



PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 (106-10) G/SO 214 (53-24)
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17 July 2013

Excellency,

We have the honour to address you in our capacity as 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 17/12 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 **deportation of Ms. Alma Shalabayeva and her 6-year old daughter** [REDACTED] from Italy to Kazakhstan on 31 May 2013.

At the time of the deportation of Ms. Shalabayeva and her daughter, the Italian authorities claimed there were irregularities in Ms. Shalabayeva's documents, which justified their expulsion. However, Ms. Shalabayeva's lawyers have since provided evidence that her documents were legitimate, and we were informed by the Italian authorities that on 12 July 2013, the deportation order was rescinded, and that Ms. Shalabayeva and her daughter are now welcome to return to Italy. However, as the deportation was in fact carried out on 31 May 2013 by the Italian authorities, Ms. Shalabayeva and her daughter now find themselves in Kazakhstan.

We would like to bring to the attention of your Excellency's Government information we have received regarding the current situation of Ms. Shalabayeva and her daughter, presently in Kazakhstan.

According to the information received:

On 29 May 2013, Ms. Shalabayeva was arrested and detained in Rome, Italy. On 31 May 2013, Ms. Shalabayeva and her daughter were deported in a privately chartered jet from Rome in the presence of Mr. Yerzhan Yessirkepov, Kazakhstan's consul in Rome, and at least another diplomat. It is reported that

Ms. Shalabayeva and her daughter were sent on the jet without passports or any other official identification papers. Allegedly, the private jet had been ordered and paid for by the Embassy of Kazakhstan in Italy even before Ms. Shalabayeva's detention hearing had been completed on 31 May.

Upon arriving at the airport in Kazakhstan on 1 June 2013, Ms. Shalabayeva was allegedly handed two decrees dated 30 May 2013, declaring her a suspect and notifying her of the initiation of a criminal investigation against her. The decree was dated 31 May, notably the day before she arrived in Kazakhstan. On 3 June 2013, she was reportedly summoned to appear for questioning on 7 June 2013.

On 7 June 2013, Ms. Shalabayeva was reportedly formally charged for her alleged involvement in a case of illegal issuance of passports, a criminal offence under Kazakhstani law that could lead to two to four years of imprisonment. The passports in question have allegedly never been seen or used by Ms. Shalabayeva. The trial is reportedly pending and may start on 22 July 2013.

It is alleged that the charges being laid against Ms. Shalabayeva are being used as a political tool against her for the actions of her husband, who was a former politician in Kazakhstan and who founded the political movement "Democratic Choice of Kazakhstan". In 2002, he was convicted of charges that international civil society consider politically motivated. He was granted asylum in the United Kingdom in 2011 on the grounds that he was deemed to be at risk of persecution should he be returned to Kazakhstan.

Furthermore, according to the information received, Ms. Shalabayeva and her 6-year-old daughter might be at a risk of torture or other forms of ill-treatment in Kazakhstan, due to her husband Mr. Mukhtar Ablyazov's status as a political opponent of Kazakhstan's President Nursultan Nazarbayev. Mr. Ablyazov's whereabouts are currently unknown.

Concern is expressed that forced return to Kazakhstan as a result of the erroneous deportation order may not be in the best interest of the child concerned, given that she was living in Italy and attending school there, and this deportation disrupted her life and education, including family ties in Europe. In this connection we recall the principle that the best interests of the child shall always be a primary consideration, as enshrined in article 3 of the Convention on the Rights of the Child.

While we do not wish to prejudge the accuracy of this information, we would like to draw the attention of your Excellency's Government to relevant international standards that are applicable to the issues brought forth by the situation described above. Specifically, we would like to highlight the principles of freedom of movement and the right to leave one's country as enshrined by article 12 (2) of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall be free to leave any country, including his own". These principles are reiterated by article 13(2) of

the Universal Declaration of Human Rights which states that “Everyone has the right to leave any country, including his own, and to return to his country”.

Furthermore, the circumstances of their deportation, in particular the involvement of officials of Kazakhstan in direct contact with Italian law enforcement officials and the chartering by Kazakhstan of a private jet to expedite the deportation process, give rise to the appearance that this was not a lawful deportation but in fact an extraordinary rendition. In this light, Ms. Shalabayeva and her daughter should be returned to Italy without delay, whereas of 12 July they have been invited to return by the Italian government.

Without in any way implying any conclusion as to the facts of the case, we would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency’s Government acceded on 26 August 1998.

In this context, we would like to draw the attention of your Excellency’s Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

Moreover, since 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 greatly appreciate receiving additional details from your Excellency’s Government concerning the current situation of Ms. Shalabayeva and her daughter. We would in particular appreciate to receive information on the following points:

1. How will your Excellency’s Government facilitate Ms. Shalabayeva and her daughter’s return to Italy, in light of the cancelled deportation order?
2. How will your Excellency’s Government ensure that the affected persons are not subjected to harassment, threats, persecution, discrimination or criminal investigations as a result of their illegal deportation?
3. Please explain, what measures will be taken by your Excellency’s Government to ensure that the right to physical and mental integrity of Ms. Shalabayeva and her daughter will be protected.
4. Please explain the nature of the criminal charges laid against Ms. Shalabayeva by your Excellency’s Government? What are the legal and factual basis of

those charges and how are they in conformity with international human rights law standards and principles?

5. Please explain, what measures will be taken by your Excellency's Government to ensure that the best interest of Ms. Shalabayeva's daughter will be protected.

Because of the serious urgency of this matter, we intend to issue a public statement in the near future expressing our concerns about the unlawful deportation by Italy of Ms. Shalabayeva and her daughter from Italy to Kazakhstan, urging that the matter be given due attention by both the Government of Italy and your Excellency's Government to ensure that their rights are not violated.

We undertake to ensure that your Excellency's 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 the above mentioned persons 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.

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

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 punishment