

OPINION No. 20/2000 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 18 April 2000

Concerning Naji Azziz Harb

The State is a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. Naji Azziz Harb, a Lebanese citizen born in 1967 and a former officer in the Lebanese army, was arrested on 20 July 1990 in Beirut, reportedly by members of the Syrian intelligence services who did not produce a warrant for his arrest. According to the source, Mr. Harb was immediately transferred to Syria after the arrest. It is reported that the order for Mr. Harb's arrest emanated from the president of the military tribunal of the Second Syrian Army, General Bahjat Barakat Ismail. Mr. Harb was accused of involvement in the killing of

two Syrian soldiers in Beirut in 1988 and of terrorist acts, after having deserted from the regular Lebanese armed forces and joined the group of General Aoun. The charges against him were said to be based on articles 534 A, 305 A and 204 A of the Syrian General Code (referred to as Code général syrien by the source). It is reported that Mr. Harb was tried before a Syrian military tribunal in Syria although the Syrian judiciary never transmitted an extradition request to the Lebanese authorities.

6. In October 1991, Mr. Harb was found guilty as charged and sentenced to a life term of forced labour. He is currently serving this sentence at Saydnaya prison in Syria. It is alleged that the trial of Mr. Harb did not meet international standards for a fair trial: he was tried before a military tribunal composed of military officers subject to the orders of the military hierarchy and he reportedly was denied of his right to legal representation, as the trial transcript of the case makes no reference to the presence or assistance of a lawyer. Moreover, the conviction of Mr. Harb is said to be based entirely on circumstantial evidence and on confessions that are said to have been obtained under duress. Finally, the life sentence pronounced against Mr. Harb reportedly cannot be appealed to a higher court.

7. The family of Mr. Harb reportedly was not informed of the judgement. It was not until 1998 that his mother, after several written démarches with the Lebanese authorities (who had theretofore denied the existence of Lebanese prisoners in Syrian detention facilities) and the military tribunal of Beirut, was able to obtain detailed information about the reasons for her son's detention, as well as a certified copy of the judgement of the military tribunal. She is currently entitled to visit her son once a month at the prison of Saydnaya.

8. In its reply, dated 26 May 2000, the Government confirmed to the Working Group that Mr. Harb was arrested on 20 July 1990. Without specifying the place of arrest or the nationality of Mr. Harb, it states that he had been "found to be a member of an organization hostile to our country and to have formed part of an armed group which attacked a checkpoint manned by our forces operating in Lebanon, at which he killed two Syrian soldiers". The Government states that "he was referred to the competent court and sentenced to life imprisonment".

9. The Working Group has without success requested the Government to provide it with detailed information on the legal basis for the detention of Mr. Harb. In the absence of information, particularly concerning his trial and the observance of his right to a fair trial, which was impugned by the source, which the Government did not deny although given an opportunity to do so, the Working Group considers itself in a position to render an opinion on the case on the basis of the information provided by the source.

10. The following elements of violation of the right to a fair trial have been submitted. Firstly, the accused was denied his right to legal representation during the trial. Secondly, his conviction was based solely on circumstantial evidence and on his own confessions, said to have been obtained under duress. Thirdly, he did not have the right of appeal against his sentence. Thus, articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) and (5) of the International Covenant on Civil and Political Rights have been violated. The gravity of that violation of the right to a fair trial is such as to confer on the detention of Mr. Harb an arbitrary character.

11. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Naji Azziz Harb is arbitrary, as being in contravention of articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

12. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 14 September 2000