

OPINION No. 10/2007 (LEBANON)

Communication: addressed to the Government on 30 November 2006.

Concerning: Youssef Mahmoud Chaabane.

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

1. (Same text as paragraph 1 of Opinion No. 32/2006.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in a timely manner.
3. (Same text as paragraph 3 of Opinion No. 32/2006.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. It has transmitted the Government's reply to the source, and has received the source's comments on it. 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, the Government's reply and the source's comments.
5. The case mentioned below was reported to the Working Group on Arbitrary Detention as follows: Youssef Mahmoud Chaabane, a Palestinian born in 1965, a chauffeur, domiciled at the Bourj Barajneh camp in Beirut, was arrested on 5 February 1994 in Beirut, by members of the Syrian intelligence services, and was taken to Beau Rivage, a Syrian intelligence interrogation centre. After 10 days, he was handed over to the Furn El Chebbak - Dabta Adlieh gendarmerie in Beirut, where he was held incommunicado for one month. Mr. Chaabane was later brought to

Roumieh central prison, where he is currently being held. Mr. Chaabane was accused of murdering a Jordanian diplomat, Naëb Omran al-Maaitha, first secretary of the Jordanian Embassy in Beirut, and received a death sentence, which was commuted to life imprisonment on 19 October 1994.

6. According to the source, Mr. Chaabane was convicted by the Justice Council solely on the basis of confessions obtained under torture by the Syrian intelligence services in Lebanon. His arrest and trial took place in breach of Lebanon's international commitments, in particular the International Covenant on Civil and Political Rights, which Lebanon has ratified.

7. The source adds that the actual perpetrators of Mr. al-Maaitha's murder were convicted and executed in Jordan. Mr. Chaabane is still being held in detention, despite the fact that his innocence has been recognized. According to the source, the Lebanese courts are unable to retry Mr. Chaabane, as verdicts handed down by the Justice Council are not subject to appeal, which is a violation of article 14 of the International Covenant on Civil and Political Rights.

8. The source considers that Mr. Chaabane's detention is arbitrary and illegal. He was arrested without a warrant and was held in detention for 40 days without being brought before an examining magistrate or a procurator. His trial reportedly fell far short of the minimum requirements for a fair and just trial. Mr. Chaabane was convicted solely on the basis of confessions obtained under torture. The source concludes that Mr. Chaabane's continued detention after his innocence was confirmed by the arrest of the actual perpetrators, coupled with the Lebanese judicial system's inability to retry him, means that his detention is of an arbitrary nature.

9. In its reply, the Government explains that the judicial body known as the Justice Council is chaired by the president of the court of cassation, and is composed of four judges of that court, who serve as its members. It is a special court established by the legislature to consider serious cases, in particular those involving the internal and external security of the State, in accordance with articles 270 and 336 of the Criminal Code.

10. In accordance with Decree No. 4807 of 25 February 1994, the case of the murder in Beirut on 29 January 1994 of the first secretary of the Jordanian Embassy in Lebanon, Naëb Omran al-Maaitha, was referred to the Justice Council because it involved an attack against the internal security of the State.

11. On 19 October 1994, the Justice Council found Youssef Mahmoud Chaabane guilty, in accordance with article 549, paragraph 1, of the Criminal Code, and imposed the death sentence, which was subsequently commuted to life imprisonment with forced labour, in accordance with article 253 of the Criminal Code. Mr. Chaabane was also found guilty under article 72 of the Criminal Code of the serious offence of possessing weapons. The sentences are being served concurrently, the most severe being the sentence of life imprisonment with forced labour. These sentences were imposed on Mr. Chaabane for his participation, together with Tha'ir Mohammed Ali, in the premeditated murder of Naëb al-Maaitha, first secretary of the Jordanian Embassy in Lebanon.

12. On 2 December 2005, Mahmoud Chaabane filed an appeal against the verdict handed down on 19 October 2004, and requested a retrial. His appeal was based on a judgement reached

on 3 December 2001 by the State Security Court of Jordan. According to the judgement, Yasir Mohammed Ahmad Salamah Abu Shinar, also known as Tha'ir Mohammed Ali, and others were found guilty of belonging to an illegal association, the Revolutionary Council, which had been formed with the aim of carrying out military operations against the security of certain States, including the murder of the first secretary of the Jordanian Embassy in Lebanon, Naëb al-Maaitha. The judgement supposedly proved that Mr. Chaabane was innocent, since it contradicted the verdict handed down by Lebanon's Justice Council.

13. On 21 March 2006, the Justice Council issued a decision formally accepting the request for a retrial, but rejecting it in substance. The Justice Council upheld the decision under appeal, as the conditions for a retrial set out in article 328 of the Lebanese Code of Criminal Procedure had not been met, in particular paragraph (b), which reads as follows: "A retrial may be allowed if the individual has been found guilty of a serious or major crime and another individual has subsequently been found guilty of the same crime in the same capacity, provided that there is evidence to acquit the person found guilty."

14. The judgement cited as a basis for a retrial was issued by a Jordanian court and not by a Lebanese court, while article 328, paragraph (b), states that the two judgements must be rendered by Lebanese courts. Furthermore, since there is no contradiction between the Lebanese and the Jordanian judgements, the latter does not prove that Youssef Mahmoud Chaabane is innocent of the charges brought against him. The evidence adduced for Mr. Chaabane's appeal was considered insufficient to reopen the case.

15. Having reconsidered the legal procedures and the judgements in the case of the murder of the first secretary of the Jordanian Embassy in Lebanon, the Government contends that Youssef Mahmoud Chaabane is serving a prison sentence imposed on him in accordance with a verdict issued by the highest court in Lebanon, and following a trial that was properly conducted in Lebanon. The denial of the application for a retrial was based on Lebanese law.

16. In its comments on the Government's reply, the source emphasizes that the Government has not replied to the allegations concerning the conditions of Mr. Chaabane's arrest. It reiterates that the Syrian intelligence services arrested him and held him incommunicado for 10 days, notwithstanding the fact that they were not authorized to do so, and that his confessions were extracted under torture. Mr. Chaabane had no access to his family, a lawyer or a doctor, and he was completely deprived of the protection of Lebanese law. To obtain his confession, the Syrian intelligence services in Beirut tortured him. The source repeats that Mr. Chaabane was tried by a special court, which relied solely on confessions extracted under torture.

17. The source adds that Mr. Chaabane was unable to appeal against his conviction because judgements issued by the Justice Council were, at the time, irrevocable and not subject to any appeal. In December 2005, the law was amended to allow persons convicted by this court to request a review of their conviction. Mr. Chaabane's appeal was lodged in accordance with this amendment, but it was denied. The source emphasizes that some of the judges who had convicted Mr. Chaabane were among those who considered his appeal. They would be reluctant to challenge verdicts that they themselves had handed down. According to the source, this review is therefore not an effective remedy.

18. Lastly, regarding the Government's contention in its reply that there is no contradiction between the judgements handed down by the Jordanian and Lebanese courts, the source points out that the judgement of the Jordanian court never mentions the alleged involvement of Mr. Chaabane in this case and that, in any event, according to the Jordanian and Lebanese forensic medical examiners, there was only one gunman, even though two people - in this case, Youssef Mahmoud Chaabane and the person convicted in Jordan - both signed confessions stating that they had shot the diplomat.

19. Based on the foregoing, the Working Group notes that the Government has not challenged the allegations concerning the circumstances of Mr. Chaabane's arrest, detention and interrogation by the Syrian services. Mr. Chaabane was allegedly held incommunicado for 10 days on the premises of the Syrian services in Beirut, and confessions were allegedly extracted under torture - confessions that served as a basis for his being sentenced to death. Nor has the Government contested the fact that Mr. Chaabane was unable to have his conviction reviewed by a higher tribunal in accordance with the requirements of article 14, paragraph 5, of the International Covenant on Civil and Political Rights, to which Lebanon is a party. In its case law, the Human Rights Committee has on several occasions stated that the right to appeal established under article 14, paragraph 5, of the International Covenant on Civil and Political Rights imposes on States parties a duty substantially to review conviction and sentence, both as to sufficiency of the evidence and of the law.¹⁶

20. The Working Group considers that to be sentenced to capital punishment, when the Government has not provided evidence that the individual had the ability to have his guilty finding and conviction examined by a higher jurisdiction, is itself a very egregious breach of the standards of a fair trial. A fortiori, when the convicted person contends that his confessions were extracted under torture and when new evidence supports that contention.

21. The Working Group considers that, in the light of the circumstances, the violation of article 14, paragraph 5, of the International Covenant on Civil and Political Rights is of such gravity as to confer on the detention and sentencing of Mr. Chaabane an arbitrary character.

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

The deprivation of liberty of Youssef Mahmoud Chaabane is arbitrary, being in contravention of the provisions of article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

23. The Working Group, having rendered this opinion, requests the Government to take the necessary steps to remedy the situation of Mr. Chaabane, in conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 11 May 2006.

¹⁶ Communications No. 1100/2002, *Bandajevsky v. Belarus* and No. 802/1998, *Rogerston v. Australia*.