



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-second session, 20– 29 April 2015****No. 16/2015 (Islamic Republic of Iran)****Communication addressed to the Government on 29 December 2014****Concerning Mohammad Reza Pourshajari****The Government did not reply to the communication****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, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

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 or her sentence or despite an amnesty law applicable to the detainee) (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; or 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. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Mr. Mohammad Reza Pourshajari, also known by his pen name of Siamak Meher; born on 21 March 1960; a blogger; addressed in Gohardasht, Karaj, was arrested at his home in Karaj on 12 September 2010 at 1.00 p.m. by four members of the Iranian Revolutionary Guards Corps (IRGC), who broke into his house. They also carried out a house search, which lasted for five to six hours and confiscated a computer; a satellite receiver; personal documents; CD Roms, family films, photos and letters.

5. According to the source, Mr. Pourshajari was arrested without any warrant, court order or prior notice, purely due to his political views and journalistic activities in the blog named *Gozaresh-e Khak-e-Iran* (“*News from Iranian Territory*”).

6. Mr. Pourshajari was beaten and took for interrogations. He was put in solitary confinement and was subjected to harsh investigation and psychological torture during eight months in a prison of the Iranian Revolutionary Guards Corps in Rajai Shehr. His interrogators repeatedly threatened him with death. They also simulated a mock execution to make him confess.

7. On 13 December 2010, Mr. Pourshajari was put on trial at the Revolutionary Court of Karaj, under Judge Samadi, on charges of acting against national security; propaganda against the system; insulting the Supreme Leader; attempts to leave the country illegally; contacts with anti-revolutionary individuals and Zionist organizations. After a closed door trial which lasted only 15 minutes, Mr. Pourshajari was sentenced to three-year imprisonment. The defendant was not provided with any opportunity to defend himself nor to have a defence lawyer. On 9 May 2011, Mr. Pourshajari was transferred to the general ward of Rajai Shehr prison.

8. On 20 June 2011, Mr. Pourshajari was presented before Branch 109 of Alborz Province Court under Judge Gholam Sarabee. The session’s trial, which lasted for five hours, ended without any judgement. On 23 November 2011, he was sentenced to an additional year in prison on new charges of blasphemy and defamation of religious sanctities, bringing his total sentence term to four years’ imprisonment. He is currently serving a four-year prison term in Ghezal Hesar prison in Karaj. He rotted in a 21-square-meter cell where he was kept with 40 other inmates, including psychotic patients, murderers, rapists and child molesters. However and despite the two convictions, his case remains open. The judge has stated that the Ministry of Intelligence has requested and obtained access to the case file for further research, which could result in additional condemnations.

9. The source further reports that Mr. Pourshajari has been denied access to a lawyer since his apprehension. He was not allowed to defend himself in the courts. He was

handcuffed and shackled when presented before the judges for the trials. His arrest resembled abduction, where the authorities did not notify the family nor did allow him to make any contact with his relatives. He was held *incommunicado* for eight months, with no contact with outside world including his family members, who were searching for his whereabouts. The family learnt about his detention when Mr. Pourshajari stood a trial in court. The sentence was not pronounced to Mr. Pourshajari nor was he provided with a copy of the court decision. He learnt about his condemnation from prison authorities and other inmates.

10. According to the source, in September 2013 the authorities pressured Mr. Pourshajari to seek a pardon from the Supreme Leader, which he refused to do arguing that he had not committed any crime.

11. The source adds that Mr. Pourshajari is facing a very high-risk of dying in detention. He requires urgent access to specialist medical treatment outside prison. The prison authorities have so far denied this right, despite prison physicians recommending such urgent care. Mr. Pourshajari suffered two heart attacks in prison, in September 2012 and again in February 2013. He has been suffering from prostate disease, and has kidney stones; high sugar level; breathing problems and high blood pressure. His health condition has deteriorated due to physical abuse; poor prison conditions; prolonged solitary confinement and other forms of repeated torture and ill-treatment.

12. Prison authorities at Ghezel Hesar have prevented doctors from performing an angiogram requested by prison medical doctors and have also denied urgent treatment for the blockage in his arteries.

13. The source adds that Mr. Pourshajari's family took all possible steps to address the arbitrariness of his detention and conviction. The family reached out to the Judiciary; the Prosecutor's Office; the Ministry of Intelligence and prison authorities on numerous occasions. They wrote on two occasions to the Prosecutor General for Karaj and to the Presiding Judges, without ever receiving any positive response. Instead, some Judiciary and administrative authorities threatened the family members with arrest and prosecution for raising these concerns.

14. The source concludes that Mr. Pourshajari has been imprisoned for peacefully exercising his right to freedom of opinion and expression. His detention is contrary to articles 9, 10 and 19 of the Universal Declaration of Human Rights and to articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, from which the Islamic Republic of Iran is a Party. His detention is arbitrary, as it is not necessary, reasonable and proportionate.

Response from the Government

15. The Working Group transmitted the above allegations to the Government of the Islamic Republic of Iran requesting that it to provide, in its reply, detailed information about the current situation of Mohammad Reza Pourshajari, and to clarify the legal provisions justifying its continued detention.

16. The Working Group regrets that it has not received a response from the Government.

Discussion

17. In the absence of a response from the Government and in accordance with its Methods of Work, the Working Group is able to render an Opinion in light of the information submitted to it.

18. Mr. Mohammad Reza Pourshajari, was arrested at his home in Karaj on 12 September 2010, by the Iranian Revolutionary Guards Corps (IRGC), who broke into his house, and was arrested without any warrant, court order or prior notice. He was arrested due to his political views and journalistic activities in the blog named *Gozaresh-e-Khak-e-Iran (News from Iranian Territory)* as protected by articles 19 of the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights to which the Islamic Republic of Iran is a party.

19. The Working Group considers that there was a violation of the fair trial requirements and the right not to be subject to torture established in articles 5, 9, 10 and 11 of the Universal Declaration on Human Rights as well as in articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights:

(a) Mr. Poushajari was held *incommunicado* for eight months, with no contact with outside world including his family members, who were searching for his whereabouts until the date he stood a trial in court;

(b) In his arrest, Mr. Pourshajari was beaten and took for interrogations. He was put in solitary confinement and was subjected to harsh investigation and psychological torture during eight months in a prison of the Iranian Revolutionary Guards Corps in Rajai Shehr. His interrogators repeatedly threatened him with death. They also simulated a mock execution to make him confess;

(c) On 13 December 2010, Mr. Pourshajari was subject to trial by the Revolutionary Court of Karaj on charges of acting against national security; propaganda against the system; insulting the Supreme Leader; attempts to leave the country illegally; contacts with anti-revolutionary individuals and Zionist organizations. The trial was held in closed doors and lasted 15 minutes. Mr. Pourshajari was not provided with any opportunity to defend himself nor to have a defence lawyer, and was sentenced to three-year imprisonment;

(d) On 20 June 2011, Mr. Pourshajari was presented before Branch 109 of Alborz Province Court and tried for five hours without a judgement. On 23 November 2011, he was sentenced to an additional year in prison for blasphemy and defamation of religious sanctities;

(e) The sentence was not pronounced to Mr. Pourshajari nor he was provided with a copy of the court decision.

20. Mr. Pourshajari serves in a 21-square-meter cell where he was kept with 40 other inmates and is facing a very high-risk of dying in detention. He requires urgent access to specialist medical treatment outside prison. The prison authorities have so far denied this right, despite prison physicians recommending such urgent care. Mr. Porshajari suffered two heart attacks in prison, in September 2012 and again in February 2013. He has been suffering from prostate disease, and has kidney stones; high sugar level; breathing problems and high blood pressure. His health condition has deteriorated due to physical abuse; poor prison conditions; prolonged solitary confinement and other forms of repeated torture and ill-treatment. Prison authorities at Ghezel Hesar have prevented medical doctors from performing an angiogram requested by prison doctors and have also denied urgent treatment for the blockage in his arteries.

21. The Working Group notes with concern the arbitrary arrests and detentions in the Islamic Republic of Iran but mostly as increasing pattern of a silence on the part of the Government by not availing the opportunity of responding to allegations put forth by the Working Group in cases alleging arbitrary detention presented to this group (see e.g. the Working Group's Opinions on the Islamic Republic of Iran Nos. 52/2013, 55/2013, 28/2013, 18/2013, 54/2012, 48/2012, 30/2012, 8/2010, 2/2010, 6/2009, 39/2008, 34/2008,

14/1996, 28/1994 and 1/1992).¹ It is therefore pertinent to mention that the Working Group sees the present case as a matter of grave concern since basic human rights are not being respected.

22. The Working Group reiterates that the prohibition of arbitrary detention is part and parcel of international customary law. This draws upon the established practice of human rights bodies regarding the prohibition of arbitrary detention as a norm of customary international law, authoritatively recognised as a peremptory norm of international law or *jus cogens*; see *inter alia*, the established practice of the United Nations as expressed by the Human Rights Committee in its general comment No. 29 (2001) on derogations during states of emergency (CCPR/C/21/Rev.1/Add.11, para.11). This is the approach which this Working Group follows in its Opinions. The norm contained in Articles 9 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, prohibiting arbitrary arrest and detention is a deeply entrenched human rights norm reflected in both practice and *opinio juris* of States (see, *inter alia*, International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *ICJ Reports* 2010, para. 79; Separate Opinion of Judge Cançado Trindade, pp. 26-37, paras. 107-142).

Disposition

23. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Mohammad Reza Pourshajari is arbitrary, being in contravention of articles 5, 9, 10, 11 and 19 of the Universal Declaration on Human Rights as well as of articles 7, 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights; thus it falls within categories II and III of the categories referred to by the Working Group when considering the cases submitted to it.

24. Consequent upon the Opinion rendered, the Working Group requests the Islamic Republic of Iran, without delay, to take the necessary steps to remedy the situation of Mr. Mohammad Reza Pourshajari and to bring it into conformity with its obligations under the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights. Also, the Working Group requests the Government to ensure protection against further torture and ill-treatment of Mr. Mohammad Reza Pourshajari.

25. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be the immediate release of Mr. Mohammad Reza Pourshajari by the authorities of the Islamic Republic of Iran and to guarantee his right to reparation in accordance with article 9.5 of the International Covenant on Civil and Political Rights.

26. The Working Group taking into accounts the torture and ill treatment inflicted to the detainee as well and its delicate medical condition the Working Group considers appropriate, in accordance with article 33 (a) of its Revised Methods of Work, to refer these allegations to the Special Rapporteur on Torture for appropriate action.

27. The Working Group reminds of the Human Rights Council's call for all States to take into account the Working Group's views and, where necessary, to take the appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. States are also

¹ Available at <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

In the past the Islamic Republic of Iran has provided information the Working Group on Arbitrary Detention on various letters of allegations submitted to it, i.e. See Opinions No. **58/2011, 21/2011, 20/2011, 4/2008, 26/2006, 19/2006, 14/2006, 8/2003, 30/2001**.

requested to extend their co-operation to the Working Group's requests for information and to give due consideration to the recommendations it has made.²

[Adopted on 28 April 2015]

² Human Rights Council resolution 24/7 (Human Rights Council 24th session, 26 September 2013, (A/HRC/RES/24/7); paragraphs 6 and 7.