

OPINION No. 2/1997 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 9 August 1996.

Concerning: Mazen Kana.

The Syrian Arab Republic is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of Opinion No. 1/1997.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Mr. Mazen Kana (son of Subhi Said Kana, a Jordanian national), born in Damascus in December 1954, a civil engineer (graduate of Aleppo University) and a businessman, was reportedly arrested on 20 August 1980, from his home in Damascus by a group of security officers. The reasons for the arrest are not known. His detention has never been acknowledged and it is not known whether he has ever been charged with any criminal offence, or tried. His family was informed by persons who saw Mr. Mazen Kana in prison, that four months after his detention he was transferred to Palmyra (Tadmur) prison. In 1992 his mother received an unofficial confirmation that he was being detained in Palmyra prison: When she went to the military police quarters in Damascus to apply for a permit to visit her son, the responsible officer checked the name in a register and told her that her son was in the Palmyra prison and was to be released shortly. But the family has not received any news from him ever since.
6. In its reply of 24 September 1996, the Government stated that Mazen Subhi Saïd Kana had been arrested on 30 August 1980 on a charge of belonging to an armed terrorist group involved in murders and bomb attacks in Syria. According to the Government, he was tried and sentenced to death by judgement No. 28 of 9 June 1996.
7. The Working Group considers that the Government's reply contains no information on the current status of Mazen Kana with regard to criminal law, and above all gives no indication whether he has been able to lodge any

appeals; this is a particular source of concern to the Group in view of the seriousness of the sentence handed down. Moreover, the Government has not indicated to what group Mazen Kana allegedly belonged and on what grounds it is classified as a "terrorist group". Nor has it provided any details of the murders allegedly committed by the group, of the bomb attacks it allegedly carried out, of the places and dates of the attacks, or of Mazen Kana's alleged role in the organization.

8. Nor does the Government indicate why Mazen Kana was not tried until 15 years after being taken into custody; what judicial or other organ was responsible for ordering his arrest without charges or trial during this period; under what law or legal provision was he held without trial for more than 15 years; and what court was responsible for trying him. Finally, the Government provides no information on the trial, such as the acts for which Mazen Kana was tried and found guilty, the relevant procedural law, whether the accused was present at his trial, what means were made available for his defence, whether a lawyer was present, and whether the trial was public and the verdict handed down in public. The only certain conclusion that can be drawn from the Government's reply is that Mazen Kana was held without trial for more than 15 years and sentenced to death for having belonged to what was described as a terrorist group.

9. The Working Group, having noted that Mazen Kana's trial took place after more than 15 years, that for the whole of this long period of pre-trial detention he was denied contact with his family and, above all, with his lawyer, and that the grounds for his arrest remained unknown during this period, considers that the foregoing acts constitute violations of articles 5 and 10 of the Universal Declaration of Human Rights, of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, and of principles 2, 4, 9-13, 15-19 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and that these violations are sufficiently serious for the deprivation of liberty to be classified as arbitrary.

10. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mazen Kana is arbitrary, as being in contravention of articles 5 and 10 of the Universal Declaration of Human Rights and articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the applicable categories to the consideration of the cases submitted to the Working Group.

The Working Group also transmits the present opinion to the Special Rapporteur on Extrajudicial, summary or arbitrary executions.

11. Consequent upon the opinion rendered, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation, and bring it in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 14 May 1997.