

Opinion No. 39/2011 (Syrian Arab Republic)

Communication addressed to the Government on 3 February 2011

Concerning: Tuhama Mahmoud Ma'ruf

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. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

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 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);

(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 towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Tuhama Mahmoud Ma'ruf, born in XXXX, is married with two children. She is a dentist who usually works and resides in Aleppo. Ms. Ma'ruf is married to Bakr Sidqi, who is a writer and a former political prisoner.

4. It is reported that on 6 February 2010, Ms. Ma'ruf was arrested by the criminal security forces, Aleppo branch, due to her alleged association with the Communist Labour Party in the Syrian Arab Republic.

5. In 1992, Ms. Ma'ruf had been arrested on the charges of membership in the Syrian Communist Labour Party, a party banned since the early 1980s. Ms. Ma'ruf was then a 26-year-old medical

student. She was imprisoned for a year, but then released in March 1993, pending her trial. On 5 January 1995, Ms. Ma'ruf was sentenced by the Supreme State Security Court to six years in prison with hard labour for "membership in a secret organization which aims to change the economic and social status of the state" (article 306 of the Syrian Penal Code). However, this sentence was not implemented and Ms. Ma'ruf remained free.

6. On 9 February 2010, Ms. Ma'ruf's lawyer requested her release, and when the sentence not served was brought up, the lawyer explained that this had expired under the prescription provisions of article 162 of the Syrian Penal Code. The Attorney General of the Supreme State Security Court rejected the request made by Ms. Ma'ruf's lawyer to release her.

7. Ms. Ma'ruf was subsequently taken to a branch of the political security services in Damascus to serve her 1995 sentence. She was transferred to Adra prison, where she was detained in the political security wing in a special section for women.

8. The source maintains that Ms. Ma'ruf's arrest and detention are a direct consequence of her membership in a political party, the Syrian Communist Labour Party.

Response from the Government

9. The Working Group forwarded a communication to the Government on 3 February 2011 and a reminder on 10 June 2011. The Working Group stated that it would appreciate if the Government could, in its reply, provide it with detailed information about the current situation of Ms. Ma'ruf and clarify the legal provisions justifying her continued detention.

10. A response was received from the Government on 14 July 2011. The Working Group welcomes the cooperation of the Government. The Government informs the Working Group that Ms. Ma'ruf has been released under the general amnesty of 30 May 2011. Pursuant to paragraph 17 (a) of its revised methods of work, the Working Group considers that the present matter is of such gravity as to justify the adoption of an opinion. According to its revised methods of work, the Working Group is in a position to do so on the basis of the submissions that have been made.

Discussion

11. In the present case the first question is whether the deprivation of liberty was the result of the exercise of the rights and freedoms in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

12. The Working Group has considered the relationship between the detention of Ms. Ma'ruf and her exercise of the fundamental right to freedom of expression. The source alleges that the detention is in direct consequence of her membership in the Syrian Communist Labour Party and has no other grounds. The Working Group has not received any information from the Government that can rebut the claims that human rights guarantees regarding the freedom of opinion and expression have been violated. Since the Government has not contested the prima facie case, the Working Group has no alternative but to reach the conclusion that the detention of Ms. Ma'ruf was a restriction on her exercise of fundamental right to freedom of opinion and expression, and that there were no grounds to justify the restriction. The arbitrary detention falls within category II of the categories applicable to the cases submitted to the Working Group.

13. Ms. Ma'ruf was detained in order to serve a criminal sentence for political offences, which had already expired. Article 162 of the Syrian Penal Code provides that the statute of limitation for criminal punishments is double of that of the sentence ordered by the Court. However, it cannot exceed either 20 years or be under 10 years. The statute of limitation in other cases is 10 years. In the present case, Ms. Ma'ruf was sentenced originally to 6 years in 1995 and hence she is subject to a 12-year statute of limitation. Nevertheless, she was arrested in February 2010, i.e. 15 years after her original sentence and 3 years beyond the 12 years of her statute of limitation. This is a violation of due process guarantees. The Working Group also reiterates that the military and exceptional jurisdiction of the Supreme State Security Court, from which there is no appeal, does not satisfy due process guarantees.

14. In its constant jurisprudence, the Working Group has held that the use of military tribunals in such cases is in breach of international human rights obligations (see, for instance, opinion No. 27/2008). In its concluding observations on the Syrian Arab Republic, the Human Rights Committee stated that it "remains concerned about numerous allegations that the procedures of military courts

do not respect the guarantees laid down in article 14 of the Covenant" (CCPR/CO/71/SYR, para. 17). In its concluding observations on the initial report of Syria, the Committee against Torture stated that it: "is deeply concerned at the numerous, consistent and serious allegations that this court fails to function in accordance with the international standards for courts of law" (CAT/C/SYR/CO/1, para. 11). The Committee added that the Supreme State Security Court "has the competence to adopt sentences and impose penal sanctions for crimes that are very widely defined ..." (ibid.). Finally, in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee reaffirmed that the guarantees in article 14 are applicable to common and exceptional jurisdictions of civil and military character (CCPR/C/GC/32, para. 22).

15. The detention of Ms. Ma'ruf was in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. The detention thus also falls within category III of the categories applicable to the cases submitted to the Working Group.

16. As Ms. Ma'ruf has been released from the detention that constituted a breach of international human rights obligations, the principal remedy is an enforceable right of compensation under article 9, paragraph 5, of the International Covenant on Civil and Political Rights, which is an expression of general principles. The reasons that may be given for the detention of Ms. Ma'ruf cannot be used against a claim for compensation.

17. The Working Group further points out that this is only one of several opinions from the Working Group finding the Syrian Arab Republic in violation of its international human rights obligations (see, for instance, opinions No. 1/2011; No. 26/2011; No. 37/2011 and No. 38/2011). The Working Group reminds the Syrian Arab Republic of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide them with compensation. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations. The Working Group also underlines the liability that can follow from arbitrary detention when it constitutes a crime against humanity under customary international law.

Disposition

18. In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Ms. Ma'ruf is arbitrary, and constitutes a breach of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, falling within categories II and III of the categories applicable to the cases submitted to the Working Group.

19. The Working Group notes that Ms. Ma'ruf has been released and that the further steps to remedy the situation include adequate reparation to her.

[Adopted on 1 September 2011]