

OPINION No. 10/2006 (ALGERIA)

Communication: addressed to the Government on 29 September 2005.

Concerning: Salaheddine Bennis, Mohamed Harizi, Amar Medriss and Mohamed Ayoune.

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

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)
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, the response of the Government thereto and the comments of the source.

5. According to the information received, Mr. Salaheddine Bennis, an Algerian born on 24 February 1974 and resident at 20 avenue Atallah El Naoui Hussein Dey, was arrested at his home on 31 December 2002 by members of the Department for Information and Security (DRS). His detention was ordered by the examining magistrate of the Fifth Chamber of the Algiers Court:

(a) According to the source, for over two years Mr. Bennis was held incommunicado, with no contact with his family or a lawyer. He was detained without legal foundation in an illegal place of detention, the Antar military barracks in Hydra;

(b) The source adds that justification for the incommunicado detention was only produced *a posteriori* and in the form of a mere administrative issuance, namely, a restricted residence order signed by the Minister of the Interior and dated 28 June 2003, i.e. nearly six months after the arrest. The order did not specify the required place of residence;

(c) The examining magistrate did not order the opening of an investigation (Investigation No. 07/2005; Parquet No. 124/05) under articles 87 bis 3 and 87 bis 4 of the Criminal Code (terrorism) until 29 January 2005. Mr. Bennis has been transferred to the Serkadji Prison. He claims to have been tortured while being held incommunicado and to have been told that he would be questioned by United States intelligence agents;

(d) Mr. Mohamed Harizi, an Algerian born on 1 February 1974, resident at 47 rue Amari Mehdiya Tiaret and director of a private insurance company, was arrested at his home at 11.30 p.m. on 15 December 2002 by members of the DRS. The following day, his family filed a complaint for kidnapping;

(e) Mr. Harizi has been held incommunicado for 2 years and 45 days, with no contact with his family or a lawyer. He has been detained without legal foundation in illegal places of detention (military barracks): first in the Tiaret military sector and then in the Antar barracks in Hydra. He is still awaiting trial and there has been no investigation of the legality of his arrest;

(f) The source adds that, as in the case of Mr. Bennis, an attempt has been made to justify the incommunicado detention *a posteriori* through an administrative issuance in the form of a restricted residence order. The order, signed by the Minister of the Interior, is dated 5 January 2003 and once again does not specify the required place of residence. The opening of an investigation for offences under articles 87 bis 3 and 87 bis 4 of the Criminal Code was ordered on 29 January 2005;

(g) Mr. Harizi claims to have been tortured for five days while being held incommunicado and to have been told that he would be questioned by United States intelligence agents;

(h) Mr. Amar Midriss, an Algerian born on 23 December 1974, a merchant resident at 5 rue Idir Toumi, Ben Aknoun, Algiers, was arrested at his home on 1 September 1999 by officers of the Debih Cherif criminal police department;

(i) The source reports that in 2000, when a case for membership of an armed group was under investigation in Algiers, the court in Bir Mourad Rais also opened a file on it. The criminal police pointed out at the time that the case was already being investigated by the Algiers criminal court. In the circumstances, the examining magistrate should have deferred to the competence of the court in Algiers. In fact, the court in Bir Mourad Rais set the matter aside for several months. During that time, on 27 March 2002, the Algiers criminal court sentenced Mr. Midriss to three years in prison; he should have been released in October 2002. The court in Bir Mourad Rais reopened proceedings and Mr. Midriss was tried a second time for the same offences and on the basis of the same evidence. On 4 April 2005, he was convicted of the offences a second time and sentenced to 15 years' imprisonment;

(j) The source adds that in the court in Bir Mourad Rais proceedings against all the other persons involved, who had been convicted in Algiers, were dismissed;

(k) Mr. Mohamed Ayoune, an Algerian born on 19 December 1979, a merchant resident at Bach Djerrah, was arrested on 1 November 2002 on a charge of having carried Mrs. Leila Hamma, allegedly the wife of a member of a terrorist organization, in his car. On 10 August 2004, a committal order from the indictment chamber reduced the case to the status of one for the misdemeanour of failure to denounce a criminal. The prosecution service appealed the order and the matter is pending before the Supreme Court;

(l) According to the source, Mr. Ayoune has been held without trial for 34 months, whereas the Code of Criminal Procedure sets the maximum period of preventive detention at 24 months. His application for pretrial release has been denied. Mrs. Hamma has been left at liberty;

(m) Torture was reportedly practised on Mr. Ayoune in Ben Aknoun barracks, resulting in the breaking of his left arm and necessitating an operation;

(n) The source considers the detention of Messrs. Bennia, Harizi, Midriss and Ayoune arbitrary because the men's fundamental rights to a fair trial, particularly their rights 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, have not been respected.

6. In its response the Government states that:

(a) Proceedings were brought against Mr. Salaheddine Bennia and Mr. Mohamed Harizi for the offence of membership of a terrorist organization operating abroad and the case was entrusted to an examining magistrate of the Fifth Division of the Algiers court. A warrant of commitment was issued on 29 January 2005;

(b) Contrary to what is alleged in the communication, Mr. Omar Medriss was not prosecuted for the same offences in two separate cases;

(c) In the first case, he was prosecuted by the prosecution service in the Sidi M'hamed district of Algiers for membership of a terrorist organization, robbery and illegal possession of a weapon;

(d) Following referral of the case to the Algiers criminal court, he was sentenced on 29 February 2004 to three years' immediate imprisonment, a sentence that both he and the prosecution service appealed. The matter is pending before the Supreme Court;

(e) In the second case, Mr. Omar Medriss was prosecuted by the prosecution service in the Bir Mourad Rais district of Algiers for complicity in the murder of O. Mohamed Said;

(f) Following referral of the case to the Algiers criminal court, he was sentenced on 4 April 2005 to 15 years' imprisonment. He has applied for judicial review of that decision;

(g) As can be seen from this, there were two distinct cases concerning different acts, charges, and victims;

(h) Mr. Mohamed Ayoun was prosecuted for membership of a terrorist organization;

(i) When the investigation was complete, the examining magistrate referred to the case to the indictment chamber;

(j) The indictment chamber held the offence to be a misdemeanour and on 18 August 2004 issued an order referring the case to a criminal court;

(k) The Attorney-General's department appealed for judicial review of that decision and the matter is pending before the Supreme Court;

(l) Contrary to what is alleged in the communication, preventive detention can be for as long as 48 months in the most serious cases of terrorism;

(m) In conclusion, the Government states that Mr. Salaheddine Bennis, Mr. Mohamed Harizi and Mr. Mohamed Ayoun have benefited from the effects of the Order implementing the Charter for Peace and National Reconciliation in that they have been released.

7. In its comments on the Government's response, the source confirms that Mr. Salaheddine Bennis, Mr. Mohamed Harizi and Mr. Mohamed Ayoun have been released and maintains that Mr. Medriss was found guilty and sentenced twice for the same offences.

8. The Working Group concludes that, as Mr. Bennis, Mr. Harizi and Mr. Ayoun have been released, paragraph 17 (a) of its methods of work applies.

9. With regard to Mr. Medriss, the Working Group observes that according to the Government he was and is the defendant in two distinct trials, one for action in connection with

terrorist activities and the other for conspiracy to commit murder. In each of the cases he has been convicted, proceedings have been suspended on the ground of an appeal, and an application has been filed for judicial review. The Group notes that, while the source alleges that Mr. Medriss was tried and convicted twice for the same offence, the allegation is insufficiently supported to refute the Government's contention that the acts that gave rise to the two trials and two convictions were different.

10. In the light of the foregoing, the Working Group renders the following Opinion:

- With respect to the communication concerning Messrs. Bennia, Harizi and Ayouné the case may be filed;
- With respect to the communication concerning Mr. Medriss, his deprivation of liberty is not arbitrary.

Adopted on 11 May 2006.