

OPINION No. 17/2006 (LEBANON)

Communication: addressed to the Government on 3 May 2005.

Concerning: Mr. Nehmet Naim El Haj.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)

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, which made 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 and the response of the Government thereto.

5. According to the information received, Mr. Nehmeh Naim El Haj, born in 1963, of Lebanese nationality, interior decorator, resident in the Al Basatin neighbourhood, Ain Saadeh, Lebanon, and currently detained in the Roumieh central prison in Lebanon, was arrested at the Lebanese-Syrian border on 25 November 1998. The arrest was made, without an arrest warrant, by Syrian intelligence service agents, who placed Mr. El Haj in an illegal Syrian interrogation centre at Anjar in the Bekaa Valley region of Lebanon for a month. While he was there, his family was told neither that he had been arrested nor where he was and he had no access to a lawyer. According to the information received, he was tortured during interrogation sessions conducted by members of the Syrian intelligence services. A month after his arrest, he was handed over to the Lebanese authorities at Zahleh and then transferred to Jounieh before being detained in the Roumieh prison, where he has been ever since.

6. He was charged with having murdered two people in Lebanon and was not tried until July 2004. The Lebanese authorities did not question him about the alleged murders. According to the source, his conviction was based solely on the interrogations conducted by members of the Syrian intelligence services. He is currently awaiting judicial review of his case.

7. According to the source, almost six years elapsed between Mr. El Haj's arrest and his trial. In addition, his conviction was based solely on the interrogations conducted by members of the Syrian intelligence services during his first month in custody. Those services were not competent to conduct a judicial investigation or to collect evidence, and while being interrogated Mr. El Haj was tortured.

8. The source further states that the families of the two people Mr. El Haj was charged with, and convicted of murdering withdrew their claims against him for criminal indemnification once his lawyer explained his situation to them. Despite that, Mr. El Haj was sentenced to death.

9. The Government of Lebanon states in its response that the documents and official records in Mr. El Haj's case file show that he was arrested by the intelligence services on 22 November 1998 in Syria, where he had fled because he was wanted by the Lebanese authorities for the murders of two Syrian workers. The examining magistrate in the case had issued a warrant for his arrest. The Syrian intelligence services questioned him at the Anjar station without informing the Lebanese authorities, to whom they handed him over at Zahleh on 25 November 1998. On 26 November 1998 he was passed on to the judicial authorities in Jounieh, which were competent *ratione loci* and which in turn delivered him the same day to the prosecutor of the Court of Cassation in Mount Lebanon. Later that day he was brought before the examining magistrate, who decided to apply the arrest warrant issued against him by default on 18 November 1998.

10. The Government further states that Mr. El Haj admitted to the examining magistrate 35 days after having committed the murders that he had made a plan to drug and strangle the two Syrian workers and burn their bodies. It is apparent from the records in the case file that his questioning by the Syrian intelligence services lasted only three days, since he was arrested by the Syrian authorities on 22 November 1998 and handed over at Zahleh on 25 November 1998. As the Lebanese authorities did not ask the Syrian authorities to make the arrest and did not take part in it, they can neither confirm nor refute his assertions that he was tortured. Consequently, none of what happened before his handover to the Lebanese authorities concerns Lebanon. Furthermore, the Criminal Court made no mention of the record of the inquiries carried out by the Syrian intelligence services among the grounds for its judgement. It should also be noted that Mr. El Haj himself chose to flee to Syria, even though his victims were of Syrian nationality.

11. The preliminary inquiry carried out by the Lebanese authorities lasted no more than 48 hours from the time when Mr. El Haj was brought to the Zahleh station on 25 November 1998, transferred to the Jounieh station and then taken to the office of the Procurator-General at the Court of Cassation at Mount Lebanon, who in turn referred him on 26 November 1998 to the examining magistrate. Those 48 hours constitute the legal time limit provided for in article 48 of the Code of Criminal Procedure. Mr. El Haj was heard on 26 November 1998 by the examining magistrate. The latter is not a military officer serving in a barracks. He is a civil servant whose office is located in the Law Courts. As it is the right of the accused to ask to be assisted by a lawyer before being heard, the examining magistrate offered Mr. El Haj such assistance but he agreed to be questioned in the absence of a lawyer and signed a document to that effect. At no moment was Mr. El Haj subjected to torture, maltreatment or psychological pressure before the examining magistrate. He unambiguously admitted the crime of which he had been accused and his statements were consistent on all points with the account of his accomplice, Sami Rebeh, who had confessed to the examining magistrate without the Syrian authorities having questioned him. Mr. El Haj personally recognized before the Criminal Court that he had never been badly treated in the office of the examining magistrate or in police premises, affirming only that he had been tortured by the Syrian police.

12. Mr. El Haj was tried for intentional, premeditated homicide under article 549, paragraphs 1, 4 and 8, of the Criminal Code, an offence which carries the death penalty. The judgement was pronounced by the Criminal Court composed of three eminent judges known for their competence, integrity and experience. The proceedings before this body are conducted in public in the presence of lawyers so as to guarantee the accused a fair and impartial trial. As regards the affirmation that the plaintiffs decided not to proceed against Mr. El Haj, such decisions have no effect on public prosecutions and apply only to personal rights, i.e. action for damages. The Court of Cassation declared the appeal filed by Mr. El Haj admissible on 11 April 2005 under article 396 of the Code of Criminal Procedure, by virtue of which all death sentences are subject to appeal on the merits and the form, which makes it possible for the Court of Cassation to re-examine the case. Mr. El Haj's place of detention is a prison governed by the provisions of decree No. 14310 of 11 February 1949 and the amendments thereto relating to the organization of prisons. Those provisions lay down the procedures for the application of the laws and regulations concerning detainees, define the obligations and powers of prison directors, contain the rules governing the management of prisoners inside prisons and their transfer to the courts, and provide for the submission to the competent authorities of periodic reports on prisoners' conditions of detention.

13. The Government further observes that: the Criminal Court established, after examining in public the probative and indicative evidence and facts of the case, that Mr. El Haj committed a horrible crime whose victims were two innocent workers; Mr. El Haj was tried by an independent regular criminal court observing the legal rules in force in Lebanon, which are applicable to all citizens without distinction and which are consistent with the international norms and principles in force in such matters. Mr. El Haj is currently serving a prison sentence in a place of detention governed by the law, under entirely humane conditions and respecting reasonable standards of security and good management of places of detention as set forth in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

14. The allegations that Mr. El Haj was arrested arbitrarily and was the victim during his pretrial detention of violations by the security services of legal safeguards are merely tendentious affirmations coming from suspect persons who have no hesitation in making gross accusations, without providing the slightest proof, in order to tarnish the image of the Lebanese authorities. It should not be forgotten that the Procurator-General at the Court of Cassation, who is the highest authority in the department of public prosecutions, personally supervises all the judicial police services and oversees the application of the provisions of criminal law designed to ensure the protection of citizens against any arbitrary measure or injustice.

15. In reply, the source asserts that, contrary to what is said in the Government's response, Mr. El Haj has officially been in detention in Lebanon since 25 November 1998, when the Syrian intelligence services handed him over to the Lebanese authorities. The fact that the Government says that "the Syrian intelligence services questioned [Mr. El Haj] at the Anjar station without informing the Lebanese authorities" means that it is relying on information from the Syrian intelligence services when it states that those authorities only held him for three days.

16. The source asserts that Mr. El Haj's detention by the Syrian authorities was illegal because the place of detention was not an official one, the persons who arrested and interrogated Mr. El Haj were not competent to do so, and Mr. El Haj was held without the knowledge of the Lebanese authorities, meaning that during that period of incommunicado detention he was deprived of the protection of the relevant laws.

17. The source points out that the Government contradicts itself when it says on the one hand that Mr. El Haj was arrested by the Syrian intelligence services under a warrant issued by the examining magistrate because of his default and on the other that the arrest took place without any official request by and without the supervision of the Lebanese authorities. The source believes that Mr. El Haj was arrested in violation of the lawful procedure.

18. The source observes that, although the Government contends that Mr. El Haj's arrest by the Syrian intelligence services did not concern Lebanon, it was sanctioned by the Lebanese judicial authorities, since they did not contest it for having been made in an unlawful manner.

19. The source asserts that the verdict against Mr. El Haj was founded on a confession he signed while under torture at the hands of the Syrian intelligence services. The Government claims to be unable to confirm or refute the allegations that Mr. El Haj was tortured because the examining magistrate did not include a record of the intelligence services' questioning of him in the case file. According to the source, however, Mr. El Haj's lawyer, Mr. Elias Bou Ghosn,

reported that the file does contain such a record, dated 24 November 1998 and drawn up by the Syrian intelligence services. The source also disputes the Government's assertions that Mr. El Haj was questioned by a civilian judicial officer in a civilian prison and that he agreed in writing to be questioned without the presence of a lawyer. In fact, Mr. El Haj claims that he was tortured for a month before being handed over to the Lebanese authorities, that he was immediately brought before the examining magistrate and that, under mental pressure from that magistrate, he simply signed papers without reading them.

20. The Working Group notes that the Government of Lebanon neither confirms nor refutes the allegations that Mr. El Haj was arrested at the Lebanese-Syrian border, that he was detained and tortured for a month in an interrogation centre and that it was under torture that he made a confession. The Government admits that Mr. El Haj was questioned by the examining magistrate without the assistance of a lawyer and claims that the examining magistrate reported in the record of the hearing that he offered Mr. El Haj such assistance and that Mr. El Haj agreed to do without it.

21. The Working Group considers that, when someone is accused of an offence punishable by death, the presence of a lawyer is not simply a right that the accused person may renounce, but an absolute necessity for the sake of justice. The Working Group wishes to draw attention in this regard to article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights, an instrument to which Lebanon is a party. That paragraph provides that everyone charged with a criminal offence has the right to legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

22. In view of the circumstances of the case in question, the Working Group considers the violation of the above provision to be so serious as to confer on Mr. El Haj's detention and conviction an arbitrary character.

23. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Naim El Haj is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights, and falls under category III of the categories applicable to the consideration of cases submitted to the Working Group.

24. Having rendered this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Naim El Haj in conformity with the norms and principles set forth in the International Covenant on Civil and Political Rights. In view of the special circumstances of the case, the most appropriate remedy would be to obtain his exemption from capital punishment.

25. Such a generous measure would, the Working Group believes, be broadly welcomed and highly appreciated by the international community.

Adopted on 12 May 2006.