the law and still be arbitrary, as it may not be reasonable, necessary or proportional. The prohibitions of arbitrary detention and torture are considered as *jus cogens*, or universally-recognized norms of international law, which cannot be derogated, invoked or justified in any circumstance.**

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.

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<sup>1</sup> European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Grand Chamber, Judgement of 21 January 2011, para. 353

We are issuing this appeal in order to safeguard the rights of Mr. Piroglu from irreparable harm and without prejudicing any eventual legal determination.

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 Mr. Piroglu, 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 on the factual and legal grounds for the deprivation of liberty of Mr. Piroglu and how his detention is compatible with the norms prohibiting arbitrary detention under international human rights law binding on the state of Serbia;
3. Please provide information on why charges related to membership of a terrorist organisation have been levied against Mr. Piroglu and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).
4. Please provide detailed information about the steps taken by judicial and other relevant Serbian authorities to assess the risks of violations of his rights to life, liberty, personal security, should Mr. Piroglu be forcibly returned to Turkey; and how this is compatible with the duty of the state of Serbia under Article 3 of the Convention against torture not forcibly return anyone to his/her country of origin if there is a risk of torture.
5. Please provide detailed information on the legal and procedural safeguards that exist in Serbian criminal procedural law to provide asylum seekers with legal guarantees concerning their rights to legal representation, to access, contact and communication with their families. In the case of Mr. Piroglu, how these legal guarantees are effectively applied?
6. Please provide detailed information about Mr. Piroglu's conditions of detention, with regard to his access to food, water, sanitation, healthcare and access to his lawyer and to the outside world;
7. Please provide detailed information that supports the conclusion that Mr. Piroglu is a threat to the national security of the state of Serbia and that he is at risk of absconding, which are invoked by Serbian authorities to justify the deprivation of his liberty pending extradition.

Please clarify why other less restrictive measures, as alternatives to the deprivation or liberty, are not being implemented in this case.

8. Please provide information on the measures taken by your Excellency's Government to protect the rights of political activists and human rights defenders in Serbia and to ensure that they are guaranteed protection and that they are able to carry out their legitimate work in a safe and enabling environment, free from fear of torture and persecution, prosecution, criminalisation and arbitrary deprivation of liberty.

We would also like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication 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.

**In view of the urgency of the matter, we would appreciate a prompt response to this letter, and recommend that due diligence is exercised by the relevant Serbian authorities, so as to protect the rights of Mr. Pirolglu under the Convention against torture, and see to it that he not forcibly sent to a country where he is at risk of being tortured or otherwise ill-treated.**

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.

Mumba Malila  
Vice-Chair of the Working Group on Arbitrary Detention

Fernand de Varennes  
Special Rapporteur on minority issues

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