



PERMANENT MISSION OF THE REPUBLIC OF TÜRKİYE
TO THE UNITED NATIONS OFFICE IN GENEVA

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The Permanent Mission of the Republic of Türkiye to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the Communication from Special Procedures dated 19 June 2024 (AL TUR 2/2024), has the honour to enclose herewith the information note provided by relevant Turkish authorities,

The Permanent Mission of the Republic of Türkiye to the United Nations Office in Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 25 October 2024



Encl: As stated.

Office of the High Commissioner for Human Rights
Palais Wilson
Rue des Pâquis 52
1201 Geneva

INFORMATION NOTE IN REPLY TO THE COMMUNICATION FROM THE SPECIAL PROCEDURES

(Reference: AL TUR 2/2024)

With reference to the joint communication of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment dated 19 June 2024, the Government of the Republic of Türkiye (hereinafter, “the Government”) would like to submit its responses and observations hereinbelow.

INFORMATION ON THE RELEVANT LAW

The principles and procedures with regard to foreigners’ entry into, stay in and exit from Türkiye, and the scope and implementation of the protection to be provided for foreigners who seek protection from Türkiye are stipulated in the Law on Foreigners and International Protection No. 6458 (hereinafter, “Law No. 6458”) and the Regulation on the Implementation of the Law on Foreigners and International Protection. Pursuant to Article 53 of Law No. 6458, a deportation decision shall be issued either upon instructions of the Directorate General of Migration Management or *ex officio* by the governorates. This decision together with its reasons shall be notified to the foreigner in respect of whom the decision has been issued or to his/her legal representative or lawyer. The foreigner concerned or his/her legal representative or lawyer may appeal against the deportation decision to the administrative court within seven days as of the date of the notification. The decision of the court on the appeal shall be final. Except where the foreigner consents, the foreigner shall not be deported during the judicial appeal period or in case of resort to a judicial remedy, until the conclusion of the proceedings. In addition, the person placed under administrative detention or his/her legal representative or lawyer may appeal against the detention decision to the Magistrate's Judgeship and request his/her release.

FACTS AND OBSERVATIONS

A. Administrative and Judicial Proceedings Against Ms. Sabouny

I. Deportation and Administrative Detention Decisions of the Governorate of Malatya dated 4 October 2023 and the Judicial Proceedings Related to These Decisions:

i. The 1st Administrative Court of Malatya (Case No. 2023/1898)

Malatya Governorate, with its decision dated 4 October 2023, decided that Ms. Sabouny (whose official full name was determined to be Ghada Mohamed Najibe Shikh Jamil Sabouny) be deported pursuant to Article 54/1(d) of Law No. 6458 for the reason that "*It was deemed appropriate to take a deportation decision on the grounds that the foreigner is a threat to public order due to the existence of a G-99 restriction record*". Along with the said decision, the Malatya Governorate determined that deportation to Egypt, the country of origin of the said person, could result in violation of Articles 4 and 55/1(a) of Law No. 6458, and decided that she be deported to a safe third country within the scope of Article 52 of the said Law or returned to her country of origin subject to her consent. The relevant deportation decision and the third country assessment form are herewith attached (Annex-1).

An administrative case was filed on 11 October 2023 before the 1st Administrative Court of Malatya (Case no. 2023/1898) with the request for the annulment of the Malatya Governorate's deportation decision concerning Ms. Sabouny. The case is still pending.

ii. Decision of the 2nd Magistrate's Judgeship of Erzurum (Decision No. 2023/9521)

With the decision dated 4 October 2023, the Governorate of Malatya also decided to place the applicant under administrative detention for 6 months in a removal centre under Article 57 of Law No. 6458 on the grounds that she posed a threat to public order and public security. As a result, Ms. Sabouny was placed under administrative detention at the Aşkale Removal Centre in Erzurum. The applicant appealed against the administrative detention decision before the 2nd Magistrate's Judgeship of Erzurum, requesting her release. Her request was accepted by the said Judgeship on 2 November 2023 and she was released.

II. Deportation and Administrative Detention Decisions of the Governorate of Edirne dated 5 April 2024 and Judicial Proceedings Regarding These Decisions

i. The Administrative Court of Edirne (Case No. 2024/1001):

The Governorate of Edirne, with its decision dated 5 April 2024, decided that Ms. Sabouny be deported in accordance with Article 54/1(d) of Law No. 6458, stating that "*In the risk analysis form prepared by the relevant law enforcement units, it was reported that she had a criminal record*".

for having committed the offence of intentional injury. In addition, upon the examination conducted in the relevant system (GÖÇNET) of the Presidency of Migration Management, it was determined that there is a "G-207 provocative actions restriction code" regarding the person concerned. Due to the fact that there is a restriction code in the foreigner's name, it has been deemed appropriate that a deportation decision be taken on the grounds that the foreigner is a threat to public order." In the same decision, the Edirne Governorate determined that deportation to Egypt, the country of origin, could result in violation of Articles 4 and 55/1(a) of Law No. 6458 and decided that Ms. Sabouny be deported to a safe third country within the scope of Article 52 of the said Law or returned to her country of origin subject to her consent. The revised deportation decision dated 5 April 2024 is attached hereto (Annex-2).

An administrative case was filed on 15 April 2024 before the Administrative Court of Edirne (Case no. 2024/1001) with the request for the annulment of the Edirne Governorate's deportation decision concerning Ms. Sabouny. The case is still pending.

The Edirne Governorate, with its decision dated 5 April 2024, also decided to place Ms. Sabouny under administrative detention for 6 months in a removal centre under Article 57 of Law No. 6458 on the grounds that she posed a threat to public order and was at risk of absconding and disappearing. As a result, Ms. Sabouny was placed under administrative detention at the removal centre in Edirne. Subsequently, on 19 April 2024, the administrative detention order was terminated by the Edirne Governorate and Ms. Sabouny was released.

As there was no third country where she had requested to be deported, both the Governorate of Malatya and the Governorate of Edirne conducted research on safe third countries to where she could be deported. During this research, it was considered whether there was a risk that the third country would forcibly return her to Egypt. As a result of their assessment, the relevant Governorates decided that she could be deported to Germany or Australia.

B. Entry Ban Decisions and Administrative Judicial Proceedings

Ms. Sabouny also filed an administrative lawsuit through his lawyer on 25 April 2024 before the 1st Administrative Court of Ankara, requesting the annulment of the decisions dated 14 September 2023 and 5 April 2024 banning her from entering Türkiye. The lawsuit filed by the applicant is still ongoing before the said Court (Case no: 2024/1150).

C. The Criminal Proceedings for the Offence of Intentional Injury

From the examination of the decision file numbered 2023/421 and decision numbered 2024/113 of the Istanbul 36th Criminal Court of First Instance, in which Ms. Sabouny was tried as a defendant, it was determined that she committed the offence of intentional injury against an Egyptian national named Ahmed Hamdi İbrahim Abdelnabi Elhanafi on 27 July 2022 and a conviction sentence was issued against her. On 22 February 2024, the court decided to suspend the announcement of this sentence in accordance with Article 231 of the Code of Criminal Procedure No. 5271. On 12 March 2024, the 22nd Assize Court of Istanbul rejected the objection made by the defendant against this decision and the decision became final. Consequently, Ms. Sabouny was not placed in a penal institution as a convict.

D. Regarding allegations of ill-treatment and violations of the right to a fair trial and freedom of expression

Turkish Constitution enshrines the principle of equality of all persons before the law. While everyone is under the guarantee of the State in terms of protection and promotion of human rights and freedoms at both national and international level in accordance with the requirements of democratic society regardless of their title or profession; this guarantee does not give an absolute immunity from being subjected to the law. Rights of all individuals subject to administrative or judicial processes are protected. All these processes which are carried out in accordance with the principles specified in the relevant laws and supervised by an independent and impartial judiciary, cannot be labelled as “harassment” or “persecution of journalists or human rights defenders”.

On the other hand, Türkiye has adopted a zero tolerance against torture policy since 2003, and introduced a comprehensive set of legislation and other measures in order to prevent, investigate, prosecute and punish all acts of torture and ill treatment in line with the relevant international standards and principles.

Although it is asserted in the joint communication that, on 2 October 2023, Ms. Sabouny was “violently taken from her home by plainclothes security officers on the grounds that her residence permit had expired”, she was in fact duly invited to the police station on the grounds that there was a G-99 restriction code in her name, by law enforcement officers who properly showed her their identity cards, as was put on record in the attached report (Annex-3).

Also, on various dates prior to both of the above-mentioned deportation decisions, Ms. Sabouny underwent several medical examinations to determine whether she had been subjected to any kind of ill-treatment. In these medical examinations, she was asked whether she had suffered any physical or mental harm. It was also recorded in the medical reports that there was no physical indication that Ms. Sabouny had been subjected to ill-treatment (Annex-4).

In addition, as a result of the queries made in the National Judiciary Informatics System (UYAP) regarding the allegations stated in the joint communication, no record of an investigation or a report of crime was found before the Investigation Office for Public Officials' Crimes. No complaint was filed against the public officials who invited Ms. Sabouny to the police station.

Furthermore, within the framework of Article 36 of the Turkish Constitution titled "the freedom to claim rights", which also refers to the right of everyone to a fair trial, Ms. Sabouny had the opportunity to have independent and impartial judicial authorities examine the lawfulness of the deportation and administrative detention decisions concerning herself by applying to the above-mentioned judicial remedies with the assistance of her lawyer.

Finally, it should be reiterated that Ms. Sabouny shall not be deported from Türkiye until the lawsuits she has filed become final, in accordance with the relevant law explained above.

In conclusion, the Government is of the view that Ms. Sabouny's rights are being respected, and all proceedings related to her are carried out in accordance with the law, including the relevant international standards and principles.

ANNEXES

- 1- Deportation decision and the third country assessment form dated 04.10.2023 (with translated versions).
- 2- Revised deportation decision dated 05.04.2024 (with translated version).
- 3- Police record dated 02.10.2023 (with translated version).
- 4- Medical reports (with translated versions).