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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 214 (3-3-16) G/SO 214 (53-24) G/SO 214 (106-10)
ITA 1/2013

7 June 2013

Dear Mr. Trambajolo,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the human rights of migrants, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 17/2, 17/12, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the reported deportation of Ms. **Alma Shalabayeva** and her 6-year old daughter to Kazakhstan.

According to information received:

On 29 May 2013, it is alleged that some thirty heavily armed Italian special operations forces conducted a night-time raid on a villa outside Rome in search of Mr. **Mukhtar Ablyazov**, a national from Kazakhstan who was granted asylum status in the United Kingdom.

It is reported that Mr. Mukhtar Ablyazov is the former Minister for Energy, Industry and Trade of Kazakhstan and a political opponent of Kazakhstan's President Nursultan Nazarbayev. Mr. Ablyazov was granted political asylum in the United Kingdom in 2011. Reportedly, after the British police formally warned him of a plot to assassinate him on British soil, Mr. Ablyazov has gone into hiding. Mr. Ablyazov is also a former political prisoner of Kazakhstan, recognised as such by Amnesty International, the European Parliament, the OSCE and the United States State Department. It is alleged that Mr. Ablyazov was subjected to torture, beatings and other ill-treatment while he was in prison in Kazakhstan.

While failing to find Mr. Ablyazov, the Italian police arrested his wife, Ms. **Alma Shalabayeva**, and allegedly took her to an undisclosed location. It is reported that the reason for Ms. Shalabayeva's arrest was that she was in possession of an allegedly forged diplomatic passport from the Central African Republic. The

police allegedly failed to verify her valid passport, issued by Kazakhstan, which allegedly contained a valid residency permit, issued by Latvia. While in detention, it is alleged that Ms. Shalabayeva's lawyers did not have access to their client. It is also reported that Ms. Shalabayeva was not provided with an interpreter which prevented her from understanding the charges pending against her and the proceedings underway.

The police also reportedly had members of Ms. Shalabayeva's family sign the report of search premises, while they were not provided with a translation that they could understand. One of the family members reportedly wrote in Russian on the report "I do not know what I am signing."

On 31 May 2013, the police reportedly went to pick up Ms. Shalabayeva's 6-year-old daughter who was staying with family members. The police allegedly told the family members that they were taking the girl to see her mother. It is reported that the police did not inform the family that they were about to immediately deport both Ms. Shalabayeva and her daughter, and that they could not deport Ms. Shalabayeva without the minor accompanying her.

On 31 May 2013, the Italian authorities deported Ms. Shalabayeva together with her 6-year-old daughter to Kazakhstan. Ms. Shalabayeva and her daughter were allegedly deported in a privately chartered jet in the presence of Mr. Yerzhan Yessirkepov, Kazakhstan's consul and at least one other diplomat. It is alleged that the jet had been dispatched to Rome's Ciampino airport even before the decision on deportation was made and communicated officially to the lawyers.

While moving quickly to deport Ms. Shalabayeva and her daughter, the Italian authorities allegedly violated Italian legislation on immigration, in particular legislative decree 286 of 25 July 1998 entitled "*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*", as well as the due process rights of Ms. Shalabayeva and her daughter. Article 19 of legislative decree 286 reportedly states that: "In no case can there be expulsion or rejection to a State in which the foreigner may be persecuted for reasons of race, language, nationality, religion, political opinion, personal or social conditions, or where he or she may risk being sent to another State where the same is not protected against persecution." It is further alleged that Ms. Shalabayeva's right to appeal her deportation and apply for asylum were not respected by the Italian authorities. The lawyers reportedly had no opportunity to appeal for a stay of deportation. Also it is alleged that while making a decision on the deportation the Italian authorities ignored the fact that Ms. Shalabayeva might be at a risk of being tortured or subjected to other forms of ill-treatment upon her forcible return to Kazakhstan.

Without prejudging the accuracy of the information made available to us, we would like to express our serious concern that Ms. Shalabayeva and her six-year-old daughter were deported from Italy to Kazakhstan, where they may be at risk of being tortured or subjected to other forms of ill-treatment. In this regard, we urge your Excellency's Government to undertake all necessary steps to ensure that the rights of Ms.

Shalabayeva and her daughter, including their right to seek asylum, are respected in compliance with international law, in particular the international principle of non-refoulement.

In this context, we would like to draw your Excellency's Government's attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by Italy on 12 January 1989, which provides that no State party shall expel, return ("refouler"), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, we would also like to remind your Excellency's Government of paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee affirmed 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".

Furthermore, Article 37 of the Convention on the Rights of the Child, ratified by the Government of Italy in 1991, reads: "States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Additionally, article 3 of the Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions concerning children."

We would also like to bring to the attention of your Excellency's Government paragraph 16 of the Resolution 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."

Furthermore, paragraph 7(d) of Human Rights Council Resolution 16/23 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, stressing the importance of effective legal and procedural safeguards in this regard, and recognizing 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.

With regard to the allegation that Ms. Shalabayeva's right to seek asylum was not respected, we would like to draw your attention to article 33 of the 1951 Convention on the Status of Refugees and its protocol, ratified by Italy on 15 November 1954 and 26 January 1972 respectively, which stipulate that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

In this connection, we would also like to refer to Article 13 of the International Covenant on Civil and Political Rights, ratified by Italy in 1978, which provides that “An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from *only* in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” In its General Comment 15, the Human Rights Committee reaffirms this principle (Paragraphs 9 and 10).

Regarding the arrest and subsequent detention of Ms. Shalbayeva, we would like to refer your Excellency’s Government to article 9 of the International Covenant on Civil and Political Rights, in particular:

- Article 9(2) which states: “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”
- Article 9(4) which states: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

Furthermore, we would like to refer your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular:

- Principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”
- Principle 7, which states: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”
- Principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

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 Ms. Shalabayeva and her daughter in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims against the Italian authorities regarding their deportation?
3. Please provide detailed information on the legal grounds for the decision to deport Ms. Shalabayeva from Italy to Kazakhstan together with her 6-year-old daughter, and explain how this decision is compatible with the aforementioned international norms and standards, in particular with the principle of non-refoulement. Please also explain if any attempt to lodge an appeal against deportation was made by or on behalf of the alleged victims.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case to clarify the facts, establish the responsibilities and ensure the accountability of any person involved, and remedy the situation. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information regarding if and how Ms. Shalabayeva and her daughter were given an opportunity to apply for asylum prior to her deportation. Please also provide information regarding measures available for the protection of those who claim to be victims of persecution and torture, seeking asylum in Italy.

We undertake to ensure that your Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Shalabayeva and her six-year-old daughter are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In light of the potentially serious implications of this case, we are considering to publicly express our concern in the near future.

Please accept, Mr. Trambajolo, the assurances of our highest consideration.

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Gabriela Knaul

Special Rapporteur on the independence of judges and lawyers

François Crépeau
Special Rapporteur on the human rights of migrants

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
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