

# No. 14/2011 (Lebanon)

## Communication addressed to the Government on 27 January 2011

**Concerning: Mr. Thaer Kanawi Abed el Zahra el Rimahi**

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision 2006/102 and extended it for a further three-year period in Council resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) 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 sentence or despite an amnesty law applicable to him) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 to 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);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established 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);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims to or can result in ignoring the equality of human rights (category V).

3. The Working Group thanks the Government for the information provided, according to which Mr. El Rimahi left the country voluntarily on 13 February 2011 for Iraq, and that as a result he is no longer detained in Lebanon.

4. This case was submitted to the Working Group in the following terms: Mr. Thaer Kanawi Abed el Zahra el Rimahi, an Iraqi national, born on X May XXXX, is the holder of refugee certificate No. XXX-XXCXX XXX issued by the Office of the United Nations High Commissioner for Refugees. On 9 March 2010, he was arrested by plain-clothes officers of the National State Security Department. At the time of his arrest, Mr. El Rimahi was not presented with a warrant of arrest. Nonetheless, a warrant appears in his case file (initial number 658, issued on 9 March 2010 by the Prosecutor-General of south Lebanon). Mr. El Rimahi was allegedly charged with illegal residence in

violation of article 36 of the Act of 10 July 1962 regulating the entry and residence of aliens in Lebanon and their departure from the country.

5. According to the information received, Mr. El Rimahi was first of all taken to the Roumieh central prison. On 18 May 2010, he was allegedly transferred to the Aley prison. Towards the middle of June 2010, he was reportedly returned to the Roumieh central prison. Finally, during the second week in September 2010, Mr. El Rimahi was allegedly taken to the State Security Department police station.

6. According to the source, Mr. El Rimahi's hearing was postponed several times, 11 to be exact, because he had not been arrested by the domestic security forces.

7. On 22 April 2010, Mr. El Rimahi's lawyer reportedly requested his release. Subsequently, on 29 April 2010, the judge is said to have ordered his release on bail. Again according to the source, Mr. El Rimahi paid the bail deposit and informed the authorities concerned of his decision, including the authorities at the Roumieh central prison and the State Security Department. Despite his release on bail having been ordered, he was allegedly kept in detention.

8. On 3 June 2010, the single criminal judge at Saïda gave Mr. El Rimahi a sentence equivalent to the duration of his detention. Nevertheless, according to the information received, he is still being detained at present in the Adlieh police station in Beirut, which belongs to the State Security Department.

9. According to the source, Mr. El Rimahi's detention is a violation of article 8 of the Constitution of Lebanon, according to which "Individual freedom is guaranteed and protected. No one may be arrested or detained except as provided for by law. No breach or penalty may be established other than by law." The source also alleges that Mr. El Rimahi's detention is a violation of articles 403 and 406 of the Code of Criminal Procedure, article 371 of the Criminal Code and of article 58 of decree No. 14310 of 11 February 1949 on the regime applicable to prisons and places of detention.

10. According to the information received, despite Mr. El Rimahi's lawyer having taken all the necessary steps to obtain the enforcement of the decision for his release, the authorities have so far not released Mr. El Rimahi.

11. According to the source, after his arrest Mr. El Rimahi was taken to several detention centres and not brought before a judge. The hearing before a judge was postponed 11 times. Mr. El Rimahi was never given an opportunity to be heard by a judge to contest the lawfulness of his detention. Finally, he was charged with the offence of unlawfully entering and residing in Lebanon.

12. Mr. El Rimahi's lawyer has applied for his release on bail; it was granted by the judge responsible for the case. The lawyer for the defence actually paid the deposit set. However, the police and prison authorities have ordered that Mr. El Rimahi be kept in detention without any legal basis.

13. In the decision handed down in this case, the judge sentenced Mr. El Rimahi to a custodial sentence equivalent to the time he had already spent in detention. Consequently, he should have been released immediately. However, the sentence did not produce the effect proper to any decision of justice, and the convicted person was kept unlawfully in detention without any legal basis.

14. In its reply, the Government stated that Mr. El Rimahi had been placed in detention on the basis of a legal warrant for the crime of illegally entering and residing on Lebanese territory. The Representation of the Office of the United Nations High Commissioner for Refugees in Beirut was informed of the case but no reply was received. Mr. El Rimahi left the country voluntarily on 13 February 2011 and the Representation of the Office of the United Nations High Commissioner for Refugees in Beirut was informed of this.

15. According to the information provided by the Government, Mr. El Rimahi left Lebanese territory of his own free will. According to the source, he had no alternative after having been deprived of his liberty for 11 months and on account of failure to implement the decisions of the court ordering his release.

16. In accordance with article 9, paragraph 1 of the International Covenant on Civil and Political Rights, "No one shall be subjected to arbitrary arrest or detention." It further specifies that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." According to article 9, paragraph 3 of the International Covenant:

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

17. The Working Group considers that while Mr. El Rimahi’s decision to leave Lebanon may have been voluntary, it was a consequence of his arbitrary and unjustified deprivation of liberty.

18. The Working Group considers that in the case at hand, there have been several violations of human rights: Mr. El Rimahi was placed in detention without a warrant issued by a competent authority; he was not promptly brought before a judicial authority; for a considerable time, he was unable to contest before a judge the lawfulness of his detention, and when he was finally able to do so, he did not have an effective means of appeal on account of the failure, on two occasions, by the police, administrative and prison authorities to comply with the judicial decision for his release.

19. According to the Working Group, these facts constitute violations of the rights enshrined in articles 3, 5 and 7 to 11 of the Universal Declaration of Human Rights and in articles 2, 3, 9, 10 and 12 to 15 of the International Covenant on Civil and Political Rights.

20. In application of article 17 (a) of its methods of work, the Working Group decides to file the case. However, it considers that Mr. El Rimahi’s deprivation of liberty was arbitrary in accordance with categories I, III and IV of its methods of work.

21. Accordingly, the Working Group requests the Government to provide Mr. El Rimahi with compensation for the time spent in detention in violation of a court order.

[Adopted on 5 May 2011]