

OPINION No. 21/2000 (SYRIAN ARAB REPUBLIC)

Communication addressed to the Government on 14 April 2000

Concerning Fateh Jamus and Issam Dimashqi

The State 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 by resolution 1999/50 and reconfirmed by resolution 2000/36. 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. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
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 and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. According to the source, Fateh Jamus, born in 1948 and a mechanical engineer, was arrested in February 1982 for his alleged involvement in activities of the banned political opposition group Party for Communist Action (PCA). Issam Dimashqi, born in 1950 and a civil engineer, was arrested in March 1982 for the same reason. After more than 10 years in

detention, both men were tried in the Supreme State Security Court (SSSC) on 28 June 1992, on charges of “forming or belonging to an organization intended to change the social and economic structure of the State and society’s fundamental conditions” and “opposing the objectives of the Revolution”. Mr. Jamus and Mr. Dimashqi were both sentenced to 15 years in prison, a sentence which, according to Syrian law, was to apply from the date of arrest and not the date of sentencing. Thus, according to the source, both men should have been released in February and March 1997, respectively, but at the time of submission of the communication, they remained incarcerated at Sednaya Prison, more than three years beyond the expiration of their prison sentences.

6. The source notes that the SSSC was created by Legislative Decree 47 of 28 March 1968, for the purpose of dealing with all political and State security cases. It is submitted that Mr. Jamus and Mr. Dimashqi did not receive a fair trial in the SSSC, as the procedures followed in the SSSC are said to be incompatible with internationally recognized standards for fair trial. Thus, it is argued that for the vast majority of trials before the SSSC in the course of 1992 (and up to the present), lawyers were not granted access to their clients prior to the trial, proceedings were initiated before legal representatives had had an opportunity to study their clients’ case files, and the court frequently denied lawyers the opportunity to engage in oral arguments on behalf of their clients. Moreover, lawyers arguing cases before the SSSC were said to require written permission from the President of the SSSC in order to be allowed to see their clients in detention, permission which was often withheld. Moreover, those sentenced by the SSSC in 1992 reportedly had no right to appeal their sentences.

7. According to the source, Mr. Jamus and Mr. Dimashqi were found guilty of “opposition to the socialist system of the State and Arab unity” and “terrorism” on 11 January 1994. They were convicted of terrorism although they were reportedly not charged with committing or planning any act of violence or terrorism and, according to the source, no evidence was presented in court to suggest that they had ever used or advocated violence.

8. The source recalls that the trial of Mr. Jamus and Mr. Dimashqi took place more than 10 years after their arrest which, pursuant to article 437 (1) of the Syrian Code of Criminal Procedure, infringes the 10-year statutory limit for bringing a case against the defendant. It is further said to violate articles 9, paragraph 3, and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights.

9. According to the source, under the regulations of the SSSC, Mr. James and Mr. Dimashqi had no right to challenge the legality of their continued detention beyond the expiration of their respective sentences in February and March 1997. This is said to constitute a violation of article 9, paragraph 4, of the International Covenant on Civil and Political Rights.

10. In its reply of 22 May 2000, the Government informs the Working Group that Mr. Jamus and Mr. Dimashqi have been unconditionally released. This was confirmed by the source, which states that Mr. Dimashqi was released on 22 or 23 April 2000 and Mr. Jamus on 4 May 2000, after having refused the same day to sign an undertaking to renounce political activity.

11. The Working Group welcomes the release of the two men and the prompt reply of the Government. It notes, however, that the Government only provided information on their release and did not respond to the Group's request for information and explanations regarding the situation of the detainees, including the legal basis for their detention from 1982 to 2000. The Government has not reacted to the source's allegations, which were communicated to it by the Working Group.

12. Given that the Government had an opportunity to comment on the allegations but did not do so, the Working Group has decided to render its opinion based on the information supplied by the source. The Working Group believes that the facts as submitted enable it to render an opinion.

13. The Working Group renders its opinion on the question of whether the deprivation of liberty in the cases referred to was arbitrary, notwithstanding the release of the above-mentioned persons, in accordance with paragraph 17 (a) of its methods of work.

14. The proceedings took place before the SSSC and the two men were tried for political or State security offences. The Court was established by Legislative Decree No. 47 of 28 March 1968. The Working Group is seriously concerned at what it views as the Court's non-compliance with international standards on the right to a fair trial. For example, lawyers are not granted access to their clients prior to the trial, proceedings are initiated before legal representatives have an opportunity to study the case file, and lawyers are frequently denied their right to speak on behalf of their clients. Lawyers require written permission from the Court's President before they can see their clients in prison, permission that is often withheld. Moreover, at least in 1992, those sentenced by the SSSC had no right to appeal their sentences.

15. The Working Group considers that the deprivation of liberty of Mr. Jamus and Mr. Dimashqi between February/March 1982 and the start of their trial in June 1992, that is to say a period of more than 10 years without trial, constitutes a violation of international norms guaranteeing the right to a fair trial. Other violations of the right to a fair trial have been noted: the absence of defence counsel (International Covenant on Civil and Political Rights, art. 14, para. 3 (b) and (d)), and the absence of the right to have the conviction and sentence reviewed by a higher tribunal (Covenant, art. 14, para. 5). In accordance with articles 9, 10 and 11, paragraph 1, of the Universal Declaration of Human Rights and articles 9, paragraph 3, and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights, these violations are of such gravity as to render the detention of Mr. Jamus and Mr. Dimashqi arbitrary.

16. The continued detention of Mr. Jamus and Mr. Dimashqi after their sentences had been completed, on 12 February 1997 (Mr. Jamus) and in March 1997 (Mr. Dimashqi) until their release on 22 (or 23) April 2000 (Mr. Dimashqi) and 4 May 2000 (Mr. Jamus), i.e. for more than three years, manifestly cannot be justified on any legal basis.

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

The deprivation of liberty of Fateh Jamus and Issam Dimashqi is arbitrary since it manifestly cannot be justified on any legal basis and therefore falls into category I of the categories applicable to the consideration of cases referred to the Working Group, for the period between the completion of their sentence in February 1997 and March 1997 and the release of Mr. Jamus on 4 May 2000 and of Mr. Dimashqi on 22 or 23 April 2000.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into 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 September 2000