

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 1/2020

20 March 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 36/6, 42/22, 34/21, 40/16, 34/19.

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. **Selami Şimşek** from Albania to Turkey, where he is likely to face detention, prosecution and, potentially, torture or other cruel, inhuman or degrading treatment, for his perceived or imputed affiliation to the Hizmet/Gülen movement. The information received also indicates that Mr. Şimşek is at risk of enforced disappearance in transit from Albania, following the alleged short-term enforced disappearance and expulsion to Turkey of Mr. **Harun Çelik** on 1 January 2020.

According to the information received:

Case of *Mr. Selami Şimşek*

Mr. Selami Şimşek was detained on 8 July 2019 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. Subsequently, he was transferred to the Regional Border and Migration Centre in Laprake, where he applied for asylum. In support of his application, Mr. Şimşek's lawyer sent a letter to the Regional Border and Migration Department, requesting that the authorities refrain from forcibly transferring him to Turkey. As per the

standard procedures, Mr. Şimsek was supposed to be placed in the National Centre for Asylum Seekers in Babbru, but the transfer to the Centre never occurred. Instead, he was driven around in a white van for hours without any explanation provided to his lawyer or relatives. At approximately 21:00h on the same day, his lawyer was informed that Mr. Şimsek had been taken to the Ministry of Interior to provide additional information on his asylum application. Allegations were made that several high-level government officials demanded that an immediate expulsion order be issued, which would allow for his prompt transfer to Turkey. Several individuals, including a person associated with Mr. Şimsek, were arrested by police in front of the Ministry. They were released in the morning of 10 March.

At around 1.30 a.m. on 10 March, Mr. Şimsek was taken to an undisclosed location in the white van. His lawyer was subsequently informed that he might be detained in the Closed Detention Centre for Foreigners, which further raised concerns that his expulsion is imminent. In addition, his lawyer was not permitted to contact Mr. Şimsek.

Case of Mr. Harun Çelik

Mr. Harun Çelik was a teacher at a Hizmet-affiliated school in Kazakhstan. In July 2019, he was detained at the Tirana airport together with Mr. Şimsek on the grounds of counterfeiting a Canadian visa.

Pursuant to the Law on Foreigners, the High Court sentenced him to eight months in prison. Until 31 December 2019, he was held at the Detention Facility No. 302. It is alleged that the Turkish authorities requested his immediate deportation, after which an expulsion order was issued by the Albanian Ministry of Interior on 1 January 2020.

On 1 January 2020, persons associated with Mr. Çelik were waiting for him to be released from the Detention Facility No. 302, minutes away from the center of Tirana. Instead of being released, Harun Çelik was abducted without an arrest warrant and his whereabouts allegedly remained unknown for several hours. It is believed that he was placed outside the protection of the law, without any possibility to challenge his deprivation of liberty, inform his friends and lawyer or his family.

Persons associated with Mr. Çelik drove to the Regional Border and Migration Department in Laprake to pre-empt illegal transfer. Shortly after, Harun Çelik was brought to the Regional Border and Migration Department, where he could not appeal the expulsion order, given that he was denied legal representation. While he was being taken to an unidentified vehicle, several bystanders confirmed that

he had been loudly demanding the right to asylum. Finally, his lawyer learned that he had been transferred by Air Albania flight, which departed the Rinas airport in Albania at approximately 8.30 p.m. for Istanbul, Turkey.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the imminent forcible returns of Mr. Selami Şimsek and other Turkish nationals currently residing in Albania may place them at serious risks of being subjected to arbitrary arrest and detention, and possibly enforced disappearance and torture in transit and upon arrival in Turkey. We are equally concerned that Mr. Çelik appears to have been expelled for his alleged connection to Hizmet/Gülen movement¹, reportedly without any due process guarantees afforded by relevant legislation, most notably Law 108/2013 “On Foreigners”. In the same light, we underscore 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (article 3), the International Convention for the Protection of All Persons from Enforced Disappearance (article 16), and the 1951 Convention on the status of refugees (article 33). Likewise, 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.

The forcible return may result in serious violations of their rights to liberty, personal security, integrity and fair trial in contravention of the Universal Declaration of Human Rights (UDHR, articles 3, 5, 9 and 14), the International Covenant on Civil and Political Rights (ICCPR, articles 7, 9, 13, 14,) and the CAT(in particular article 3), which Albania duly ratified.

We wish to 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 also 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 both instruments 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

¹ Also classified by the Government of Turkey as a terrorist organization under the assigned names Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ) or Parallel State Organisation (Paralel Devlet Yapılanması, PDY).

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 stress that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute 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 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 persons 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 the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the current whereabouts and the state of health of Mr. Şimsek, and the measures taken to ensure that he enjoys prompt and regular access to legal representation.
3. Please provide information on the current status of Mr. Simsek's application for political asylum and international protection.
4. Please provide information on the factual and legal grounds for expelling Mr. Çelik to Turkey. Please clarify precisely how this measure is compatible with Albania's international human rights obligations under the Conventions it has ratified (CAT, Refugee convention, Convention on Enforced Disappearances).
5. Please provide information on the factual and legal basis (whether national security or other measures) that are being invoked to justify the expulsion to Turkey of persons seeking asylum to Albania, accused of involvement in or sympathies for the Hizmet/Gülen movement.

6. Please provide detailed information as to how comprehensive individual risk assessments are carried out by relevant Albanian authorities, both in terms of procedural safeguards and analysis of the country of return situation, so as to ensure that individuals will not be subjected to violations of their fundamental rights in transit and upon return.
7. Have any written guarantees been sought by the Government of Albania from the Government of Turkey, that persons requested by the latter to be returned, will not be subjected to violations of their rights to liberty, to personal security, to integrity, and to fair trial if accused of any criminal offence? Please provide evidence that such assurances were sought and received.
8. Please provide information on the safeguards that are in place and the measures taken to implement them in order to avoid deportation, or forcible return of any person in a similar situation in Albania, in particular persons applying for asylum or holding an asylum seeker certificate, to countries where their liberty, personal security, integrity, and lives may be at risk.
9. Please provide information on measures adopted by the Albanian authorities to ensure the right of persons to an effective remedy for human rights violations, including arbitrary detention, enforced disappearance, illegal deportation, torture and ill-treatment.

While awaiting a prompt reply to this urgent communication, we respectfully urge the Albanian authorities to halt and review without delay the decisions of expulsion taken against Mr. Selami Şimsek and all other Turkish nationals residing in Albania. To this end, we also respectfully call on the authorities to conduct comprehensive individual assessments of the risks these individuals may face in respect of their rights under international human rights law.

Finally, 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.

A communication will be transmitted to the Government of Turkey on the same subject.

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.

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Felipe González Morales
Special Rapporteur on the human rights of migrants

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