

## **Opinion No. 17/2008 (Lebanon)**

**Communication addressed to the Government on 9 October 2007**

**Concerning Mr. Assem Kakoun**

**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, which clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council approved the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 6/4 of 28 September 2007. In accordance with its methods of work, the Working Group transmitted the above communication to the Government.

2. The Working Group thanks the Government for providing it with the information requested.

3. The Working Group considers that deprivation of liberty is arbitrary in cases falling into one of the following three categories:

(i) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (Category I);

(ii) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

(iii) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).

4. According to the communication addressed to the Working Group on 31 July 2007 and the complementary clarifications and additional information received later, Assem Kakoun was arrested on 6 January 1990 at Hammana, in the residence of Rustom Ghazalé, an official of the Syrian intelligence services in Lebanon, for whom Mr. Kakoun worked. The arrest was carried out by the Syrian security services in Lebanon, without an arrest warrant. Mr. Kakoun was taken to one of the Syrian security centres, located at Anjar, in the Lebanese Bekaa. Two weeks later, he was transferred to an establishment administrated by Syrian services in Damascus. There he was detained for 11 months, always in solitary confinement. He was allegedly tortured at all of the places where he was detained. On 20 November 1990, the Syrian authorities turned him over to the Lebanese police and it is only on 14 December 1990 that a detention order was issued against him. During more than seven months, he was being transferred from one detention facility to another until he arrived at the central prison of Roumieh, where he currently is, or at least where he was on the date of the communication.

5. Mr. Kakoun appeared before a Lebanese court in Beirut for an assassination which occurred on 25 November 1989 but neither the source nor the Government have specified the name of the victim or any other circumstance. The Government merely alleged that the facts occurred in Tabir. According to the source, Mr. Kakoun was accused of the alleged

crime in the aftermath of a dispute with Mr. Ghazalé and confessed to the crime only under torture.

6. It is pointed out that the torture suffered by Mr. Kakoun left him with serious after-effects, both physical (functional impairment of a hand and traces on the body) and psychological. He was allegedly subjected to torture in all of the secret detention centres where he was held, both in Lebanon (Bekaa) and in the Syrian Arab Republic.

7. The source adds that the proceedings against Mr. Kakoun were flawed because:

(a) Mr. Kakoun remained in solitary confinement during 15 days starting with his arrest in Lebanon, during the following 10 months, while in the Syrian Arab Republic, and during 8 more months in Lebanon until the commencement of proceedings on 14 December 1990, when his detention was acknowledged for the first time.

(b) During interrogations, extrajudicial in the Syrian Arab Republic and before an examining judge in the prison of Barbar el Khazem (Verdun), Lebanon, Mr. Kakoun requested a lawyer, refusing to make statements before the judge. As a result, Mr. Kakoun's hearing was suspended and he was only examined on 4 January 1991, but again without a lawyer. At the trial, Mr. Kakoun stated that he had confessed under torture. According to the source, the court in its decision indicates that its certainty about the guilt of the accused was specifically based on the confession. The court rejected the allegation of torture on the grounds that the claim had not been substantiated.

(c) Mr. Kakoun was not allowed to exercise the right of appeal. He certainly lodged an appeal but the court did not examine it, declaring it inadmissible, although the admissibility conditions of were met, and upholding the sentence to life imprisonment handed down at first instance.

8. In its reply, the Government indicates that Assem Kakoun was sentenced to death on 10 February 1993 by the Assize Court of Beirut as a result of the proceedings initiated against him, under article 549 (p) and article 72 (carrying of firearms), but that the sentence was commuted to forced labour for life, under Act No. 84/91 on amnesty.

9. Clearly, the Working Group is not called upon to rule on the merits of the charges which led to the verdict of guilt and the sentence imposed on the person concerned for assassination or illegal carrying of firearms. Accordingly, the Working Group will rule only on whether Assem Kakoun's deprivation of liberty for the last 18 years has been arbitrary or not.

10. Under articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him or her; is entitled to a fair and public hearing by an independent and impartial tribunal; is presumed innocent until proved guilty according to law; may not be deprived of his or her liberty except in accordance with such procedure as is established by law; shall be brought promptly before a judge or other officer authorized by law to exercise judicial power; is entitled to trial within a reasonable time; and, lastly, pre-trial detention must not be the general rule and may be authorized only to ensure the appearance of the person concerned for trial and the execution of the judgement.

11. In its reply, the Government failed to dispute the facts described by the source. This lends credibility to the allegations.

12. Moreover, Assem Kakoun has claimed to have been subjected to torture at the places where he was held and that it was under torture that he acknowledged having committed the assassination of which he has been accused. If he actually denounced such mistreatment, the State should have carried out an investigation, in accordance with

article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In its reply, the Government does not maintain having complied with this provision and the Working Group must consequently presume that the Government did not order any investigation. It is therefore at least reasonable to assume that Mr. Kakoun may well have been subjected to acts of torture and that his confession could well be the result of such acts, in which case, pursuant to article 15 of the Convention against Torture, the confession in question should not have served as evidence, as it did.

13. Given that all the rules of the Universal Declaration of Human Rights and the other instruments referred to were violated, it is legitimate to conclude that:

Mr. Kakoun's detention is arbitrary and falls into Category III of the criteria used in considering cases submitted to the Working Group.

14. Consequently, the Working Group requests the Government to remedy the situation of Assem Kakoun in accordance with the provisions referred to in this opinion. The Working Group considers that, in view of the circumstances of the case and the duration of the detention, the appropriate solution would be the immediate release of the person concerned.

Adopted on 9 September 2008