
The Public Commission was formed at the Federal Cassation Court on 23 Muharram 1429¹, 29 JAN 2008, with Vice-President Nu`man Fathi presiding and the following members: Vice-President Hasan Ibrahim Hasan and Judges Kamal al Bandar, Ali Al-Khatib, Dhamen Khashala, Salman Ubaid, Hasan Aziz, Ahmad Farhan, , Muwaffaq Tawfiq, Riyadh Khalil, Su`ood Aziz, Hasan Awdah, Muhammad Saheb, Hamid al Bayati, Adnan Abdulhusain, Awwad Muhsen, Najji Habash, Kamel Shihab, Isma`il Khalil, Khalil Ibraheem Khalifa, Najm Abdulwahed, and Abdulhusain Shandal, being authorized for judgeship in the name of the people. The Public Commission has issued the following decision:

Defendants: 1) Salam Hikmat Muhammad; 2) Abduljabbar Abbas Jasem; 3) Umar Jassam Muhammad; 4) Ibrahim Yasin Kazhem; 5) Yousef Munaf Muhammad; 6) Muhammad Munaf Muhammad.

Central Investigation Judge has referred the detainees Salam Hikmat Muhammad, Abduljabbar Abbas Jasem, Umar Jassam Muhammad, Ibrahim Yaseen Kazhem, Yousef Munaf Muhammad, and Muhammad Munaf Muhammad, per Referral Decision No. 1021, dated 4 OCT 2006, to the Central Criminal Court for prosecution in a non-summary case pursuant to the provisions of Article 421/C, Penal Code, as amended by Order No. 3 for the year 2004. Central Criminal Court, Baghdad, ruled on 12 OCT 2006 on Case No. 2011/C3/2006, convicting the defendants Salam Hikmat Muhammad, Abduljabbar Abbas Jasem, Umar Jassam Muhammad, Ibrahim Yasin Kazhem, Yousef Munaf Muhammad, and Muhammad Munaf Muhammad, in accordance with the provisions of Article 421/C/E of the Penal Code, based on Decision 3 of the year 2003 issued by the Cabinet, on three counts, and ruled for execution by hanging until death for each one of

¹Translators note: In the Hijri Calendar.

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them on three counts for participation in the kidnapping of the victims, namely the Romanian journalists Marie Jeanne Ion, Sorin Miscoci, and Edward Ovidiu Ohanesian.² The penalties stated in paragraphs 1, 2, and 3 were to be carried out consecutively, in accordance with the provisions of Article 143 of the Penal Code. The convicts were informed that their papers were being automatically sent to the Cassation Court for a review of the sentence and that they had the right to challenge the sentence within thirty days of the date of the pronouncement of the sentence.

In view of the failure of the victims to be present to have their statements documented as complainants in the course of investigation before this court, the court deemed their absence a waiver of their civil right and did not grant them the right to do so, while upholding the complaint on the basis of the public right and setting the lawyer's fees for the appointed attorney Husam al A`raji at fifty thousand dinars to be paid from public funds after the sentence becomes definitive.

As convict Abduljabbar Abbas Jasem al Salman was dissatisfied with the above decision, his counsel, attorney Manal al Safi filed a review motion dated 1 NOV 2006 requesting dropping the charges and releasing him. Attorneys Badi` Aref Izzat and Marwan Hazem Muhammad, counsel for Muhammad Munaf Muhammad and Yousef Munaf Muhammad, filed a review motion dated 2 NOV 2006 requesting dropping the charges and releasing their clients. Khaled Sayyid Naji Shaker and Sa`doon Ahmad al Abdali, counsel for convicts Muhammad Munaf Muhammad, Yousef Munaf Muhammad, and Ibrahim Hasan Kazhem, filed a review motion dated 7 NOV 2006 requesting the release of their clients. Attorney Sami Ibraheem,

² Translators note: The name spelling of the aforementioned is based on web search; the names in the Arabic version are misspelled beyond recognition.

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counsel for convict Salam Hikmat Muhammad Farhan, filed a review motion requesting the release of his client. Attorney Majeed Mustafa Abdullah, counsel for convict Yousuf Munaf Muhammad Ameen, filed a review motion dated 13 NOV 2006 requesting to have the decision overturned. Attorney Khaled Sayyid Naji, counsel for convict Muhammad Munaf Muhammad, filed an explanatory review motion dated 7 DEC 2006.

The Office of the Prosecutor General, based on its Review no. 148/P.C./2006, dated 19 DEC 2006, has requested to have the decision overturned and the case remanded back to its court.

Decision

Upon review and deliberation by the Public Commission at the Court of Cassation, it has been determined that all the decisions that were issued by the Iraqi Central Criminal Court in Baghdad on 12 OCT 2006 in Case no. 2001/C3/2006 were based on an error in the proper implementation of the law because the incident, as stated in the investigation and prosecution of the case is summarized as follows:

On the date of the incident, 28 MAR 2005, three Romanian journalists were riding in the car driven by defendant Muhammad Munaf Muhammad when they were kidnapped by armed individuals in the vicinity of al Jami`a District. After bargaining with the Romanian government and receiving a ransom, the kidnappers released the victims. Their statements were not documented in the course of investigation because of their departure to Romania, although the Romanian Embassy representative documented reports of the incident. Upon information gathering, it was determined that the kidnapping operation had been planned in Romania by a Syrian

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businessman named Haytham al Umar, and that the said individual had sent his brother Muhammad Khaled al Umar to Iraq to act as liaison with the perpetrators in their action. Based on this information, the defendants that were referred to court were apprehended.

Upon interrogation, defendants Ibrahim Yasin Kazhem, Abduljabbar Abbas Jaseem, and Salam Hikmat Muhammad confessed to participating in the kidnapping of the journalists. As to the other defendants, namely Umar Jassam Muhammad, Muhammad Munaf Muhammad, and Yousef Munaf Muhammad, the court has not ascertained the role of each one of them in the crime of kidnapping, a fact which calls for widening the scope of the investigation and, if necessary, documenting the statements of the other defendants as witnesses against them after separating their cases into individual cases.

Additionally, the court should have made efforts to document the statements of the kidnapped individuals through proxies or through various communication means, and should have ascertained their names based on official documents, as the names of the kidnapped individuals listed in the Victims field in the Referral Decision are different from their names as listed in the Charge Sheet.

The court decision also stated that the identity of the perpetrators of the kidnapping operation was determined after the arrest of the defendant Mahmoud Khaled al Umar and his explicit confession to the operation, its planners, and its perpetrators in Iraq.

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However, we could not find the defendant's statement in the case papers. The court should have documented his statements as a witness against the other defendants. Likewise, it should have documented the statements of defendant Hakeem Diyab as a witness.

Moreover, the crime of kidnapping the three journalists occurred within one criminal act. Therefore, the action of the defendants, if confirmed, constitutes one count, not three.

Incidentally, the Cabinet Order no. 3 was issued on 8 AUG 2004, not 2003 as was stated in the Charge Sheet, in the two conviction decisions, and in the sentence.

In view of the fact that the court decided the case before completing its investigation and in view of the aforementioned deficiencies, it is decided to overturn all the decisions issued in the case above and to intervene as a review authority with respect to the Referral Decision by overturning it and remanding the case papers back to its court for filing with the investigation court having jurisdiction to continue forward as outlined above.

The defendants are to remain in custody pending the outcome.

The decision was issued pursuant to the provisions of Article 259/A-7 of the Code of Penal Procedures, by consensus on 23 Muharram 1429³, 29 JAN 2008.

Zahra/ 19 FEB 2008

³ Translators note: in the Hijri Calendar