

**OPINION No. 4/2008 (Islamic Republic of Iran)**

**Communication addressed to the Government on 30 October 2007.**

**Concerning Ms. Shamila (Delara) Darabi Haghighi.**

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

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. (Same text as paragraph 3 of Opinion No. 15/2007.)

3. In the light of the allegations made, the Working Group conveys its appreciation to the Government for having forwarded the requisite information. The Working Group transmitted the reply provided by the Government to the source, however, has to date not received any comments. Nevertheless, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
4. The case summarized below was reported to the Working Group as follows: Shamila (Delara) Darabi Haghghi, an Iranian national born on 21 September 1986 and a high school student, addressed in the city of Rash, in the Northern Gilan Province, was arrested on 28 December 2003 at around 10.30 p.m. at her home by members of the police.
5. Ms. Darabi, who was 17-years old at the time, was arrested in connection with the murder of her elderly paternal cousin, Ms. Mahin Darabi Haghghi. While under the influence of sedatives given to her by Mr. Amir-Hossein Sotoudeh, she was severely interrogated and confessed to having participated in the murder of her cousin together with Mr. Sotoudeh. According to her statement, they had betaken themselves to the victim's house in order to steal her jewellery and money. Their idea was to steal money to be able to get married. In her confession, she did not admit any premeditation or deliberate intention to kill the victim.
6. The following day, the case was assigned to Branch 10 of the General Court of Rasht headed by Judge Mohammadpour, who was at the same time Investigator, Prosecutor and Judge, given that at that time, the Iranian criminal system lacked a separate Prosecution service. No consideration was given to the fact that Ms. Darabi was a minor and that, consequently, her case would have had to be assigned to a juvenile court.
7. Ms. Darabi repeated her declaration before an on-call criminal judge and subsequently before Judge Mohammadpour, who was in charge of the case. Neither a defence lawyer nor Ms. Darabi's parents were present when her statements were taken by the police or the judges. She was not informed about the real legal consequences of her confession, either.
8. Moreover, no consideration was given to the contradictions in Mr. Amir-Hossein Sotoudeh's statement or to the fact that the coroner's report had established that the killer must have been right-handed, whereas Ms. Darabi is left-handed. As Ms. Darabi is left-handed, the stab wounds would have had to be inflicted on the victim's left side of the body rather than on her right side as it was actually the case.
9. According to the source, Ms. Darabi's confessions were not consistent with the facts of the case. They were extracted while she was in deep shock, highly impressionable and under the influence of sedatives. In spite of all contradictions, discrepancies and lack of real evidence, on 29 December 2003, Judge Mohammadpour charged Ms. Darabi with intentional murder, burglary and illicit relationship, charges based exclusively on her initial confession. Mr. Amir-Hossein Sotoudeh was charged with complicity in murder. No criminal or forensic investigation of the crime scene or the murder weapons took place.

10. Despite the Judge's declared consent to conduct a crime scene re-enactment, this was never done. According to the source, a re-enactment of the crime scene would have clearly established that Ms. Darabi was not the killer.

11. After having been charged, Ms. Darabi was taken from the police station to the women's ward of Rasht Prison, where she is being kept together with adult convicts. Soon thereafter, Ms. Darabi recanted her initial confession and described what she could remember about the incident. She stated that her intention at the moment of confessing the murder was to save her boyfriend, Mr. Sotoudeh, from a possible death penalty. He had told her that it was easier for her to receive pardon from the victim's heirs since she was their relative. He had also told her that due to the fact that she was below 18, she would not receive a death sentence if she undertook responsibility for the murder.

12. The first hearing on Ms. Darabi and Mr. Sotoudeh's first trial took place on 6 December 2004, and the second session was conducted on 9 February 2005. Both sessions were closed to the public. During the first session, Ms. Darabi's parents were not present and she was not assisted by a defence counsel. Although Ms. Darabi told Judge Mohammadpour that she would not speak without her lawyer present, the trial was not adjourned. The victim's four children expressed their wish that Ms. Darabi receive the *qisas* death sentence. Several irregularities reportedly occurred in both sessions amounting to lack of defence.

13. On 26 February 2005, Judge Mohammadpour sentenced Ms. Darabi to the mandatory punishment of death or *qisas-e-nafs*. Ms. Darabi was condemned without the possibility to obtain a State pardon or the commutation of her sentence. The *Qisas* law does not allow any discretion on the part of the judge to evaluate possible mitigating circumstances and to reduce the sentence. Mr. Sotoudeh was sentenced to 10 years of imprisonment. Both were also convicted of burglary and illicit relationship other than fornication and each received an additional sentence of seven months of imprisonment and 63 strokes of lashes.

14. Ms. Darabi filed an appeal before Branch 33 of the Supreme Court. On 4 September 2005, the Supreme Court ordered to refer the file back to the lower court for amendments because it had found an investigatory deficiency concerning the sedative pills provided to and consumed by Ms. Darabi during the murder. However, the Supreme Court had held that despite the noted deficiency, the lower court's verdict was essentially correct, which shows that the trial conducted by the lower court was the decisive trial. The Supreme Court failed to note that Ms. Darabi should have been tried in a juvenile court.

15. Judge Yari, who was replacing Judge Mohammadpour at Branch 10 of the Rasht General Court, failed to order the Forensic Organization to conduct an investigation on the sedative pills that Ms. Darabi had consumed the day of the incident, as ordered by the Supreme Court, and instead ordered that Ms. Darabi's file be sent to a juvenile court.

16. On 29 December 2005, a new trial took place before Judge Javidnia of Branch 107 of the Juvenile's Court of Rasht which again convicted Ms. Darabi of intentional murder and sentenced her to the mandatory penalty of death.

17. Following a second review, on 15 February 2007, the Supreme Court, despite numerous flaws attached to the verdicts of the lower court, confirmed Ms. Darabi's

*qisas-e-nafs* death sentence. The Supreme Court failed to note that the Forensic Organization had not carried out the investigation on the sedative pills it had previously ordered.

18. Mr. Sotoudeh changed his initial statement and accused Ms. Darabi of having attempted to kill him, too. He lodged a complaint against Ms. Darabi for having been stabbed by her. According to his statement, he had stood behind the victim and grabbed her while Ms. Darabi had stood behind him and repeatedly stabbed the victim from that position. Ms. Darabi instead declared that, when Mr. Sotoudeh was stabbing the victim, she tried to stop him.

19. On 25 February 2007, Ms. Darabi's lawyer filed an appeal with the 7th Branch of the Discernments Branch of the Supreme Court, which speedily reviewed the appeal in a few weeks. It confirmed the verdict merely on the basis of the judgments of the lower court. Ms. Darabi's lawyer's writs were not at all considered. Mr. Sotoudeh did not object to his 10-year sentence of imprisonment.

20. On 9 May 2007, Ms. Darabi's lawyer wrote to the Head of the Judiciary requesting a stay of execution as well as another review of the case. On 17 May 2007, Ms. Darabi's lashing sentences for illicit relations was confirmed by the Appeal Court and were thus enforceable.

21. According to the source, if the Head of the Judiciary rejects Ms. Darabi's appeal, she could be executed swiftly or at any time.

22. Since Ms. Darabi's incarceration at Rasht Prison, her physical and mental health has continuously deteriorated due to overcrowded and unsanitary conditions, poor quality of food, limited and restricted visitation rights and tensions amongst inmates.

23. The source points out that the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a State party, establishes that all defendants facing execution must receive a trial that conforms to the highest standards of fairness. The Human Rights Committee has expressed that capital punishment must not be imposed in circumstances where there have been violations by the State party of any of its obligations under the Covenant.

24. In addition, the Convention on the Rights of Child, to which the Islamic Republic of Iran is also a State party, explicitly prohibits the imposition of capital punishment for offences committed by persons below 18 years of age.

25. The source further points out that the *qisas* laws define intentional murder in very broad terms. A murder can be categorized as intentional even if the elements of premeditation and deliberate intention to kill are missing. In Ms. Darabi's case, the mere use of a knife was considered sufficient to call the murder "intentional". Ms. Darabi's guilt was established solely on the basis of her confession, which had not only been obtained under coercion, but also while she was clearly sedated. Neither her parents nor her defence lawyer were present when she confessed. Ms. Darabi's confession was clearly incredible and implausible and was admitted despite her recantation shortly thereafter. The coroner's report was clearly in contradiction with Ms. Darabi's confession regarding the position, depth and multiplicity of the stab wounds.

26. In addition, the Judge excluded Mr. Sotoudeh from any serious investigation, which, according to the source, cannot be explained by anything other than gender-bias.

27. The source further argues that by empowering the victim's heirs to exclusively implement or pardon a *qisas* death sentence, the authorities have been subjecting Ms. Darabi to unnecessary suffering amounting to torture. If the victim's family is rich and not in need of financial compensation, they may become more inclined to refuse pardon. In this case, the victim's children are known to be extremely wealthy.

28. Ms. Darabi was arrested on pure suspicion for the sole purpose of her interrogation. Once she was charged with intentional murder, the law sanctioned her mandatory pretrial detention. She had no recourse to challenge the lawfulness of her detention. Although no meaningful or relevant investigation had ever been conducted, it took 38 months for her judgment to receive the confirmation of the Supreme Court. Her criminal proceedings took an excessively long period of time. In spite of that, the crime scene and the murder weapon were never examined. Her first trial and the second session of her second trial were entirely closed to the public and even Ms. Darabi's parents were not allowed to enter the court room. Their appeals did not include a hearing.

29. Ms. Darabi was not able to gain access a defence lawyer during the preliminary investigation stage of the proceedings, which is often the time when guilt or innocence of the suspect is established. During this crucial stage of the proceedings, she was held incommunicado. The first session of Ms. Darabi's first trial took place without the presence of her lawyer despite Ms. Darabi's express objection. At later stages, her lawyer was denied access to any evidence that could potentially exonerate her. Her lawyer was neither given the possibility to examine the witnesses and experts at trial, nor Mr. Sotoudeh, Ms. Darabi's co-defendant, who by all accounts was the primary suspect. Her lawyer was not even provided with copies of any part of the case-file and only was allowed to take some notes from it.

30. The source further adds that Ms. Darabi's Judge of first instance was at the same time Investigator, Prosecutor and Judge. It was the same person who charged her, indicted and tried her. According to the source, by issuing a guilty verdict, judges guarantee their protection from any eventual prosecution for illegal arrest or detention.

31. The source concludes that Ms. Darabi was wrongfully, discriminatorily and extra-legally charged and convicted of intentional murder. She was sentenced to death in a mandatory and indiscriminate way. Ms. Darabi was denied the right to seek clemency or commutation of sentence from the State.

32. Ms. Darabi was arrested and is being held in detention arbitrarily and extra-legally. She was tried in disregard of objectivity, impartiality, fairness and due process guarantees. In addition, she has been subjected to further cruelty due to the manner that the *qisas* death sentences have been interpreted. According to the source, the detention of Ms. Darabi is thus contrary to articles 9 and 10 of the Universal Declaration of Human Rights; and to articles 6, 7, 9, 10, 14 and 26 of the International Covenant on Civil and Political Rights and 37 of the Convention on the Rights of the Child. The criminal proceedings against Ms. Darabi have been marked by numerous violations of the International Covenant from the moment of

her arrest and throughout her pretrial, actual trial and post-trial stages. Her death sentence is also in clear violation of the Convention on the Rights of the Child.

33. The Government states in its response that “[i]n the Islamic Republic of Iran, the penalty for premeditated murder has two aspects: 1. private, 2. public. Since, the first one is in relation with denial and spoil of the rights of guardians of the murder victim, it is given priority and is of high importance. In the judicial system of Muslim countries, including I.R. Iran, “*Qesas*” (lex talionis – retribution in kind) is the verdict for premeditated murder. For that purpose, enforcement of *Qesas* depends upon the request to be made by guardians of the murder victim; and the Government is solely delegated to carry out the verdict, on behalf of the former. The second aspect, which deals with denial and spoil of public rights, is the responsibility of the Government for establishment and protection of security in the society. For realization of this responsibility, the lawmaker has anticipated five to fifteen years of imprisonment. In case of disclamation of *Qesas* by guardians of the murder victim, through remission or payment of *Diyeh* (blood money) to guardians of the murder victim by the convicted party, imprisonment, penalty shall be imposed. In other words, disclamation, on the side of guardians of the murder victim, puts an end to *Qesas*, but the penalty of imprisonment, still remains as the duty of Government. So, sentence of *Qesas* is not open to pardon or amnesty by the state, in absence of consent from guardians of the murder victim. Meanwhile, the Government of the Islamic Republic of Iran strives to apply mechanisms, such as provision of financial assistance to the guardians, which might result in receiving the required consent from them.”

34. The Government further states that “Ms. Delara Darabi was sued on the basis of the complaint filed by guardians of the murder victim with the charge of premeditated murder. Following judicial procedures and investigations, at the presence of her lawyer, the court of first instance, ascertained her guilt and sentenced her to *Qesas*. Pursuant to appeal by the convict and her lawyer, Branch 33 of the State Supreme Court confirmed the earlier issued verdict. The state judicial system has been trying for resolution of the dispute through conciliation. Therefore, the case is in the conciliation procedure and enforcement of death penalty is not in the programme of work.”

35. The Government finally informs “that since the case is one of murder under the age of 18, the pertinent authorities have been exerting their utmost effort to decrease carrying out verdicts to a level close to stop, with the hope of ultimate conciliation.”

36. The Working Group has reviewed in depth the information received from the Government and the source. Ms. Darabi, who was 17 when the events occurred, has been sentenced to death for premeditated murder. Article 6, paragraph 2, of the International Covenant on Civil and political Rights, which was ratified by the Islamic Republic of Iran on 24 June 1975, stipulates that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”

37. Similarly, its article 6, paragraph 4, states that “anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases”, and article 6, paragraph 5, establishes that “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”.

38. The Government, which acknowledges in its response that Ms. Darabi committed the murder for which she has been condemned when she was under the age of 18, does not make any mention or include any reference to article 6, paragraph 5, of the International Covenant on Civil and Political Rights. Nor does the Government dispute the fact that she was not given the right to seek pardon or commutation of sentence in violation of article 6, paragraph 4, of the Covenant. The fact that the Government seeks conciliation with the victim’s family in order to avoid the execution of the mentioned death penalty according to internal law, does not exempt the State from its obligations to respect article 6 of the Covenant.

39. The source describes extensively in its communication transmitted to the Working Group a set of violations regarding due process, as protected by article 14 of the ICCPR. The source considers that Ms. Darabi: (a) was not duly informed of the charges against her at the time of her arrest and incommunicado detention or of her right to remain silent; (b) was not assisted by her family during her interrogation despite her age; (c) did not benefit from the assistance of a lawyer during the proceedings leading to the first trial; (d) the conduct of the defence at a later stage of the proceedings was impaired; and (e) she was tried in closed court during her first trial and the second session of her second trial without her parents present.

40. Ms. Darabi was not tried by a competent, independent and impartial court since the Judge of first instance was at the same time Investigator, Prosecutor and Judge, that is to say that it was the same person who charged her, indicted and tried her. The first session of the first trial took place in the absence of Ms. Darabi’s lawyer although she had expressly requested the suspension of that trial. Her lawyer was not granted direct access to the evidence presented by the State in support of the charges against her. The court of her first appeal found an investigatory deficiency attached to the first trial since no forensic investigation had been duly carried out. Although there was an attempt to conduct the investigation afterwards as ordered by the Supreme Court, the lower courts subsequently failed to obtain information on the possible psychic alterations of Ms. Darabi at the time of the crime. Hence, her sentence was essentially based on Ms. Darabi’s self-inculpation, when she confessed right after her arrest in the absence of her family and her lawyer, although Ms. Darabi later revoked her initial confession once she had a lawyer.

41. The Working Group notes that the Government has not refuted the serious irregularities of the proceedings as alleged by the source, which in view of the additional infringements of the guarantees afforded by article 6 of the International Covenant on Civil and Political Rights amount to violations of the right to fair trial of such gravity as to confer upon Ms. Darabi’s detention an arbitrary character.

42. The Working Group recalls that in its 2003 report on the country visit to the Islamic Republic of Iran,<sup>25</sup> it already elaborated on the lack of independent courts due to an unclear allocation of powers between judges who initiate proceedings and trial judges. In this report, the Working Group also expressed concern regarding the absence of an effective defence since those accused cannot rely on the assistance of lawyers during the proceedings, who most of the times do not have the chance to obtain access to the evidence which form the basis of the charges against the accused. The report recommended to the Government to guarantee due process rights from the very moment of the detention.

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

The deprivation of liberty of Ms. Darabi is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 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.

44. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Ms. Darabi and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 7 May 2008

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<sup>25</sup> E/CN.4/2004/3/Add.2.