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No.: 392/ 2006

Date: 30 September 2006

The Office of High Commissioner for Human Rights, Geneva,

Please circulate this letter to the Working Group on Arbitrary Detention (also for Fair Trials)

CC Mrs. Harrison, Amnesty International, London

Dear sir/madam,

Re COMPLAINT – Mr. MAHMUD HESENPUR A VICTIM OF ARBITRARY SENTENCE ISSUED BY AN IRANIAN JUDGE

Further to our Complaint (Ref: 382/2006 on 17 September 2006) regarding arbitrary treatments of detained activists of Southern Azerbaijan by relevant authorities of the Islamic Republic of Iran, we have further evidence on one particular case. This is the Case of Mr. Mahmud Hesenpur Sheikh Rejeb, whose sentence was actually issued on 9 August 2006 and we received a copy of it on 14 September 2006 (subsequently published on 15 September 2006 in various Azerbaijani websites). Regrettably, we overlooked this case but have just rediscovered the significance of this sentence as it is firm evidence to some of the points we have made in our above Complaint. We therefore use this firm evidence and lodge a Complaint purely for this particular case.

We would like to emphasise that it is our own initiative to lodge this Complaint. Thus, we have not consulted with Mr. Mahmud Hesenpur Sheikh Rejeb, his family or his lawyer. We purposely mention this to manage the risk of authorities' reprisals against the individuals concerned.

The Particulars of the Case

The Case concerns the Sentence issued by the Prosecutor, Mr. Vahdat, the Chief of Department 110, Criminal Court of Tebriz, on 2 August 2006 and apparently issued on 9 August 2006. The copy of the original is attached together with its translation for your perusal. We would like to draw your attention to the following issues:

1. **The Charge:** Disturbing public order
2. **The Sentence:** 6 months imprisonment together with 50 lashes
3. **The Procedure for Lashing:**
 - (i) Medical Procedure: obtain medical certificate;
 - (ii) The Weather Conditions: (select)** a fine pleasant day;
 - (iii) Place of Punishment: (Take the convict to a place) out of the public view;
 - (iv) The Clothing Condition: normal clothing (without stripping);
 - (v) Application of the Punishment: apply lashing to all over the body with exception of his head, face and private parts;

** The expressions within the brackets are ours to assist the rephrasing in the source text.



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We are not sure if the unusually detailed specification of the procedure for carrying out the sentence makes up a mitigation basis for the victim or it is the prosecutor's discretion. Even if it is not relevant to the case, the above procedure exposes the substance of dialogue of civilizations, as promoted by Messrs Khatami and Rafsanjani, two former presidents of the Islamic Republic of Iran. However, irrespective of the ideology of the Iranian theocracy, we wish to lodge our complaint on the following basis:

1. Mr. Mahmud Hesempur Sheikh Rejeb was arrested in relation to mass protests which swept throughout Southern Azerbaijan and therefore he should have been viewed as a prisoner of conscience and enjoyed appropriate rights. His trial in a criminal court is a breach of his right and judiciary procedures
2. We understand that his right of access for a lawyer was denied to him and normally these courts are carried out in closed sessions and unfortunately we have not been able to clear this matter but believe that this was the case.
3. The sentence of lashing is a flagrant violation of human rights

We therefore request you to kindly defend human rights of Mr. Mahmud Hesempur to avert the sentence, at least the lashing.

Yours faithfully,

Boyuk Resuloglu

The Committee for the Defence of the Rights of World Azerbaijanis



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No	The Translated Documents
TRANSLATION	The Translation of the Verdict:
	<p>Emblem of the Judiciary of Islamic Republic of Iran Judicial Report of The Court</p> <p>Dossier Number: Criminal 314-85/110 Judicial Number: 523-85/5/11 Access Number: 716589 Section Dealing with the Case: Department 110, Criminal court of Tebriz Plaintiff: Report Accused: Mahmud Hesempur Sheikh Rejeb, son of Mehemmad, resident of Tebriz, Akher-Khiaban-e-Hafiz, Kuye-Fatihyan, No. 95. Accusation: Disturbing public order Description of Proceedings: After receiving the dossier and filing it under the above reference number, and following the legal stages of the court on 2 August 2006 during the extraordinary time (outside the courts usual working hours), by declaring the end of the hearing, the following sentence was issued:</p> <p>Court's Sentence: In the present criminal dossier filed under number 31485/110 of the accused, Mr Mahmud Hesempur Rejeb son of Mehemmed, age: 36 years old, Profession: jeweller, Resident of: Akhere-Khiyabane- Hafiz, Kuye-Fatihyan, Number 95 has been bailed by providing a guarantor.</p> <p>The above named is accused of participating in disturbing the public order and the court, by taking into consideration of relevant documents and the contents of the dossier and the reports of relevant officials and confessions of the accused and his insufficient defence, and other evidences in the said dossier, the accused has been found guilty as charged. Therefore, in accordance with Section 618 of Islamic Penal Law passed in 1996, the accused has been sentenced to 6 months imprisonment together with 50 lashes which will be carried out after obtaining medical certificate. The lashing will be carried out over his normal clothing, out of the public view and in a fine pleasant day. The punishment will be applied to all over his body with exception of his head, face and private parts (testicles).</p> <p>The courts sentence will be carried out with him being present and within 20 days from the date of issuing the acceptance of his appeal. 1% 180585 (Translator's Note: we guess this is date and transformed as 9 August 2006)</p> <p>Chief of Department 110 of Criminal Court of Tebriz Vahdat</p>



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The Source Documents

The Sentence against Mr. Mahmud Hesenpur Sheikh Rejeb

دادنامه
دادگاه

فلا تتبعوا الهوى ان تعدلوا

دولت اسلامی ایران

شماره پرونده : ۳۱۲-۸۵/۱۱ جزائی
شماره دستوری : ۷۱۶۵۸۹
مرجع رسیدگی : شعبه ۱۱ دادگاه جزائی تبریز
شاکس : گزارش

متهم : محمود حسینیور شیخ رجب فرزند محمد ساکن تبریز آخر خ حافظ کوی فتحیان پ ۹۵
اتهام : اخلال در نظم عمومی
گرددش کار : پس از وصول پرونده و ثبت آن به کلاس فوق و پس از جری تشریفات قانونی دادگاه
در تاریخ ۸۵/۵/۱۱ در وقت فوق العاده با اعلام ختم رسیدگی میادرت و صدور رای می نماید :
رای دادگاه : در پرونده حاضر بکلاس ۳۱۲/۸۵/۱۱ جزائی آقای محمود حسن پور شیخ رجب فرزند
آقای محمد سن ۳۶ شغل زرگر به آدرس تبریز آخر خیابان حافظ کوی فتحیان پلاک ۹۵ آزاد بنا
فید کفالت متهم است به مشارکت در اخلال نظم عمومی دادگاه با توجه به اوراق و محتویات
پرونده و گزارش مامورین مربوطه و مفاد کثیرخواست دادسرا و اظهارات متهم و دفاع بدون
مؤثر وی و سایر قرائن و امارات موجود در پرونده بزهکاری نامبرده به دادگاه محرز و مسلم
بوده لذا دادگاه مستنداً " به ماده ۶۱۸ قانون مجازات اسلامی مصوب سال ۷۵ متهم موصوف الذکر
را به تحمل شش ماه حبس ۷۵ متهم موصوف الذکر را به تحمل شش ماه حبس تعزیری و تاخیر
پنجاه ضربه شلاق تعزیری که پس از تجویز پزشکی و در هوای معتدل و در تعمیر ملأ عام و بدون
خلع لباس به نمای بدن او بغیر از سر و صورت و عورت زده شود محکوم می نماید پس رای
صادر حقوقی و ظرف بیست روز از تاریخ ابلاغ قابل تجدیدنظر خواهی در دادگاههای تجدیدنظر
مرکز استان (تبریز) می باشد. ۱٪ ۱۸.۵۸۵

رئیس شعبه ۱۱ دادگاه جزائی تبریز
و جدت