

LEBANON

Unfair Trial of a Human Rights Defender

INTRODUCTION

Amnesty International is concerned at the intimidation of human rights defender Kamal al-Batal, Director of the Lebanese human rights organization MIRSAD, and Ziad Mugraby, the Director of the computer company ITX, who were tried and convicted by the Military Court of Beirut in March 2001 on charges of “tarnishing the reputation of the *police des moeurs* [vice squad police]”. In September 2000, Amnesty International had issued a public statement expressing its condemnation of the harassment of Kamal al-Batal and voicing its concern at the use of the military court “to silence free criticism”¹. On several occasions Amnesty International has stated that trials conducted by the Military Court in Lebanon are summary, flawed, and fall short of international fair trial standards.

Amnesty International is also concerned with regard to the violation of the right to freedom of expression which pervaded the whole case. *In July 2000 Kamal al-Batal was summoned by the police for interrogation concerning a call for urgent action MIRSAD had issued by e-mail in April 2000. The communique expressed concern about a raid by the Lebanese vice squad on an Internet service provider "Destination" and the interrogation of its General Manager, Ziad Mugraby, about a gay Lebanese website.* Subsequently, Kamal al-Batal and Ziad Mugraby were tried before the Military Court and sentenced to three months’ imprisonment, reduced to one month, and then commuted to a fine.

CASE DETAILS:

- On 3 April 2000 two plainclothes officers from the *police des moeurs* (vice squad police) entered the office of ITX, which manages the Lebanese Internet provider - Destination, to inquire about a specific website address - *gaylebanon.com*. They questioned the personnel of the company about the owners of the said website address and eventually summoned the company’s technical advisor to appear for

¹See *Lebanon: Amnesty International condemns harassment of human rights defender*, AI Index MDE 18/012/2000 - News Service Nr. 181

interrogation at the Hobeish police station in Beirut. It was reported that when he entered the offices of ITX company, the police prevented the staff from making outgoing calls and took the ID of the technical advisor. The Director of ITX - Destination, Ziad Mugraby, was also summoned on 13 April 2000 for interrogation, following his return from a trip abroad.

- On 13 April 2000, the human rights organization MIRSAD issued an urgent action protesting the police raid of the ITX -Destination offices and the harassment of its employees.
- On 17 April 2000 Ziad Mugraby and his technical advisor were called to the police station again and asked to disclose the identity of the person or persons who installed the website *gaylebanon.com*. The company denied any relation with the website or knowledge of the person or persons behind it. (The website pursued by the police is said to belong to a group not resident in Lebanon and hosted in North America).
- On 18 April 2000 MIRSAD issued a follow-up urgent action stating that the police continued to harass Destination and its Director. The organization deplored “the blatant and unlawful attempts by the police to interfere in freedom of the Internet as well as the freedom of expression of the gay community and call[ed] for urgent action to prevent the worsening of the situation in light of the threats made”.
- On 19 April 2000 ITX Director Ziad Mugraby was questioned again about the website in question, and he affirmed his previous statement.
- On 21 July 2000 Kamal al-Batal, Director of MIRSAD was summoned for interrogation concerning the urgent actions issued by MIRSAD in April 2000.
- On 5 August 2000, the Military Prosecutor brought charges against both Kamal al-Batal and Ziad Mugraby under Article 157 of the Military Penal Code, which provides for a penalty of between three months and three years in prison for anyone who defames the Lebanese army and Lebanese flag. The precise charge against Kamal al-Batal was that he "tarnished the reputation of the police des moeurs by issuing a printed flier claiming that an officer [of the vice squad] had threatened one of them".
- Following a series of postponements, both defendants were tried by the Military Court of Beirut in March 2001, found guilty as charged, and sentenced to three months' imprisonment, reduced by a majority of the court to one month, and immediately commuted to a fine of LL 300, 000 (US\$ 200) each.

AMNESTY INTERNATIONAL'S CONCERNS

From the outset, Amnesty International has expressed its concerns in this case in view of the apparent infringement of the right to freedom of expression, the harassment mounted by the authorities against human rights defenders, and the use of the Military Court in a case that clearly falls outside the jurisdiction of the military judiciary.

In its preamble, the Lebanese Constitution affirms Lebanon's commitment to the Universal Declaration of Human Rights. The Constitution also guarantees individual liberty (Article 8), as well as the right to freedom of expression, press and association (Article 13). Article 1 of the United Nations Declaration on Human Rights Defenders, 1998, states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".

Lebanon also acceded, in 1972, to the International Covenant on Civil and Political Rights (ICCPR) Article 19 of which guarantees freedom of expression, while Article 14 provides for the right to a fair trial.

In general, Amnesty International is of the opinion that there are insufficient guarantees for a fair trial before the Military Court for the following reasons:

- ✓ Despite being set up mainly to deal with cases related to the army and military personnel, the military courts have been granted a very wide jurisdiction over

civilians. It is because of this wide jurisdiction that the Military Court tries cases which should have otherwise been tried by civil or criminal courts. Such expansion of the jurisdiction of the Military Court is contrary to Lebanese legislation which does not give military personnel any legal authority over civilians².

- ✓ The presence of civilian judges in the military courts is limited: one member out of four in the permanent Military Court, with the President of the Court being a military officer. In the Military Court of Cassation the President is a civilian judge with four military officers as members. Those who preside over the military courts are mostly regular army officers without adequate legal training. However, they are required to try complex political cases some of which involve capital offences. Significantly, the judgments made by the Military Court, unlike civilian courts, do not provide a full explanation of the grounds for their verdicts.
- ✓ The Military Court is characterized by its summary proceedings as demonstrated by the number of cases it rules on every day³. Although in law the right of defence is guaranteed to the accused, lawyers state that the *modus operandi* of the Military Court does not always allow them to discharge their tasks properly or allow time for them to make their case fully.
- ✓ Furthermore, proceedings before the military courts are not subject to independent judicial review. On 24 February 1994 the Court of Cassation decided (Decision No.5/94) that the civil justice system has no authority over military justice, and has no jurisdiction to review the proceedings of civilian judges appointed in the military court system as prosecutors or as investigating magistrates.

²On 9 March 2001, of the 94 cases heard in a six hour session only 24 were military or police cases.

³The case load of the Military Court is estimated at 22,000-25,000 annually. It was also estimated that during the period from June 1993 to December 1994, the military court system handled nearly 22,000 cases mostly involving civilians.

- ✓ In theory, military courts are bound to apply the Lebanese Code of Criminal Procedure, but in practice they frequently fail to do so. Violations in pre-trial procedure, such as arrests without warrant, prolonged incommunicado detention, and denial of detainees' access to lawyers have created an environment where other human rights violations may flourish⁴.

In view of all these considerations, many aspects of the trials conducted by the Military Court appear to violate the right to a fair trial as stipulated in Article 14 of the ICCPR. In its specific recommendations to Lebanon in April 1997, the Human Rights Committee (HRC) - the body of experts entrusted to monitor states parties' implementation of the ICCPR - said:

“The Committee expresses concern about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians. It is also concerned about the procedures followed by these military courts, as well [as] the lack of supervision over the military courts' procedures and verdicts by the ordinary courts. The State party should review the jurisdiction of the military courts and transfer the competence of military courts, in all trials concerning civilians and in all cases concerning the violation of human rights by members of the military, to the ordinary courts”.

To date Lebanon has not yet taken appropriate steps to implement these recommendations.

With regard to the case in question it is not clear on what grounds the case of Kamal al-Batal and Ziad Mugarby was referred to the Military Court. Their lawyer said "Ziad and Kamal were never properly informed of the charges against them and they were never even asked what their plea would be ... the most elementary rules of evidence and procedure were ignored." The Military Prosecutor charged them under Article 157 of the Military Penal Code and accused them of “tarnishing the reputation of the police des moeurs”. In fact Article 157 prescribes a prison term of between three months

⁴See Amnesty International report: *Lebanon: Human Rights Developments and Violations*, AI Index MDE 18/19/97, London, October 1997.

to three years for anyone who commits acts of “contempt of the Lebanese flag or army, or which infringe upon the dignity or morale of the army, or carries any act that is bound to weaken the military discipline, or obedience and respect to commanding officers in the army”.

Thus Article 157 does not seem applicable in this case, because: a) it relates to the army and not the internal security forces; b) it deals with offences concerning defamation of the army or flag or acts that may impact negatively on dignity, morale or discipline of the army and its personnel. When the lawyer of the two defendants challenged the applicability of the said article as well as the competence of the Military Court to rule in the case, before the Military Court of Cassation, the latter overturned the appeal. The Court of Cassation argued that the Military Court of Beirut could go ahead with the case and may apply any relevant article that is appropriate to the offence even if it did not coincide with the article referred to in the prosecution charge (Article 157 in this case). Eventually, the Military Court convicted Kamal al-Batal and Ziad Mugarby under the very same Article 157 of the Military Penal Code.

It would appear that the Military Court has resorted to Article 157 and given it a wider interpretation to justify legal proceedings against Kamal al-Batal and Ziad Mugarby. It is thus difficult to avoid the conclusion that the Military Court has been used in this instance to intimidate human rights defenders who are trying to defend freedom of expression.

RECOMMENDATIONS

Amnesty International calls on the Lebanese authorities:

- to order a judicial review of the verdict passed by the Military Court against Kamal al-Batal and Ziad Mugraby and to remedy violations of their rights.

- to conduct a review of the jurisdiction, proceedings and conduct of the Military Court in line with the recommendations of the Human Rights Committee to Lebanon of April 1997.

- to safeguard the right to freedom of expression in accordance with the Lebanese Constitution and Lebanon's obligations under international human rights laws and treaties.

KEYWORDS: TRIALS1 / HUMAN RIGHTS DEFENDERS1 / FREEDOM OF EXPRESSION / COMPUTER STAFF / MILITARY TRIBUNALS / DEFAMATION / SEXUAL ORIENTATION