

OPINION No. 38/2006 (ALGERIA)

Communication: addressed to the Government on 29 September 2005.

Concerning: Mr. M'hamed Benyamina and Mr. Mourad Ikhlef.

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

1. (Same text as paragraph 1 of Opinion No. 32/2006.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in a timely manner.
3. (Same text as paragraph 3 of Opinion No. 32/2006.)
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 from the source: M'hamed Benyamina is an Algerian national domiciled in France since 1997 and married to a French national since 1999. They have two children, and his wife is now pregnant with twins. He works as a butcher in the town of Trappes, in France.
6. Mr. Benyamina and his nephew, Madjid Benyamina, were arrested on 9 September 2005 at Oran airport in Algeria, by plain-clothes policemen. The two men were about to leave their country of origin after a family visit. They were immediately separated once their identities were confirmed.
7. Madjid Benyamina was released after four days of detention, and returned to France. He claims that the Algerian security forces informed him that his uncle had been arrested at the request of the French Government, and that the French Department for the Supervision of Alien Activity in France had provided the information on his presence in Algeria. During his four days in detention, officers reportedly questioned Madjid Benyamina about his uncle's activities in France, as his uncle was suspected of belonging to a terrorist organization.
8. Neither the family of M'hamed Benyamina nor his lawyer received any information on his status or his place of detention. According to the judicial register, he was not brought before any Algerian court. Six months after his arrest, his place of detention was still unknown. Mr. Benyamina was released in March 2006 following a presidential amnesty decree concerning the implementation of the Charter for Peace and National Reconciliation of 27 February 2006.
9. At 6 p.m. on 2 April 2006, he was again arrested by plain-clothes policemen from the Department of Intelligence and Security (*Département du Renseignement et de la Sécurité* (DRS)) while he was staying with his family at their house in Tiaret, in western Algeria. He was brought to DRS premises in Tiaret, where he was detained all night. On the morning of 3 April, his brother attempted to obtain information from officers at those premises, and was informed that M'hamed Benyamina had been interrogated and released the following morning. However, in reality, instead of being released, M'hamed Benyamina was transferred on 3 April to the capital, Algiers, probably to other DRS premises, before being transferred again, on 5 April, to Serkadj prison in Algiers. He reportedly never had the opportunity to see a lawyer, nor was he informed of the reasons for his rearrest. Furthermore, it is unclear whether he was formally charged.
10. Mourad Ikhlef was arrested on 28 February 2003 after being extradited from Canada to Algeria. He had been detained in Canada for alleged ties with Ahmed Ressam, suspected of having attempted to enter the United States of America in 1999 with explosives. Mr. Ikhlef was held incommunicado for 10 days by DRS and was subsequently sentenced, during a trial that was qualified as unfair, to seven years' imprisonment for membership of a terrorist group operating abroad and for acting against the interests of Algeria. Mr. Ikhlef was released on 26 March 2006 under the presidential decree implementing the Charter for Peace and National Reconciliation of 27 February 2006, and prosecution for the other crimes of which he was suspected was terminated.
11. On 3 April 2006 at 1 a.m., Mr. Mourad Ikhlef was again arrested at his home in Algiers, in the El Harrach district, by 10 plain-clothes DRS officers, accompanied by uniformed policemen.

The officers presented no warrant or other legal document justifying the arrest, nor did they even state the reasons for the arrest. Mr. Ikhlef's family is still unaware of the grounds for the arrest.

12. According to the Government's observations, on 6 February 2006 Mr. M'hamed Benyamina was placed in pretrial detention by the examining magistrate of the second chamber of the Sidi M'hamed court in Algiers; he was charged with membership of a terrorist organization active in Algeria and abroad.

13. On 7 March 2006, the indictment division of the Algiers court issued a decision terminating criminal proceedings against Mr. Benyamina and ordering his release, in application of articles 4 to 11 of Order No. 06/01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation.

14. In reality, Mr. Benyamina, who had been implicated in extremely serious acts of terrorism, could not benefit from the termination of criminal proceedings but only from a commutation or remission of the sentence after the verdict, in application of articles 18 to 20 of the aforementioned Order.

15. After bringing the case before the indictment division, the Procurator-General once again placed Mr. Benyamina in detention, in application of article 3 of Order No. 06-01 implementing the Charter for Peace and National Reconciliation. The article stipulates that "the indictment division shall be competent to rule on incidental matters that may arise in the application of the provisions of this chapter" of the Order in question.

16. It should be noted that Mr. Benyamina was the subject of an international letter rogatory issued by the Italian judicial authorities on 18 April 2006, relating to two investigations under way in Italy involving charges of membership of a terrorist organization; Mr. Benyamina is implicated in those investigations.

17. Mr. Benyamina is also the subject of an international letter rogatory issued by the French authorities in a case involving Mr. Benyamina that is being investigated by the examining magistrate of the Paris court. Mr. Benyamina is accused of criminal association with the intention of preparing terrorist acts, financing terrorism, extortion, possession of false documents and possession of illegal weapons.

18. Mr. Yekhlef Mourad [*sic*], the subject of an international arrest warrant issued on 7 March 1993 by the examining magistrate of the Sidi M'hamed court in Algiers, was arrested on 1 March 2003 by the Oran airport police while entering Algeria from Canada.

19. He was transferred to Algiers and brought before the judge who had issued the arrest warrant. He was charged by the judge with membership of a terrorist organization operating abroad.

20. On 7 March 2006, the indictment division of the Algiers court issued a decision terminating criminal proceedings against Yekhlef Mourad [*sic*] and ordering his release, in application of articles 4 to 11 of Order No. 06/01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation.

21. In reality, Mr. Mourad, who had been implicated in extremely serious acts of terrorism, could not benefit from the termination of criminal proceedings but only from a commutation or a remission of the sentence after the verdict, in application of articles 18 to 20 of the aforementioned Order.

22. After bringing the case before the indictment division, the Procurator-General once again placed Mr. Mourad in detention, in application of article 3 of Order No. 06-01 implementing the Charter for Peace and National Reconciliation. The article stipulates that “the indictment division shall be competent to rule on incidental matters that may arise in the application of the provisions of this chapter” of the Order in question.

23. In response to the communication sent by the Government on 15 August 2006, the source raised two important points: first, the Government failed to address the question of the legality of Mr. Benyamina’s detention during his five months of imprisonment, which was not authorized by a court decision, on DRS premises. What is more, according to the source, the procedures for reviewing the improper application of the amnesty law in respect of the aforementioned detainees - which subsequently led to their rearrest - were unlawful. Specifically, the adversarial principle was not respected, insofar as the defendants did not have an opportunity to challenge the warrant for their rearrest.

24. According to the Government’s observations, Mr. Benyamina and Mr. Ikhlef were arrested in accordance with two arrest warrants issued by the competent judicial authorities. They were tried in two separate proceedings for their respective implication in terrorist activities. The criminal proceedings brought against them were under way when the two detainees were released under the amnesty law proclaimed by the Charter for Peace and National Reconciliation. However, following the release of Mr. Benyamina and Mr. Ikhlef, the authorities concluded that the release had been the result of a misapplication of that amnesty law. In fact, for similar cases, the law provided that, on the contrary, criminal proceedings, once begun, should not be terminated. On the other hand, if they had been convicted, Mr. Benyamina and Mr. Ikhlef would have benefited from the application of article 18 of the Charter, which deals with the commutation or remission of the sentences of persons not covered by measures to terminate criminal proceedings, and with pardons. Consequently, two arrest warrants were reissued.

25. While welcoming the steps taken by Algeria for national reconciliation, the Working Group considers that the procedures established for the application of the amnesty law should also respect the principles and requirements of a fair and equitable trial, in particular the adversarial principle, which is fundamental to criminal procedure. The Government contends that the termination of criminal proceedings against Mr. Benyamina and Mr. Ikhlef was decided by the indictment division. In other words, that means that the competent judicial body handed down a decision that terminated criminal proceedings against these persons.

26. The Working Group is by no means challenging the fact that any misapplication of the amnesty law should be corrected. It regrets, however, that the Procurator-General’s application, which called into question the initial decision of the indictment division, was not considered in an adversarial procedure that would have allowed the defence to contest it by presenting its own

arguments. Furthermore, and bearing in mind that the Procurator-General's application was prejudicial to Mr. Benyamina and Mr. Ikhlef, the principle of equality of arms between the prosecution and the defence was seriously undermined. This constitutes a violation of article 14 of the International Covenant on Civil and Political Rights, to which Algeria is a party.

27. Having concluded that such a violation took place, the Working Group did not deem it necessary to consider the other allegations put forward by the source, in particular those relating to the illegality of Mr. Benyamina's five months of detention by DRS.

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

The deprivation of liberty of Mr. M'hamed Benyamina and Mr. Mourad Ikhlef is arbitrary, being in contravention of article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

29. The Working Group requests the Government of the People's Democratic Republic of Algeria to take the necessary steps to remedy the situation and bring it into conformity with the principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 21 November 2006.