

Query response a-6971 of 19 October 2009

Iraq: Punishment for draft evasion and desertion prior to Saddam Hussein's 1994 decree (particularly Iran-Iraq war period)

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Please read in full all documents referred to.

Non-English language information is comprehensively summarised in English. Original language quotations are provided for reference.

Although the Iraq chapter of War Resisters' International's (WRI) country section was published in October 2002, some of the information on draft evasion and desertion disclosed therein relates to laws and practices prior to Saddam Hussein's 1994 decree and/or the Iran-Iraq war period: According to Decree 10/1988, deserters or draft evaders who had deserted/evaded the draft more than once or whose desertion/evasion period had exceeded one year were to be punished by death. According to WRI, it remains unclear how long this decree applied and whether it was abolished by decree 115/1994:

"The precise penalties for draft evasion and desertion are not known. Important decisions in Iraq are made on an ad hoc basis through RCC [Revolution Command Council] Decrees and, due to the closedness of Iraqi society, it is sometimes hard to judge which decrees are still valid and which have been replaced by other decrees. According to Decree 1370/1994 desertion in wartime is punishable by death. [5] According to Decree 115/1994, desertion in peacetime is punishable by death if someone has deserted three times or more. [5] According to Decree 10/1988: "The death sentence shall be carried out by the Party organization (...) on every deserter or draft dodger who is captured if the duration of his desertion or draft evasion exceeds one year or if he has committed the crime of desertion more than once." It is, however, not clear if this decree still applies. [4] In September 1994 the RCC ordered the amputation and branding of draft evaders and deserters, particularly the amputation of the ear (Decree 115/1994). In March 1996 the RCC ordered a decree which is thought to have abolished amputation and branding as punishment for draft evaders and deserters (Decree 81/1996). This is not absolutely sure

1

though, because the details of this decree have never become public. (see also: amputation and branding). In 1998, capital punishment was reintroduced for desertion. [24]" (WRI, 2 October 2002)

In a report of June 1995, Human Rights Watch (HRW) mentions the same decree 10/1988 but clarifies that not all of these deserters were executed before Decree 115/1994 came into force. According to HRW, Kurdish soldiers were granted amnesty on several occasions:

"On March 1, 1988, the RCC issued Decree Number 10 which stated, "The death sentence shall be carried out by the Party organization, after that examination, on every deserter or draft dodger who is captured if the duration of his desertion or draft evasion exceeds one year or if he has committed the crime of desertion more than once." Human Rights Watch/Middle East, Bureaucracy of Repression: The Iraqi Government in Its Own Words (New York: Human Rights Watch, 1994), p. 89. Nevertheless, the Iraqi government did not execute all of these deserters before Decree Number 115. For example, it granted amnesty to Kurdish soldiers on several occasions." (HRW, June 1995, FN 20)

According to the Swiss Federal Office for Migration, draft evasion was punishable by death under resolution 1370 as of 13 December 1983 (coming into force on 2 January 1984). The Revolution Command Council has in the past passed amnesties for deserters which, however, frequently had numerous exemptions:

[Original quotation from source in German language:]

"Die Wehrpflicht beträgt zwei bis drei Jahre, für Hochschulabsolventen 1 1/2 Jahre. Im Kriegsfall wird sie auf unbestimmte Zeit verlängert. Über die Entlassung aus der Wehrpflicht verfügt Saddam Hussein. So wurden beispielsweise im Mai 1991 die Wehrpflichtigen der Jahrgänge 1961 bis 1963, im Februar 1993 die des Jahrganges 1968 entlassen. Während den beiden Golfkriegen waren auch 18jährige Studenten im In- und Ausland wehrpflichtig. Die entsprechenden Jahrgänge wurden durch die Allgemeinen Einberufungsbehörden aufgefordert, sich zu gegebenen Zeiten in ihren Rekrutierungszentren zu melden. Bei Unterlassung wurden nicht weiter definierte "rechtliche Massnahmen" angedroht. Gemäss Resolution 1370 vom 13. Dezember 1983, in Kraft getreten am 2. Januar 1984, ist für ein solches Nichterscheinen (z.B. wegen Aufenthalt im Ausland) die Todesstrafe vorgesehen. Für Deserteure, Refraktäre, Strafgefangene usw. werden durch den Kommandorat der Revolution immer wieder Amnestien erlassen, die sich häufig durch zahlreiche Ausnahmeklauseln auszeichnen." (BFM, 1 February 1996)

In a news compilation of August 1984, the news digest Facts on File reports about talks between the Iraqi government and North Iraqi Kurds being interrupted due to Iraq's execution of some Kurdish draft evaders:

"The talks were interrupted in March after Iraq executed a number of young Kurds for draft-dodging, and were resumed in April." (Facts on File, 3 August 1984)

In its country report of October 2002, WRI mentions that the military security (Istikhbarat) was responsible for finding deserters. The report also mentions special committees on the level

of the regional command and party branches with a similar function, which were notorious for the impunity with which they acted. During the Iran-Iraq war the RCC prohibited courts and police departments to hear complaints against squads assigned to track down deserters and draft evaders, if those squads felt obliged to use force in order to arrest the fugitives. During the Iran-Iraq war there were many executions of deserters:

“Evidently the repression of the Kurdish population has caused many Kurdish men to avoid military service, many of whom have fled abroad. Precise figures about the scale of draft evasion and desertion are impossible to obtain, but it has been estimated that between 1990 and 1994 about 13,000 deserters had fled to northern Iraq. [6] The military security (Istikhbarat) is responsible for tracking down deserters. [5] In 1996 Saddam Hussain ordered the formation of special committees on the level of the regional command and party branches, their task being to track down deserters. [12] Similar committees have existed in the past and they were particularly known for the impunity with which they acted. There have been many reports of raids to arrest deserters. [16] [17] Members of the Ba'ath party and the security forces are in fact exempted from legal prosecution for murders committed while tracking down deserters. [5] During the Iran-Iraq war the RCC also prohibited the courts and police departments to hear any complaint against the squads assigned to track down deserters and draft evaders, if those squads felt obliged to use force in order to arrest the fugitives. [7] Due to the closedness of Iraqi society, it is very difficult to obtain details about the sentences handed out to draft evaders and deserters. According to Amnesty International in 1998, deserters are very likely to become victim of human rights violations. [5] It is not known if and how often draft evaders and deserters are sentenced to death. During the Iran-Iraq war there were many executions of deserters. It was, however, common that not all deserters belonging to one group were executed. Usually one or two would not be executed but sent back to their units (after witnessing the execution of the others) in order to scare others from deserting in the future. [5] According to recent report, the regime has executed several army deserters in major cities and in the presence of a crowd of people. [20]” (WRI, 2 October 2002)

Among the sources consulted by ACCORD within time constraints no further information could be found on the subject of punishment for draft evasion and desertion prior to 1994.

References: (all links accessed 19 October 2009)

- BFM - Switzerland: Federal Office for Migration: Iraq - Länderinformationsblätter, 1 February 1996 (available on Refworld)
<http://www.unhcr.org/refworld/docid/466fd52.html>
- Facts on File: Iraqi-Kurdish Talks Reported Ended, 3 August 1984 (available on LexisNexis; see attachment)
- HRW - Human Rights Watch: Iraq's Brutal Decrees - Amputation, Branding and the Death Penalty, June 1995
<http://www.hrw.org/legacy/reports/1995/IRAQ955.htm>
- WRI - War Resisters' International: Country report and updates: Iraq, 2 October 2002
http://www.wri-irg.org/programmes/world_survey/country_report/en/Iraq