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## Kuwait

KUW/04 - Abdul Hameed Dashti

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

The Committee,

*Referring to the decision adopted on the admissibility of the case of Mr. Abdul Hameed Dashti, a former member of the National Assembly of Kuwait, at its 151<sup>st</sup> session (October 2016),*

*Taking into account the letter and legal memorandum from the Speaker of the National Assembly dated 19 January 2017; considering also the extensive information provided by the complainant,*

*Considering that, according to the complainant, Mr. Dashti has been subject to a campaign of judicial harassment since 2014, primarily at the instigation of the Saudi Arabian and Bahraini authorities; Mr. Dashti has been prosecuted in more than 10 criminal cases before the Kuwaiti courts, which all revolve, according to the complainant, around the legitimate exercise of his right to freedom of expression; since July 2016, he has been sentenced in seven different cases to a total of thirty-three years and six months' imprisonment, including a two-year prison term from a Bahraini court,*

*Considering that Mr. Dashti has been on official medical leave from the Kuwaiti National Assembly since April 2016; according to the Speaker of the National Assembly, the National Assembly has always carefully and objectively examined requests for the lifting of Mr. Dashti's parliamentary immunity and given him the possibility of defending himself, even when he was abroad, by allowing him to present defence memoranda; moreover, the Speaker underscores that requests for the lifting of parliamentary immunity are not unusual in Kuwait – for the outgoing legislature there had been 72 such requests (23 concerning Mr. Dashti), of which 39 had been accepted by the National Assembly (17 concerning Mr. Dashti),*

*Considering that parliamentary elections took place in Kuwait on 26 November 2016 and that, according to the complainant, Mr. Dashti was deprived of his right to stand in those elections as a candidate,*

*Considering the following information on file, as provided by the complainant and the Speaker of the National Assembly, regarding the criminal charges underpinning the original complaint against Mr. Dashti:*

- **Case No. 10/2014**

- The authorities of Bahrain denounced Mr. Dashti's actions to the Kuwaiti authorities in a letter dated 25 September 2014 and requested that legal action be taken against him; Mr. Dashti was subsequently accused by the Kuwaiti authorities of taking hostile action against a foreign State likely to incur the risk of severing the political ties of the State of Kuwait with that State and with the aim of distorting the system of government in the

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Kingdom of Bahrain; the precise charges are based on article 4/1 of Law No. 31/1970 amending some of the provisions of the Criminal Code (No. 16/1960), which reads as follows: *"Is punishable by the temporary imprisonment – of at least two to three years – of anyone who assembles without the permission of the government military personnel or commits any other hostile action against a foreign country that could expose Kuwait to the risk of war or severance of political relations. If the act results in war or severance of political relations, punishment shall be life imprisonment"*;

- The court decided to refer the case to the National Assembly, which lifted his immunity on 13 January 2015 in a closed session, according to the complainant, and referred the case back to the court; on 10 October 2016, the court found Mr. Dashti guilty and sentenced him to a three-year prison sentence;
  - The Speaker of the National Assembly stated that the incriminating remarks made by Mr. Dashti, which underpinned his conviction, were as follows: *"Congratulations to the people of Bahrain on the victory achieved by their brothers the people of Yemen, who pledged to God to the support of the real Bahraini people with all forms as their duty [...] in Bahrain, hollow statements and decisions that reinforce violations against humanity continues, my sincere advice to the regime [...] be wise and fulfil the demands of your real people [...] the time of accepting of crumbs is over, they are very confident that they are living at the period of triumph of the good over the bad. The oppressed in Bahrain shall be done justice [...] haste by the authorities in Bahrain to establish the status quo will not pay due; it will all go down the drain. The people will achieve their aspiration, their supporters have doubled. No decisions, nor elections, nor harassment and imprisonment nor killing will be of benefit and the price shall be paid [...] tomorrow is very close. Remember you will say: Please help us"*;
  - According to the complainant, the accusation is in essence based on the publication of messages allegedly sent by Mr. Dashti through Twitter while he was attending a session of the United Nations Human Rights Council in Geneva in September 2014; Mr. Dashti was never asked whether he was the author of the tweets; in any case, analysis of their content shows that they contain nothing that would not be protected by the right to freedom of expression; in this regard, the complainant also points out that, in rulings adopted on 11 and 25 May 2016, the Constitutional Court ruled that article 4/1 of Law No. 31/1970 did not criminalize the exercise of the right to freedom of expression,
- **Case Nos 27, 29, 30 and 31/2015**
    - With regard to case Nos 27/2015 and 31/2015, according to the legal memorandum from the Speaker of the National Assembly, Mr. Dashti was accused of having, on 20 April 2015: (i) verbally and publicly challenged the rights of the Kuwaiti Emir and his authority by taking part in the *Bain Qouseen* (Between Brackets) programme on the Al-Manar television channel; and (ii) committed a hostile act against Saudi Arabia by taking part in the *Bain Qouseen* programme and uttering phrases and statements that might constitute interference in its internal affairs, insulted it and its rulers and inflamed sectarian strife, which might put political relations with Kuwaiti at risk of being severed;
    - The public prosecution service demanded that he be charged under articles 4(1) and 25 of Law No. 31/1970 amending some of the provisions of the Criminal Code (No.16/1960); the National Assembly was requested to lift his immunity, and did so on 3 July 2016;
    - With regard to case Nos 29/2015 and 30/2015, the legal memorandum from the Speaker states that the accusations against Mr. Dashti were based on articles 4(1), 14(1) and 15 of Law No.31/1970 amending some of the provisions of the Criminal Code (No.16/1960), and on the following facts: Mr. Dashti (i) committed a hostile act against Saudi Arabia through criticism and statements in the *"Ma Wraa Al-Hadat h11"* programme on the Al-Sahaat television channel and the *"Khtout Eltemas"* programme on the Al-Maseera television channel, which might put political relations with Kuwait at risk of being severed; he accused Saudi Arabia and the coalition forces of waging a war of aggression against the people of Yemen and accused Saudi Arabia of using lethal weapons against Yemen and its people, leading to the destruction of infrastructure in Yemen and of besieging the Yemeni people and putting them at risk of starvation; he also accused Saudi Arabia of funding, supporting and spreading terrorist elements in Yemen; he also incited revenge

against the Kingdom and claimed that the Kingdom sought to weaken Yemen and install a president who was loyal to Saudi Arabia; he said that the Kingdom interferes with the internal affairs of its neighbouring countries and that the southern territory of the Kingdom of Saudi Arabia is originally Yemeni territory; (ii) deliberately aired, in time of war, false news and rumours that would harm military operations of the Armed Forces by casting doubts over the goals and objectives of operations “Storm of Resolve” and “Restore Hope” in which the Kuwaiti Armed Forces are taking part with the intent of weakening the spirit of the soldiers involved in those war operations; (iii) initiated an activity that would harm the governmental interests of the country;

- On 22 September 2016, the Criminal Court sentenced Mr. Dashti (in case No. 27/2015) to a three-year prison term for the infringement of article 4/1 and to two additional years of imprisonment for undermining the prestige of the Emir of Kuwait; on the same day, the Criminal Court also sentenced Mr. Dashti (in case No. 29/2015) to three years’ imprisonment for the infringement of article 4/1 and to three additional years of imprisonment for the two other charges regarding articles 14 and 15 of the Criminal Code,

- **Case No. 0721502343**

- In March 2015, Mr. Dashti learnt through the media that a criminal investigation had been conducted against him in Bahrain; in December 2015, Mr. Dashti was informed through social media and the Bahraini newspaper Al Siyasa, dated 23 December 2015, that on 15 December 2015 a Bahraini court had sentenced him in absentia to a two-year prison term; the accusations brought against Mr. Dashti were that he had illegally collected and sent money to subversive organizations in Bahrain with the aim of destabilizing the country;
- Mr. Dashti has denied these accusations, was never interrogated about them or invited to be present or represented in the proceedings to submit his defence and has never received any answer to his official requests for information to the Kuwaiti executive and parliamentary authorities; Mr. Dashti was convicted together with two Bahraini nationals, including Mr. Hussain Jawad, a member of the opposition in Bahrain who has since fled to France and, according to the information available to the complainant, has applied for asylum there; Mr. Dashti does not know this person; the complainant points out that Amnesty International reported that Mr. Jawad had confessed under torture to the charges brought against him and Mr. Dashti;
- On 4 February 2016, the Kuwaiti authorities received an official communication from the public prosecutor of Bahrain transmitting a copy of the sentence; the Foreign Ministry handed this official communication over to the Justice Department, which in turn forwarded it to the National Assembly with a request to lift Mr. Dashti’s parliamentary immunity, which it did on 15 March 2016; on 10 March 2016, the Bahraini public prosecutor reportedly announced in the press that the Bahraini authorities intended to issue an international arrest warrant through Interpol to facilitate execution of the sentence,

- **Case No. 54/2015**

- The complainant and authorities have provided different information on the substance of this case; according to the legal memorandum from the Speaker, in this case the public prosecution service accused Mr. Dashti of deliberately announcing tendentious statements and information, as well as false rumours about the internal situation in Kuwait, which might result in weakening the prestige and the status of the country; the public prosecution service demanded that Mr. Dashti be charged under article 15 of Law No. 31/1970 amending some provisions of the Criminal Code (No. 16/1960); the complainant, however, claims that the background of the accusation is as follows: a complaint was filed on 16 July 2015 by two Kuwaiti nationals, both lawyers, one of whom is a parliamentarian known for his positions in favour of Saudi Arabia; Mr. Dashti is accused by these two individuals of “affecting their national feelings”; the accusation is based on article 15 of Law No. 31/1970; according to the complaint, during one of his visits to Lebanon, Mr. Dashti met the father of Mr. Imad Moghnieh, who is regarded by the Lebanese national resistance movement as a martyr and who was murdered in Damascus in a bomb attack; according to the complainant, the two Kuwaiti complainants argue that the meeting “affected their national feelings”, given that the deceased had been involved in the hijacking of a plane decades ago in which two Kuwaiti nationals (not related to the complainants) were killed;

- Both the parliamentary authorities and complainant agree that the National Assembly lifted Mr. Dashti's immunity on 12 April 2016 with regard to this case,
- **Case No. 10/2016**
  - On 29 February 2016, Mr. Dashti was informed that the Foreign Ministry of Kuwait had received an official note from the Embassy of the Kingdom of Saudi Arabia complaining that, during an exchange on a Syrian TV news channel on 24 February 2016, he allegedly attacked and insulted the Kingdom of Saudi Arabia; according to the legal memorandum from the Speaker of the National Assembly, one of the phrases used by Mr. Dashti was as follows: *"It is (the Kingdom of Saudi Arabia) the head of incitement and the source of terrorism and terrorists. All terrorist movements are personified in Wahhabism, and this Wahhabi mentality must be hit at the source [...]"*;
  - Following a request from the Kuwaiti public prosecutor, the National Assembly decided on 15 March 2016 to lift his parliamentary immunity;
  - On 28 September 2016, Mr. Dashti was acquitted, with the court referring explicitly to the decisions of the Kuwaiti Constitutional Court and to the freedom of expression; it is not clear if the prosecutor appealed against the acquittal,
- **Case No. 14/2016**
  - On 21 April 2016, the prosecutor submitted a request to the National Assembly to lift Mr. Dashti's parliamentary immunity in a case based on multiple statements he had made in the media and on social media, as in all previous files discussing the regional political situation and criticizing in particular the role of Saudi Arabia for allegedly destabilizing the Middle East; the request does not refer to any complaint received from another State and therefore seems to be an autonomous initiative of the Kuwaiti public prosecutor;
  - According to the legal memorandum from the Speaker, Mr. Dashti had published tweets on 23 and 26 March 2016, including the following:

*"I am astonished by the State of Kuwait, who and due to the Saudi clumsy interference, issued an arbitrary decision by the public prosecutor to seize and apprehend Dr. Abdulhamid Dashti for offending Saudi Arabia"; "Those who think that they can intimidate Dr. Abdulhamid Dashti are wrong and delusional because resistant fighters like him do not fear anything, and Saudi Arabia intervened in the affairs of a country, and will pay for that"; "The source of all incitements! Saudi Arabia"; "The reason behind the backwardness of the nation is Saudi Arabia"; "The source of all scourges is Saudi Arabia"; "The injustice suffered by the people of Bahrain is because of Saudi Arabia"; "The injustice suffered by the people of Iraq is because of Saudi Arabia"; "The injustice suffered by the people of Syria is because of Saudi Arabia"; "The injustice suffered by the people of Yemen is because of Saudi Arabia"; "Bombings in Brussels, Paris, and every dark area are because of Saudi Arabia";*
  - Moreover, according to the legal memorandum from the Speaker, Mr. Dashti held a press conference in the Syrian Arab Republic, which was broadcast by the Syrian News Agency (Sana) on 24 March 2016, in which he claimed that the Kuwaiti parliament was compromised, and that its members wanted to lift his parliamentary immunity in order to please the Kingdom of Saudi Arabia; he claimed that the Kingdom of Saudi Arabia was interfering in the affairs of the State of Kuwait and such interference in the sovereignty of Kuwait must be stopped; he also claimed that the Kingdom of Saudi Arabia sought to destroy the Arab and Islamic nation, and he described the royal Saudi family as the tribe that perched on the lands of Najd and Hejaz and extended their authority to destroy the nation; the legal memorandum from the Speaker also states that Mr. Dashti delivered a speech on 19 March 2016 which was broadcast on the Syrian News Channel during a conference on the Arab Islamic Gathering to support the choice of resistance, in which he had glorified the Secretary General of Hezbollah/Hassan Nasrallah, and pledged to continue the struggle against the foreign occupation, referring to the United States of America and the Kingdom of Saudi Arabia;
  - The legal memorandum also states that Mr. Dashti was interviewed twice by the Syrian News Channel and by the Al-Mayadeen Channel; in the first interview on 19 March 2016,

he expressed support for and solidarity with Hezbollah and called on the audience to support and join it; he also offended Saudi Arabia, attributing acts committed by the terrorist organization of Daesh to the Kingdom and said that it is the fruit of Al-Wahhabi mentality in Saudi Arabia; in the second interview on 29 March 2016, he described the decision to lift his parliamentary immunity by the National Assembly of Kuwait a result of Saudi hegemony over the sovereign Kuwaiti decision; he also offended the Kingdom of Saudi Arabia by describing it as the promoter and planner of the Zio-American-Expiatory project;

- The National Assembly lifted the immunity regarding this case on 24 May 2016, allowing prosecution on the basis of violations of article 4/1 of Law No. 31/1970 amending some of the provisions of the Criminal Code (No. 16/1960) (national security), article 147 of the Criminal Code (No. 16/1960), article 6 of Law No. 63/2015 (fighting to prevent information technology crimes (social media)), articles 21 (3) and 27 (3) of Law No. 3/2006 (publication and distribution) and article 70 (A-1, 2) of Law No. 37/2014 (development of the authority to organize telecommunications and information technology); the complainant states that, inasmuch as it allows prosecution on the grounds of article 4/1, this decision flagrantly contradicts the ruling of the Constitutional Court, which holds that this provision cannot be applied to statements and expressions of opinions;
- On 27 July 2016, the criminal chambers of the Court of First Instance of Kuwait sentenced Mr. Dashti to a total of eleven years and six months' imprisonment,

- **Case No. 16/2016**

- On 27 April 2016, the public prosecutor submitted a request to the Speaker of the National Assembly to lift Mr. Dashti's parliamentary immunity; the letter refers to a complaint filed by the Kingdom of Bahrain about Twitter messages allegedly sent by Mr. Dashti on 2 July 2015 and 19 April 2016 regarding human rights violations in Bahrain; according to the legal memorandum from the Speaker of the National Assembly, the Kingdom of Bahrain considered these tweets to be offensive, aiming to defame the ruling system, incite the people of Bahrain to illegally topple the regime and offend the Bahraini authorities and its judicial devices without government permission, which may jeopardize relations between the State of Kuwait and the Kingdom of Bahrain to the extent that they could be severed; Mr. Dashti was subsequently accused of having violated article 4/1 of Law No. 31/1970 amending some of the provisions of the Criminal Code (No. 16/1960) and Law No. 27/2014 on the development of the authority to organize telecommunications and information technology;
- The National Assembly lifted the immunity regarding this case on 24 May 2016, allowing prosecution on the aforesaid grounds;
- On 27 July 2016, the criminal chambers of the Court of First Instance of Kuwait sentenced Mr. Dashti to three years' imprisonment; the complainant points out that the Twitter messages were sent from an account named aa\_dashti; the Kuwaiti judicial authorities never investigated whether this account – which obviously contains comments by third persons about Mr. Dashti's political actions – actually belonged to him; and, even if that were so, the complainant claims that the messages of 2 July 2015 and 19 April 2016 contain legitimate criticism about human rights violations allegedly committed by the Bahraini Government and in no way exceed the boundaries of free speech; inasmuch as the conviction is based on article 4/1 of Law No. 31/1970 amending some of the provisions of the Criminal Code (No. 16/1960), it violates the right to freedom of expression as interpreted by the Constitutional Court,

- **Case No. 19/2016**

- On 19 May 2016, the public prosecutor reportedly requested the National Assembly to lift Mr. Dashti's parliamentary immunity to prosecute him on a complaint filed by the Saudi authorities in a letter dated 2 May 2016; the Kingdom of Saudi Arabia complained about an interview given by telephone by Mr. Dashti to the Syrian television channel Al Akhbaria on 25 April 2015; according to the legal memorandum from the Speaker of the National Assembly, the following are extracts from the statements made by Mr. Dashti in that phone call: *"A rogue state, involved in supporting terrorism, and by this I mean that*

*Saudi Arabia, which files a complaint against a member of the Kuwaiti Parliament in a democratic country and, unfortunately, it is accepted. A warrant issued against me for public opinion case. I admitted in international forums and in the media that I stick to my view. Yes, I have a different view against which Saudi Arabia deprives people there of their most basic rights, for abandoning Palestine, and for spreading the Wahhabi ideology and the destructive terrorism in Syria”; “Saudi Arabia is the cause of all the scourges in the nation today”;*

- Following a request from the public prosecutor on 7 June 2016 the National Assembly lifted Mr. Dashti’s immunity; on 10 October 2016, the court found Mr. Dashti guilty and sentenced him to a three-year prison sentence,
- **Case No. 20/2016**
- Mr. Dashti was informed in February 2016 that Mr. Mohammed Rashid Al-Duaij, one of the heads of the Criminal Division of the Court, had filed a complaint against him on 14 January 2016; according to the complainant, the counsellor accuses Mr. Dashti of insulting him and the judicial authorities; the accusations are based on action taken by Mr. Dashti and eight other parliamentarians in response to the court decision in the so-called case of the “Abdali-cell”; the nine parliamentarians boycotted the parliamentary session on 13 January 2016 in protest against what they considered to be the arbitrary and unjust nature of the court decision; the complaint refers to the publication on an online news site of a picture of the parliamentarians who supported this action with a caption referring to their opinion; the complainant holds that the action taken was strictly within the limits of the freedom of expression as protected by the Constitution of Kuwait and article 147(2) of the Code of Criminal Procedure, which allows criticism in good faith of court decisions; the case is registered under No. 20/2016 and was investigated while Mr. Dashti was abroad; as requested, the National Assembly lifted Mr. Dashti’s parliamentary immunity on 15 April 2016,

*Considering that Kuwait is a State party to the International Covenant on Civil and Political Rights (ICCPR), which enshrines respect for the right to freedom of opinion and expression; considering also that the United Nations Human Rights Committee, which oversees implementation of the ICCPR, held in its general comment No. 34 on article 19 of the ICCPR that freedom of opinion and freedom of expression “are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society.” With regard to paragraph 2 of article 19 on freedom of expression, the Committee holds that: “It includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse [...] The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive [...]” and that “[...] all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition”,*

1. *Thanks* the Speaker of the National Assembly for his detailed response and his spirit of cooperation;
2. *Is deeply concerned* about Mr. Dashti’s multiple convictions to long prison terms inasmuch as they emanate from the legitimate exercise of his right to freedom of expression; *is concerned also* that, as a result of the legal action against him, he was unable to stand as a candidate in the recent parliamentary elections in Kuwait;
3. *Affirms* that freedom of expression goes to the heart of democracy, is essential to members of parliament and includes not only speech, opinions and expressions that are favourably received or regarded as inoffensive, but also those that may offend, shock or disturb others;
4. *Recalls* that under standard human rights conventions and their jurisprudence, restrictions on the freedom of expression are subject to a threefold test: they should be prescribed by law; they must be necessary in a democratic society; and they must be proportionate;

5. *Fails to see* how, for the most part, the restrictions on freedom of expression that result from Mr. Dashti's convictions and the legal provisions on which they are based can be justified; *is particularly worried* as to how Mr. Dashti can be held responsible for jeopardizing official relations with foreign States, as he can in no way be seen as representing the official position of the Government or Parliament of Kuwait; *is also concerned* that the ruling of the Constitutional Court safeguarding the right to freedom of expression may not have been taken fully into account in the criminal cases against Mr. Dashti; and *wishes* to receive the official views on these points;
6. *Is eager* to receive official information regarding the facts and legal grounds underpinning Mr. Dashti's conviction in case No. 0721502343;
7. *Is unclear* as to the background to case No. 54/2015, in light of the conflicting information on file; *wishes* to receive additional information from the authorities and the complainant on this matter;
8. *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;
9. *Decides* to continue examining this case.