

OPINION No. 5/2005 (EGYPT)

Communication addressed to the Government on 6 January 2005.

Concerning Mr. Mohamed Ramadan Mohamed Hussein El-Derini.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having submitted information concerning the case.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. It has transmitted the reply provided by the Government to the source, which 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 information received, Mohamed Ramadan Mohamed Hussein El-Derini, a citizen of Egypt, born on 28 November 1962, is a well-known representative of Egypt's Shia community and the Secretary-General of the Supreme Council for the Care of the Prophet's Descendants (al-Majlis al-A'la li Re'ayat Al al-Beit), an unlicensed non-governmental organization. He was arrested on 22 March 2004, at his home, by members of the State Security Intelligence service (SSI). The SSI agents did not present any arrest warrant or other document justifying Mr. El-Derini's arrest. They also searched his home and seized cash, a computer, books, newspapers and documents. They then proceeded to search another apartment used by Mr. El-Derini in the Matareya district and his office, seizing items from both.
6. Mr. El-Derini was first taken to SSI headquarters in Lazoghly, where he was detained for two days before being transferred to the SSI branch in Nassr City. He was detained there for 40 days. For the entire period, Mr. El-Derini was forced to sit on the floor, blindfolded, bound and barefoot. SSI agents interrogated him about his Shia faith and about fellow Shia Muslims. On several occasions, SSI agents subjected him to serious physical assaults.
7. On 6 April 2004, lawyers with a non-governmental organization acting on behalf of Mr. El-Derini filed a complaint with the Prosecutor-General's Office calling for a clarification of his fate and for him to be either charged and referred to a competent court or to be immediately and unconditionally released. This complaint received no response from the Office of the Prosecutor-General.
8. Lawyers acting on behalf of Mr. El-Derini also appealed the (presumed) order for Mr. El-Derini's detention (appeal No. 14122/2004). The case was closed, however, on 3 May 2004, because no order for his detention existed.
9. On around 5 May 2004, the Egyptian Minister of the Interior issued an administrative detention order against Mr. El-Derini under article 3 of Law No. 162/1958 on the State of

Emergency (the “Emergency Law”). As usual with orders for administrative detention in Egypt, the order did not contain any specific reasons for the detention of Mr. El-Derini. He was again detained for about 20 days at SSI headquarters and subsequently transferred to the Wadi el-Natroun Prison, where he is still detained.

10. The lawyers acting on behalf of Mr. El-Derini filed a second appeal (appeal No. 18140/2004), following which the State Security Emergency Court ordered his release on 8 June 2004. The Ministry of the Interior appealed against this order, but the Court upheld it in a decision of 5 July 2004. However, this ruling was not implemented. Possibly, a new detention order was issued against Mr. El-Derini to circumvent implementation of the release order.

11. On 11 August 2004, lawyers acting on behalf of Mr. El-Derini sent another letter to the Office of the Prosecutor-General asking for his release. No response was received. Lawyers acting on behalf of Mr. El-Derini also submitted a second and third complaint to the Office of the Prosecutor-General on 14 September and 27 December 2004, respectively. No response was received.

12. On 25 November 2004, the State Security Emergency Court issued a second decision ordering the release of Mr. El-Derini (case No. 35961/2004). The Ministry of the Interior did not implement this ruling and issued a new administrative detention order. The lawyers acting on behalf of Mr. El-Derini filed a lawsuit challenging the legality of the third detention order.

13. The source alleges that Mr. El-Derini was arrested and is being detained solely because he belongs to the Shia Muslim community and of his peaceful activities as the Secretary-General of the Supreme Council for the Care of the Prophet’s Descendants. The source argues that this contention is borne out not only by the questions posed to him by his interrogators (see paragraph 6 above), but also by the fact that his arrest and detention are part of a larger crackdown by SSI agents on Egypt’s Shia community. The source refers to the arrest (respectively on 8, 22 and 27 December 2003) and administrative detention by SSI of three other Shia Muslims, Mohammed ‘Omar, Ahmad Gom’a and ‘Adel el-Shazli. As in the case of Mr. El-Derini, they were interrogated by SSI agents about their Shia Muslim beliefs and practices.

14. In its reply, the Government stated that Mr. El-Derini is among those extremist elements who use religion to conceal the dissemination of their destructive ideas throughout the Republic. Preventive measures were taken against him because of his involvement in prohibited activities. The Government added that administrative detention is only used when a state of emergency has been declared in the country. The measure, which must be approved by the Minister for Internal Affairs, is used in cases where a person poses a threat to public order. Such decisions can be appealed before the courts.

15. In its response, the source states that the Government’s response identifying Mr. El-Derini as “one of the Shia Egyptians” further proves the allegation that he continues to be detained solely on the basis of his religious beliefs. It also submitted that a detention order dated 11 July 2004, of which the source was able to obtain a copy after the submission of the case to the Working Group, states that Mr. El-Derini is “under the influence of Shia ideas and seeks to spread them in his circles”. Nonetheless, for close to 14 months the Government has failed to refer the applicant for prosecution and has not charged or tried him.

16. The source added that in its response the Government fails to acknowledge that Egypt has been under a state of emergency since 1981. The response also fails to address the fact that Mr. El-Derini has obtained final court rulings ordering his release, which the Minister of the Interior refuses to implement. Besides the 5 July 2004 ruling mentioned in the original application, the source has obtained copies of final rulings by the State Security Emergency Court ordering Mr. El-Derini's release on 25 November 2004 and on 27 February 2005. None of the three rulings has been implemented. Instead, the Minister issued a new administrative detention decree every time the Court nullified the old one.

17. The source concluded that Mr. El-Derini is part of the larger population of administrative detainees incarcerated under the state of emergency in Egypt. While the Government has repeatedly refused to disclose the exact number of administrative detainees, even to the national human rights council, the number of these detainees estimated by independent human rights groups ranges between 16,000 and 20,000. Most of them were never charged or tried and the rest have served their judicial sentences but were never released by the Minister of the Interior.

18. In the light of the above, the Working Group notes that the Government acknowledges that Mr. El-Derini has been in administrative detention since 22 March 2004 on the basis of legislation applicable to the state of emergency, which allows the Minister of the Interior to adopt such measures against persons representing a risk to public security. It further states that decisions ordering administrative detention can be challenged before the courts. The Government fails, however, to address the allegation of the source that the courts seized have several times annulled the decisions of the Minister of the Interior and that the Minister refuses to comply with the court decisions. As the Government does not dispute the allegations of the source in this respect, the Working Group concludes that they are well founded.

19. The Working Group considers that maintaining a person in administrative detention once his release has been ordered by the court competent to exercise control over the legality of detention renders the deprivation of liberty arbitrary. The Working Group is of the opinion that in the present case no legal basis can be invoked to justify the detention, least of all an administrative order issued to circumvent a judicial decision ordering the release.

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

The deprivation of liberty of Mohamed Ramadan Mohamed Hussein El-Derini is arbitrary, being in contravention of 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 Egypt is a party, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

21. Having found the detention of Mr. El-Derini to be arbitrary, the Working Group requests the Government of Egypt to take the necessary steps to remedy 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 24 May 2005