

OPINION No. 6/2003 (TUNISIA)

Communication addressed to the Government on 12 December 2002.

Concerning: Abdallah Zouari.

The State is a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
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, which made comments thereon. The Working Group is now 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 and the comments by the source. The case was referred to the Working Group on arbitrary detention as indicated below.
5. According to the source, Mr. Abdallah Zouari, born on 15 June 1956, of Tunisian nationality, a journalist, and a manager at the banned weekly *Al Fajr*, an organ of the Islamic movement Ennahada, arrested on 19 August 2002 in Tunis by the State security police and sentenced to eight months' imprisonment, is currently detained in an unknown location.
6. Mr. Zouari was arrested by plain-clothes State security police officers while in the office of his attorney, Samir Ben Amor, in Tunis, for violation of an administrative surveillance order pursuant to a judgement delivered on 27 August 1992 by the Tunis military court.
7. Mr. Zouari had just been released (on 6 June 2002) after having served an 11-year prison sentence for "membership of an illegal organization" (he had been arrested on 12 April 1991). Mr. Zouari had also been sentenced to five years' administrative surveillance on the completion of his term of imprisonment, and had been notified, on 15 July 2002, of an order banishing him to Zarzis (Hassi Jerbi region in the Sahara), whereas his home and family are in Tunis.
8. Mr. Zouari had undertaken annulment proceedings for abuse of authority before the administrative court against the banishment order issued by the Ministry of the Interior. He was arrested and then sentenced to eight months' imprisonment by the Zarzis regional court for violating the banishment order, although the administrative court had not yet rendered a decision.
9. Mr. Zouari was incarcerated in Harboub prison (governorate of Médenine) then in Houareb (prison governorate of Kairouan). On 29 October 2002 Mr. Zouari's support group went to Houareb prison with a member of his family, but the prison authorities told them that he had moved to another prison, without indicating where.

10. The source considers the arrest and detention of Mr. Zouari arbitrary since they were the result of political opinions that he expressed as both a journalist for a banned weekly and as a member of an illegal opposition political movement, although he had served 11 years in prison for the same reasons.

11. The source also asserts that the administrative surveillance measure that allowed the Minister of the Interior to banish a convicted person who had served his sentence from his town of residence is an arbitrary measure aimed at prolonging detention illegally, and that the arrest and current detention of Mr. Zouari are a consequence of this administrative surveillance measure.

12. Further, the source states that the change of prison without specifying the location is a violation of the regulation indicating that the family of the detainee must be informed of any change in the place of detention.

13. In its reply, the Government affirms that Mr. Zouari was involved in a criminal case relating to membership of a fundamentalist terrorist organization, Ennahada, an illegal movement which, the Government states, advocates fanaticism and religious and racial hatred, and perpetrates violence and terrorism. This organization, having formulated a plan of subversion intended to change the form of government by violent means, mobilized its members, including Mr. Zouari, who is one of its main instigators. Based on the accused's confessions and the results of the inquiry conducted, and having established his complicity in the preparation and execution of a terrorist plot, on 27 August 1992 the court sentenced him to 11 years' imprisonment and 5 years' administrative surveillance on the charges brought against him.

14. The Government adds that Mr. Zouari was released on 6 June 2002 after having served his prison sentence. The competent authority, on 15 July 2002 and pursuant to the judgement of 27 August 1992, issued an order establishing the place of residence of Mr. Zouari as the region of Kasusiba Hassi Jebri in Zarzis for the period of administrative surveillance. The order was issued pursuant to article 23 of the Criminal Code, as an additional sentence of administrative surveillance, to be carried out once the convicted person had served his prison sentence, and conferred on the competent administrative authorities the right to determine the place of residence of the convicted person. In response to the refusal of Mr. Zouari to conform to the order, the Zarzis cantonal court sentenced him to eight months' imprisonment. The Government concludes that the detention of Mr. Zouari is in no way arbitrary, as he was sentenced pursuant to a judicial decision by a competent court following a fair trial, at which all the guarantees provided for by law were respected.

15. The source reiterates the complaints made in its communication, specifies that the communication does not relate to the first conviction, even though detention was arbitrary pursuant to the first verdict as well as the second. The source adds that the release of Mr. Zouari for "humanitarian reasons" does not alter the arbitrary nature of his detention.

16. From the foregoing, it appears that Mr. Zouari was first arrested on 12 April 1991 and sentenced by the Tunis military court to 11 years' imprisonment and 5 years' administrative surveillance. He served the prison sentence in full and was released on 6 June 2002. On 15 July 2002 the Ministry of the Interior informed him of a banishment order issued pursuant to the administrative surveillance order. On 19 August 1992 he was again arrested, for violation

of the banishment order, and was sentenced on 22 August 2002 to 8 months' imprisonment. It is this most recent arrest and current detention which are challenged by the source and which are submitted to the Working Group for its consideration.

17. With reference to the date of arrest and sentencing, by 22 April 2003 at the latest, Mr. Zouari had served the full 8-month prison sentence and, in principle, was subject only to the order banishing him from his town of residence. The source acknowledges that Mr. Zouari was released, but indicates that this release was ordered on humanitarian grounds. Was this an early release? The source does not specify.

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

Having examined all the information before it and without prejudging the arbitrary nature of the detention, the Working Group decides to file the case of Mr. Zouari, in accordance with paragraph 17 (a) of its methods of work.

Adopted on 9 May 2003