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Bahrain

BAH/03 - Matar Ebrahim Matar
BAH/04 - Jawad Fairooz Ghuloom

Decision adopted by the Committee on the Human Rights of Parliamentarians at its 152nd session (Geneva, 23 January to 3 February 2017)

The Committee,

Referring to the case of Mr. Matar Ebrahim Matar and Mr. Jawad Fairooz Ghuloom, former members of the Council of Representatives of Bahrain, and to the decision adopted by the IPU Governing Council at its 193rd session (October 2013),

Taking into account the letter from the Speaker of the Council of Representatives dated 19 January 2017 and his previous letters; *recalling also* the information regularly provided by the complainants,

Recalling that Mr. Matar and Mr. Fairooz, who both belong to the Al-Wefaq party, were elected in 2010 and supported the call for political and social reform in Bahrain; that they and the other 16 Al-Wefaq parliamentarians tendered their resignations on 27 February 2011 in protest at the Government's response to the demonstrations that started in the capital on 14 February 2011; and that their resignations were accepted by the Council of Representatives on 29 March 2011,

Recalling the following with regard to the alleged arbitrary arrest and detention and ill-treatment of Mr. Matar and Mr. Fairooz:

- According to the complainants, both men were arbitrarily arrested on 2 May 2011 by security forces and taken to different detention centres, where they were ill-treated and denied access to family and legal counsel; Mr. Fairooz was allowed only a five-minute telephone call to his family on 29 May 2011, but forbidden to divulge his location; their families only found out what had happened to them when trial proceedings started against them on 12 June 2011 in the courts, initially the National Safety Court, which was also the first time that they had access to a lawyer;
- Mr. Matar and Mr. Fairooz submitted, in letters dated 27 September 2011, detailed complaints of their alleged arbitrary arrest, detention and ill-treatment to all the relevant Bahraini authorities and the Chairman and members of the Bahraini Independent Commission of Inquiry;
- The Speaker of the Council of Representatives affirms that: (i) on 23 October 2011, the military prosecutor heard Mr. Fairooz and observed that he was unable to recognize any of the alleged perpetrators; (ii) Mr. Fairooz's wife testified under oath that her husband had been arrested in a respectful manner; (iii) the military prosecutor likewise heard Mr. Matar on the same day; (iv) Mr. Matar's wife stated under oath that her husband had been arrested by a group of civilians, but that he had escaped briefly before being caught and arrested again; she testified that she had received a telephone call from him, and when asked by the military prosecutor whether she had seen anyone beating her husband or insulting him, she said that she had not; (v) with respect to both Mr. Fairooz and Mr. Matar,

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the military prosecutor questioned the security personnel individually, and all of them denied involvement in any ill-treatment; (vi) the military prosecution decided not to take legal action on the allegations because of the conclusive evidence that the alleged violations had not in fact taken place, the complainants having failed to present any evidence whatsoever in support of their claims; (vii) neither Mr. Fairooz nor Mr. Matar appealed the decision by the military prosecutor to close the investigation; the possibility of re-opening the investigation remained, if new evidence came to light, in accordance with article 163 of the Criminal Procedure Law;

- The complainants claim that Mr. Fairooz and Mr. Matar were never officially informed of the military prosecutor's decision to close the investigation, nor did they receive any information about its outcome,

Recalling with regard to the legal proceedings against Mr. Matar and Mr. Fairooz:

- On 12 June 2011, the accused were informed at the court hearing that they were being charged with spreading false information, instigating hatred against the authorities, organizing and participating in gatherings without having properly notified the authorities in advance, and using the gatherings to prepare or facilitate crimes or to undermine public security; both men denied the charges and were released from detention on 7 August 2011; Mr. Matar was acquitted on 20 February 2012, while Mr. Fairooz was tried on the last two counts; on 7 November 2012, Mr. Fairooz was sentenced to a 15-month prison sentence, with payment of a fine of 300 Bahraini dinars as an alternative; Mr. Fairooz appealed the sentence, and the High Court on 15 January 2013 upheld the sentence, following a single appeal hearing in the presence of his lawyer but in the absence of Mr. Fairooz, whose Bahraini nationality had been revoked in the meantime while he was abroad;
- The evidence cited in the judgment seems to consist essentially of his own admission of involvement in organizing peaceful protests, speaking at rallies and giving interviews to representatives of the international media, the United Nations and the European Parliament, together with the fact that some other participants at the gatherings had advocated the overthrow of the current regime and committed violent acts; although Mr. Fairooz himself addressed those gathered at the Pearl Roundabout on two occasions, he was neither violent nor advocated the use of violence or the overthrow of the regime, although at one point he had taken the stage to address the gathering against the backdrop of a poster advocating the overthrow of the regime, for which he was criticized by the military prosecutor during the interrogation, the suggestion being that Mr. Fairooz should have refused to speak unless the poster was taken down;
- The United Nations Special Rapporteur on the right to freedom of peaceful assembly and of association, and the Special Rapporteur on the right to freedom of opinion and expression, have made it clear that organizers should not be criminalized for not requesting authorization and that assembly organizers should not be held liable for violent behaviour committed by others; in his report dated 24 April 2013, the United Nations Special Rapporteur on the right to freedom of peaceful assembly and of association (A/HRC/23/39), qualified the specific situation of Bahrain with the words, "*peaceful assemblies have been prohibited or repressed because the [messages] conveyed do not please the authorities*"; the report also states: *"[The Special Rapporteur] is particularly troubled by the imposition of blanket bans in many States, such as […] Bahrain, typically in the interests of national security, public safety or public order. He firmly believes that such blanket bans are intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peaceful assembly"*;
- According to the Speaker of the Council of Representatives, the sentence against Mr. Fairooz is not final, as he can still submit an objection to the verdict to review the case again before the court, according to articles 288 and 291 of the Criminal Procedure Code,

Recalling the following information with regard to the revocation of Mr. Fairooz's nationality:

- On 6 November 2012, Mr. Fairooz, who was visiting the United Kingdom that day, was stripped of his nationality by an administrative decision, along with 30 others, under the Citizenship Law, which permits the revocation of nationality when a holder of Bahraini

citizenship undermines state security; Mr. Fairooz, who states that he has always been committed to the peaceful expression of views, the rejection of violence and the promotion of political reform to create a genuine constitutional monarchy, is now stateless as a result; of the 31 persons affected by this decision, nine decided to challenge it but only one, Mr. Ibrahim Karimi, had actually brought a case to court, in June 2013; a court upheld the decision to revoke Mr. Karimi's citizenship on 29 April 2014, stating that the decision was "*intimately related to national security*", without any supporting evidence; it added that the administrative authority's decision, which it was not obliged to justify, was "*not subject to judicial oversight as long as its decisions are free from abuse of authority*";

- The Universal Declaration of Human Rights stipulates that no one is to be arbitrarily deprived of nationality, that the 1961 Convention on the Reduction of Statelessness, to which Bahrain is not a party, enshrines the basic principle that no one should be deprived of nationality if such deprivation results in statelessness, and that exceptions to this principle under the Convention require that a State wishing to deprive an individual of his or her nationality do so in accordance with the law and with full procedural guarantees, including the right to a fair hearing,

Recalling further that the Bahraini Independent Commission of Inquiry, an independent body set up by the King of Bahrain to investigate alleged human rights abuses during and following the 2011 protests in the country, presented its official report on 23 November 2011, which included the following findings:

- The text and application of articles 165, 168, 169, 179 and 180 of the Bahrain Criminal Code "*raises questions about their conformity with international human rights law and the Constitution of Bahrain*"; the Government of Bahrain *"used these articles to punish those in the opposition and to deter political opposition*";
- *"[In] a substantial number of the arrests carried out by law enforcement agencies, arrest warrants were not presented to arrested individuals and arrested individuals were not informed of the reasons for their arrest*";
- "*In many cases, government security forces resorted to the use of unnecessary and excessive force, and in a manner that sought to terrorize individuals*"; "*many detainees were subjected to torture and other forms of physical and psychological abuse while in custody, which indicated patterns of behaviour by certain government agencies*"; *"[the] extent of this physical and psychological mistreatment is evidence of a deliberate practice*"; the techniques used to mistreat detainees "*fall within the meaning of torture as defined in the Convention against Torture […] to which Bahrain is a State party*"; "*the lack of accountability of officials within the security system in Bahrain has led to a culture of impunity, whereby security officials have few incentives to avoid mistreatment of prisoners or to take action to prevent mistreatment by other officials*",

Considering that the Speaker of the Council of Representatives has repeatedly pointed to the significant legislative and institutional reforms carried out by the authorities in recent years in response to the report of the Bahraini Independent Commission of Inquiry, including extensive amendments to the Criminal Code with a view to strengthening freedom of expression, the creation of the position of Ombudsman within the Ministry of the Interior and a Special Investigations Unit within the Public Prosecutor's Office,

1. *Thanks* the Speaker of the Council of Representatives for the extensive information he has provided and his continued cooperation in this matter;

2. *Regrets nevertheless* that the information does not provide answers to its long-standing question about evidence of an effective official investigation into the detailed allegations of ill-treatment of Mr. Fairooz and Mr. Matar, particularly in light of the equivocal conclusions reached by the Bahraini Independent Commission of Inquiry regarding the use of torture and other forms of physical and psychological abuse of detainees during and after the protests and the lack of accountability of law enforcement officials;

3. *Reiterates its wish* to receive a copy of the decision to close the investigation into their alleged ill-treatment, the investigation report detailing the concrete steps that the authorities took to shed light on the allegations and a copy of the record of the detainees' visitors, particularly for the first month of the detention;

4. *Reaffirms its view* that, in light of its examination of the translated texts of the first-instance and appeal judgment against Mr. Fairooz, the relevant international human rights norms and the observations made by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, there was no legal justification to depict Mr. Fairooz's actions as criminal; *remains eager*, therefore, to receive the clarifications that the authorities undertook to provide on this point;

5. *Remains deeply concerned* about the manner in which Mr. Fairooz's nationality was revoked; *emphasizes* that, under international law, the revocation of nationality is an extremely serious measure, all the more so if it leads to statelessness, and should only be taken with full respect for due process, which should include hearing the individual concerned; *acknowledges* that Mr. Fairooz has not challenged the revocation in court, but that the only person of the group of 31 who did was told that the factual basis for the revocation could not be divulged; *considers* therefore that any attempt by Mr. Fairooz to challenge the revocation would likewise have been devoid of any practical meaning;

6. *Requests* the Secretary General to convey this decision to the parliamentary authorities, the complainants and any third party likely to be in a position to provide relevant information;

7. *Decides* to continue examining the case.