

OPINION No. 16/2005 (PAKISTAN)

Communication addressed to the Government of Pakistan on 4 November 2004.

Concerning Mr. Jamal Abdul Rahim.

The State is not a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group regrets that the Government did not provide it with the requested information, despite repeated invitations to do so. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. According to the information received, Mr. Jamal Abdul Rahim was born in Beirut on 5 September 1969, a son of Palestinian refugees in Lebanon. According to a Special Identity Card for the Palestinian Refugees (No. 06911D) issued by the Lebanese Ministry of the Interior, Directorate General of the Administration of Palestinian Refugees Affairs, dated 28 January 1999, Jamal Abdul Rahim “is Palestinian, resides in Lebanon”. He is also registered as a Palestinian refugee by the United Nations Relief and Works Agency for Palestine Refugees (certificate No. 310813).
5. On a date unspecified by the source, Mr. Rahim was convicted by a court in Pakistan for participating in the terrorist hijacking of Pan Am Flight 73 in Karachi, on 5 September 1986, which resulted in the death of 21 passengers and crew.
6. In June 2001, Mr. Rahim completed the sentence imposed on him. He was not, however, released from detention and continues to be detained at the Central Jail in Rawalpindi, Pakistan. The reason for his continued detention is that under Pakistani migration laws, an alien in detention in Pakistan cannot be released from detention unless and until he has been issued travel documents. The Directorate General for General Security of the Republic of Lebanon opposed his repatriation on the ground that it had not found any registration records for him in Lebanon, as stated in a note from the Embassy of Lebanon in Pakistan to the Pakistani Ministry for Foreign Affairs dated 18 March 2002. In the same note, the Directorate General requested that the Ministry be provided with a copy of any registration documents that the above-mentioned person may possess, so that it could examine and verify them.
7. It was further reported that Mr. Rahim was brought before the Federal Review Board of the Supreme Court of Pakistan (FRB-SC) on more than one occasion. FRB-SC is competent to review the legality of his detention under the Foreigners Act 1946. On 13 April 2002, FRB-SC ruled that the Government of Pakistan should register Jamal Abdul Rahim with the National Authority for the Registration of Foreigners, which is equivalent to ordering the Government to release him from detention and legalize his position as an alien in Pakistan. In the course of the year 2003, FRB-SC again issued an identical order to the Government. Both orders were ignored by the authorities, who instead extended his detention every three months under the Foreigners Act 1946.

8. The source argues the following:

(a) Jamal Abdul Rahim is kept in detention although he completed his sentence more than three years ago. The reason for his continued detention is that the authorities are seeking a possibility of deporting him, instead of setting him free on Pakistani territory, as ordered by FRB-SC;

(b) Jamal Abdul Rahim is kept in detention in violation of the provisions of the Foreigners Act 1946, which limits the administrative detention of aliens deprived of their liberty in view of deportation to a maximum of two years.

9. It appears from the above-mentioned information that Jamal Abdul Rahim was sentenced to a prison term that was completed in June 2001. Since then he is detained awaiting deportation to Lebanon. The source states that the legal framework concerning administrative detention of foreigners limits the duration of detention to a maximum of two years and that the judicial body supervising his detention has ordered his release on two separate occasions; nevertheless, the authorities refuse to carry it out. The Government has not contested these allegations, although it was given the possibility of doing so.

10. The Working Group considers that keeping in administrative detention a person who has fully served his sentence, and whose release has been ordered by the body in charge of controlling the legality of administrative detention in the framework of a deportation process, confers an arbitrary character on the deprivation of liberty. The Working Group is of the opinion that the detention of Jamal Abdul Rahim does not have any legal basis.

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

The deprivation of liberty of Mr. Jamal Abdul Rahim is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and falls within category I of the categories applicable to the consideration of the 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 bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 26 May 2005