

OPINION No. 22/2003 (ALGERIA)

Communication addressed to the Government on 12 June 2003.

Concerning: Khaled Matari.

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

1. (Same text as paragraph 1 of opinion No. 20/2003.)
2. The Working Group conveys its appreciation to the Government for having submitted information regarding the case in good time.
3. (Same text as paragraph 3 of opinion No. 20/2003.)
4. According to the information received, Mr. Khaled Matari, born on 7 June 1978, of Algerian nationality, a second year student in the Algiers Law Faculty, normally resident at Cité Desslier, Bourouba, Algiers, was arrested at his home on 24 October 1999 at 11.45 p.m. by four armed individuals dressed in civilian clothes who said that they were police officers. They asked Khaled's brother, Smail Matari, if he had any brothers. Khaled was coming out of his bedroom and the armed civilians made him get into an unmarked car. No warrant or other court order was displayed during the arrest. A few minutes later the individuals who had carried out the arrest returned and demanded Khaled's passport. They promised his mother that she could visit him in prison within 10 days. However, no information as to what had happened to him was communicated to his family. On 10 November 1999, at 2 p.m., the individuals who had carried out the arrest returned to Mr. Matari's home and demanded his passport, although they had taken the passport at the time of the arrest, this time representing themselves as being from the military security services.
5. Mr. Matari was held in secret at the Ben Aknoun barracks in Antar, Algiers, then in the Blida military prison for 13 months. In 2000 the family wrote to the President, to the Minister of Justice and to the National Human Rights Office requesting information, but to no avail. During this period no one knew where he was being held or what the charges against him were. Neither was he able to contact a lawyer. His family spent a year looking for him, after having gone around all the possible places of detention. The officials contacted by letter failed to reply. It was only in October 2000 that the family learned of his whereabouts at the Blida military prison. They had to insist to obtain visiting rights.
6. On 15 October 2000 Mr. Matari, together with several other people, appeared before the military prosecutor, who had requested the opening of a judicial investigation on the charges of membership in a terrorist organization operating abroad and terrorist acts, under article 87 bis of the Criminal Code. The investigating judge then organized a face-to-face meeting between the group of accused and a witness, unknown to Mr. Matari. The witness reportedly stated: "These are not the people I spoke to you about."

7. The military investigating judge then charged Mr. Matari and placed him in pre-trial detention. However, the Blida military prosecutor subsequently determined that the case did not fall under military jurisdiction and thus stopped dealing with the case, which was referred to the prosecutor at the Birmandreis court. After he had been notified of the charges, Mr. Matari was reportedly placed in pre-trial detention by order of the investigating judge.

8. On 10 September 2001 Mr. Matari and the other accused were brought before the investigating judge in the civil court; they refused to answer questions in the absence of their lawyers. On 12 January 2002 they were again brought before the court, and, in the presence of their lawyers, were charged and placed in pre-trial detention.

9. According to the source, Mr. Matari, almost four years after his arrest, is still being held without trial in the civilian prison at El Harrache.

10. The source adds that, during his 13 months-long detention in secret, Mr. Matari was beaten with sticks and iron bars and subjected to mock executions with the aim of compelling him to testify against a third party. He reportedly received electric shocks to his genitals and was subjected to the so-called "rag" torture (placing of a rag soaked in dirty water and disinfectant in the mouth until the person suffocates).

11. According to the reply submitted by the Algerian Government, Khaled Matari was arrested by the military branch of the criminal investigation police during the dismantling of a vast network of terrorists active outside Algeria. On 15 October 2000 he was brought before the military prosecutor, who requested the opening of a judicial investigation on charges of belonging to a terrorist organization operating abroad and terrorist crimes, offences punishable under articles 87 bis et seq. of the Criminal Code.

12. The military prosecutor requested the opening of a judicial investigation into the facts concerning the person brought before the military investigating judge, who charged him then placed him in pre-trial detention. The military judge, considering that the military court was not competent to hear the case, handed down a decision by which the case was referred back to the military prosecutor for submission to the competent court, pursuant to article 93 of the Code of Military Justice. Thus the Blida military prosecutor referred the case to the prosecutor at the Bir Mourad Rais court, who brought it before the examining judge in the second chamber in an application for the opening of an investigation dated 19 August 2001.

13. After he had been notified of the charges, Khaled Matari was placed in pre-trial detention on the order of the examining judge. The judicial investigation concluded with the case coming before the trial chamber of the Algiers court, which, on 16 May 2003, referred the decision to the criminal court as the sentencing court, before which Khaled Matari and his fellow defendants are due to appear at its next session.

14. Subsequent to the response by the Algerian Government, the source submitted the following comments:

(a) In their response the Algerian authorities failed to state the exact date of Khaled Matari's arrest, which was on 24 October 1999, almost a year before he was brought before the military prosecutor on 15 October 2000 (which was mentioned by the Algerian authorities);

(b) Armed civilians, claiming to be police officers, and without any warrant, carried out the arrests in the middle of the night, without informing the family where Mr. Matari had been taken or providing any reason for the arrest;

(c) Khaled Matari disappeared for 12 months, despite the efforts of his family to find him; officials at all the places of detention and the authorities systematically denied that he had been arrested. The source recalls that the brother of the individual concerned disappeared in the same circumstances on 22 March 1995, following his arrest by police officers from the Montagne, Bourouba, police station, and has never been found;

(d) Over the 12 months' detention, when Mr. Matari was held in secret at the Ben Aknoun, Antar, barracks, he had no access to a lawyer, and was, according to his statement, brutally tortured to make him testify against a third party;

(e) He was located quite by chance when someone who had seen him at Blida military prison informed his family, who then had a great deal of difficulty in obtaining visiting rights;

(f) Mr. Matari has thus been held for over four years without being tried.

15. The Government has contented itself with stating that Mr. Khaled Matari was arrested by military personnel as part of a vast terrorist network active abroad and that, pursuant to article 87 et seq. of the Criminal Code, was brought before the military prosecutor. But the military prosecutor, considering that the military court was not competent under article 93 of the Criminal Code, referred the case to the criminal court. Pending convening of the competent chamber the accused was placed in pre-trial detention.

16. The Working Group notes that almost a year elapsed between Mr. Khaled Matari's arrest on 24 October 1999 and his being brought before the military prosecutor on 15 October 2000. The Government has offered no convincing argument to refute the source's allegation that Mr. Matari spent more than four years in pre-trial detention without any decision as to his guilt. Further, Mr. Matari was not allowed the assistance of counsel, either private or court appointed. These facts, pointed out by the source, have not been contested by the Government in its replies.

17. The Working Group also notes that in its reply the Government fails to state the exact date of Mr. Khaled Matari's arrest, whereas the source asserts that he was secretly held in a barracks for over a year.

18. Accordingly the Working Group considers that Mr. Khaled Matari did not receive a fair hearing, in violation of article 14 of the International Covenant on Civil and Political Rights, to which Algeria is party.

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

The arrest of Mr. Khaled Matari is arbitrary, under articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the People's Democratic Republic of Algeria is party, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

20. The Working Group requests the Algerian Government to take the necessary steps to rectify the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 27 November 2003