

OPINION No. 36/2005 (TUNISIA)

Communication addressed to the Government on 9 February 2005.

Concerning Mr. Walid Lamine Tahar Samaali.

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 provided the requested information in good time.

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. The Working Group transmitted the reply provided by the Government to the source, which made comments on it. 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, Mr. Walid Lamine Tahar Samaali, a Tunisian and French national born on 28 October 1976 and residing in Echternach, Luxembourg, was arrested on 25 April 2002 by police officers acting without a warrant on the orders of the police superintendent of the economic and financial investigations unit, while he was staying with his family in Tunis. Mr. Samaali was charged in two separate cases: one concerned the counterfeiting of six cheques amounting to a total of 180 dinars, and the other the forging of a US\$ 100 banknote.

6. In the first case (counterfeit of six cheques), Mr. Samaali was sentenced to 20 years' imprisonment and a fine of 60,000 dinars by the criminal division of the court in Tunis in a judgement delivered on 3 February 2003, which was upheld on appeal. In the second case (forgery of a US\$ 100 banknote), Mr. Samaali was sentenced to 10 years' imprisonment in a judgement delivered on 25 May 2004; this sentence was reduced to 2 years following an appeal on 26 October 2004.

7. Mr. Samaali was first imprisoned in a detention cell at the El Gorjani barracks in Tunis, where, according to the information received, he was beaten and attacked by guards and forced to sign a statement drafted by police officers from the economic and financial investigations unit, without knowing its content. He was subsequently held in the "9 April" prison in Tunis and then transferred to Sousse civil prison, and finally returned to the 9 April prison, where he is currently in detention. While detained in these prisons, Mr. Samaali was subjected to numerous restrictions and ill-treatment; complaints about his treatment have not been followed up by the prison authorities.

8. The source mentions that several requests for pardon have been submitted to the Tunisian authorities (including the President of the Republic, the Minister of Justice and Human Rights, and Tunisian embassies abroad) by the detainee himself, his family, his lawyer and the Tunisian League for Human Rights. The source also indicates that the detainee's father, Mr. Lamine Tahar Mohamed Samaali, a retired police officer residing in Tunis, had problems with former colleagues who had participated in his son's interrogation; they allegedly put considerable pressure on him and were responsible for his resignation from the police force, as well for the heavy penalties to which his son was sentenced.

9. According to the source, Mr. Samaali's detention is arbitrary, as the law was wrongly applied, in that he was tried under article 411 bis of the Commercial Code whereas the acts were governed by article 199 of the Criminal Code. The trial and conviction of Mr. Samaali were therefore invalid. The source also mentions that there were no legal grounds for Mr. Samaali's

arrest and that the subsequent searches, seizures of property and investigations were incomplete and improperly conducted. The source adds that the testimony given at the trial and the evidence collected during the forensic examination did not identify Mr. Samaali as the perpetrator of the offences with which he had been charged. Finally, the source is of the opinion that the sentence handed down is disproportionate to the alleged offences.

10. The Government indicates in its response that Mr. Walid Samaali was arrested on 25 April 2005 by the economic and financial investigations unit, at the instigation of the prosecution service of the court of first instance of Tunis, on the grounds of a complaint dated 16 April 2002 submitted by the Banque du Sud concerning the issuance of six forged cheques by a certain "Sallami Walid". After hearing statements from the recipients of the forged cheques, and on the basis of descriptions given of the suspect and his car, as well as the striking resemblance between the name on the cheques (Sallami Walid) and the name of the accused (Samaali Walid), the aforementioned unit proceeded to arrest the accused on a public thoroughfare in the southern suburb of the capital where, according to the places where the cheques had been issued, he had been operating.

11. The Government mentions that the search of Mr. Walid Samaali's car enabled the seizure of 18 cheques forged in the same way as those that were the subject of the complaint and bearing the same number and the name of a fictitious branch of a bank. On the basis of this evidence, the economic and financial investigations unit reported the accused to the public prosecutor at the court of first instance in Tunis, within the statutory time limit. The public prosecutor brought the accused before the investigating judge of that court for fraud and forgery of cheques pursuant to article 291 of the Criminal Code and 411 bis of the Commercial Code. The arrest was carried out at the instigation of the prosecution service, in accordance with the legal procedures in force, and was confirmed by a detention order issued by the competent investigating judge; in the course of further inquiries, a search of the house occupied by the accused in Ezzahra, in the southern suburb of the capital, led to the discovery of computer equipment, including a microcomputer and a scanner which had been used in the forgery process.

12. The Government points out that this search was carried out in the presence of the accused and was recorded in a statement signed by him. Furthermore, it led to the seizure, on the premises, of a banknote (in foreign currency) which had also been scanned and forged. After hearing the witnesses, who included Lotfi Bouabid, an employee at an Esso petrol station, who had received one of the six cheques in question and who had identified the accused from a group of several other persons, and after the forgery had been confirmed by a forensic expert who studied the handwriting of the accused, the investigating judge in charge of the case brought the accused before the indictments chamber, which in turn referred the case to the criminal division.

13. The Government states that, having been brought before the court for forgery of six cheques, the individual concerned was sentenced by the criminal division of the court of first instance of Tunis to 20 years' imprisonment. The Tunis court of appeal upheld that judgement. Furthermore, in a separate case, the accused was sentenced to 2 years' imprisonment for forgery of banknotes.

14. The Government notes that the judicial procedure resulting in the sentencing of the individual concerned was carried out in conformity with the applicable rules of procedure, and that all defence guarantees were respected. Mr. Samaali was questioned in accordance with the

law by the economic and financial investigations unit, and was in no way forced to sign the statement drafted in that connection. Furthermore, he has never previously claimed to have been forced to do so. The searches and seizures of property that took place during the investigation into the case were carried out under the control of the public prosecutor and the investigating judge in charge of the case, in conformity with the rules specified in the Code of Criminal Procedure. The scope of the investigation, the searches and seizures of property were determined by the judicial authority and were carried out only by the officers assigned to these tasks. The allegation that the father of the individual concerned had problems with former colleagues who had been involved in questioning his son was groundless, since the case had been instituted by the judicial authorities, not by the police. Furthermore, the judicial authorities who supervised the whole procedure had never believed such allegations. The application of the law to the acts concerned and the determination of the applicable criminal penalty fell under the exclusive jurisdiction and competence of the court, which alone could judge whether the acts of which the person concerned was accused amounted to forgery of cheques and were thus punishable under article 411 bis of the Commercial Code, or to forgery of other documents under article 199 of the Criminal Code.

15. The Government emphasizes that the accused was liable to a sentence of 60 years' imprisonment under article 411 bis of the Commercial Code (10 years' imprisonment for each counterfeit or forged cheque). The court had exercised its discretion under article 14 of the Criminal Code and article 411 bis of the Commercial Code to hand down the minimum sentence of 20 years' imprisonment, in the knowledge that article 53 of the Criminal Code, on attenuating circumstances, was not applicable to the case in point.

16. The Government points out that Mr. Samaali's detention is proceeding in conformity with the prison legislation in force, which is in line with the relevant international standards. His allegation of ill-treatment proved on investigation to be entirely groundless and his complaints on this subject to the competent judicial authorities were dismissed. Moreover, the reason why the prisoner was transferred from the civil prison in Tunis to the one in Sousse was that the investigation in another case involving him was being conducted by the investigating judge of the Sousse court of first instance. As soon as his judicial examination in this case was completed, he was returned to the civil prison in Tunis, where he is now serving his sentence. His repeated allegations on various subjects reflect certain personality traits and are part of his tendentious strategy to draw attention to his case and call into question the grounds for his convictions, which have been upheld by the courts. According to the Government, Mr. Samaali's detention is not arbitrary because it is the result of judicial decisions taken by a competent court after fair trials that were conducted in accordance with the applicable domestic legislation.

17. The source replies to the Government's arguments by pointing out that Mr. Samaali was not arrested by police officers from the economic and financial investigations unit on 25 April 2005, as claimed by the Government, but on 25 April 2002, and that he was arrested in his father's home in Boumhal, not on a public thoroughfare. Moreover, it was not his own residence that was searched, as stated in the Government's reply, but his brother's home in Ezzahra, and that he had not been present on that occasion because he was under arrest in the offices of the economic and financial unit. As a result, police officers from this unit had been able to take the keys for his brother's house and carry out the search, which was illegal as the accused had refused to sign the statements before him.

18. In addition, the source points out that the only testimony heard was that of Lofti Bouabid: the other recipients of the cheques, such as Mehrez Louati, a Mobil filling-station attendant mentioned in the Government's reply, was not heard either in the preliminary stage of the investigation or during the judicial examination. In the view of the source, this nullifies the whole procedure.

19. The source notes that Mr. Samaali refused to sign certain statements, although he agreed to sign others under threat of violence, as he had even been refused a medical examination for fear that it might reveal the marks of an assault. The source also rejects the Government's allegations that the accused's father, Mr. Lamine Samaali, had had problems with his former colleagues. The source concludes that the procedure was tainted with irregularities at both the procedural and substantive levels, so that the detention was of an arbitrary nature.

20. It appears from the above that the complaints submitted by the source concern irregularities in the procedure. According to the information provided by the Government, it would appear that Mr. Walid Lamine Tahar Samaali was tried for acts that are offences under the applicable national criminal legislation, and that all stages of the proceedings relating to the search for the offender, his arrest, the judicial examination, the trial and sentencing were conducted in accordance with criminal procedure. In its reply, the source has not convincingly rebutted the Government's arguments. The Working Group concludes that the detention is therefore not arbitrary.

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

The detention of Mr. Walid Lamine Tahar Samaali is not arbitrary.

22. Having rendered this opinion, the Working Group, on the basis of paragraph 17 (b) of its revised methods of work, decides to file the case.

Adopted on 2 September 2005