

Decision: 59/1993 (Kuwait)

Communication addressed to the Government of Kuwait on 22 February 1993.

Concerning: Omar Shehada Abu-Shanab, on the one hand, and the State of Kuwait, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Kuwait. The Working Group transmitted the reply of the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) According to the communication, Omar Shehada Abu-Shanab, a Palestinian citizen using a Jordanian passport who was a nurse at Al Razzi hospital during the Gulf war, was arrested on 10 March 1991 while leaving his place of work and disappeared until his trial on 9 June 1991. At this trial he was sentenced to 15 years' imprisonment for having collaborated with the enemy in the above-mentioned war.

(b) The communication further maintains that the charge against him was unjust since, in the course of his duties as a nurse, he simply acted in a humanitarian spirit, "without making distinctions between the sick and wounded for whom he was caring in that war situation on the ground that they belonged to one side or the other". The communication presumes that his arrest may have been due to this situation or to the fact that "he was a Palestinian or simply held a Jordanian passport".

(c) The communication adds that, during the two months when nothing was known of his fate, he was tortured and beaten, subjected to electric shocks and forced to make false statements.

(d) When the communication was transmitted to the Government, the latter stated that no person with the name given was under detention and that no one of that name had been tried. The only person with a similar name was Ahmed Rashid Ahmad Abu Shanab, who had been arrested in April 1991, charged with theft and released on 19 December 1992.

(e) The Working Group transmitted the reply to the source, which stated that the detainee's complete name is "Omar Shehada Abdalla Hamdan Abu-Shanab" and that he is still being held in cell No. 4 in Al Markazy Central Prison. It added that his relatives are in touch with him through the International Committee of the Red Cross and the Spanish Embassy in Kuwait. It appended the copy of a letter which the prisoner had sent to them and whose postmark indicates that it was sent from Kuwait, the sender's address being given as cell No. 4, Al Markazy Central Prison.

(f) Out of a desire to clear up the case, the Working Group consulted the International Committee of the Red Cross, which, referring to "Omar Shahadeh alias Abu Shanab", said it regretted to state that it was only in touch with the family of the persons concerned and was consequently unable to answer the Group's question.

(g) In the circumstances, the Working Group has to decide whether "Omar Shehada Abu Shanab", "Omar Shehada Abdalla Hamdan Abu Shanab" or "Omar Shehadeh alias Abu Shanab" is in fact under detention and, if so, whether or not his detention is arbitrary.

(h) In the light of the information given by the source, and taking special account of the fact that there is a letter with a postmark giving the sender's address as Kuwait Central Prison, and the fact that the International Committee of the Red Cross has referred to a person known as "Omar Shehadeh alias Abu Shanab" - a name which does not come from the group but can only originate from the ICRC files, the Working Group concludes that there is indeed a person detained in Kuwait Central Prison with the latter name and that, because of the similarity with the names supplied by the source, it can only be the same person.

(i) In the absence of a reply from the Government to the actual substance of the communication, the Working Group reaches the conclusion that the detention referred to is arbitrary. The prisoner was in fact accused and sentenced for the lawful exercise of the medical occupation in which he was engaged in Al-Razzi hospital, a right embodied in article 23, paragraph 1, of the Universal Declaration of Human Rights. It is quite clear that "free choice of employment" presupposes the free performance of work in conditions in conformity with the specific rules for the activity in question. It is recognized that in a war situation it is not lawful for medical personnel to extend the required humanitarian care only to the wounded of one side. Such action is contrary to the 1949 Geneva Conventions relating to the treatment of wounded prisoners and to civilians affected by the conflict.

(j) Furthermore, the detention is arbitrary, in conformity with category III of the principles applicable in the consideration of cases submitted to the Working Group since the prisoner is being held in breach of principle 1 (humane treatment), principle 2 (every detention shall be carried out strictly in accordance with the law) and principle 19 (communication with his family) of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. The non-observance of the principles mentioned derives from the fact that at present the Government of Kuwait denies the detention of the person referred to in this decision, which makes it impossible to exercise the human rights provided for in those principles.

(k) As to the allegations of torture, the Working Group, in a spirit of coordination with the whole United Nations system for the protection of human rights, will transmit the case to the Special Rapporteur on the question of Torture.

(l) In addition, if the Government of Kuwait insists that the person referred to in this decision is not under detention, this information will be transmitted to the Working Group on Enforced or Involuntary Disappearances.

6. In the light of the above the Working Group decides:

(a) The detention of Omar Shehade Abu Shanab is declared to be arbitrary, being in contravention of articles 9 and 23 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture to which Mr. Abu Shanab was subjected to the Special Rapporteur on the question of Torture.

7. Consequent upon the decision of the Working Group declaring the detention of Omar Shehade Abu Shanab to be arbitrary, the Working Group requests the Government of Kuwait to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

8. If the Government of Kuwait does not report that it has taken the necessary measures to remedy the situation, or if it insists that the person referred to in this decision is not under detention, within a period of 30 days from the time when this decision is transmitted to it, this information will be transmitted to the Working Group on Enforced or Involuntary Disappearances.

Adopted on 9 December 1993.