

OPINION No. 8/2007 (SYRIAN ARAB REPUBLIC)

Communication: addressed to the Government on 5 July 2006.

Concerning: Ayman Ardenli and Muhammad Haydar Zammar.

The State has ratified the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 32/2006.)
2. (Same text as paragraph 3 of Opinion No. 32/2006.)
3. 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 has 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, as well as of the observations by the source.
4. According to the information submitted by the source Ayman Ardenli is a dual Syrian and Australian national, about 47 years of age, usually residing in Australia.
5. Mr. Ardenli was arrested at Damascus airport around August 2003. He was initially detained at the Aleppo Branch of Military Intelligence, where he was reportedly ill-treated and tortured. Thereafter he was transferred to the Far' Filisteen (Palestine Branch 235) detention centre of the Military Intelligence in Damascus, where he has been held since then. He is believed to be held in a communal cell measuring 475 cm by 475 cm with between 20 and 60 other people.
6. It is alleged that Mr. Ardenli has not been given any opportunity to challenge the legality of his detention. He is being denied all access to a lawyer, his family or consular officials. He has not been charged with any offence. It is thought that his arrest and detention may be connected to his father's previous involvement with the outlawed "Al Ikhwan al Muslimin" ("Muslim Brotherhood").

7. Muhammad Haydar Zammar is 43 years of age. He left the Syrian Arab Republic when he was about four years old and moved to Germany where he obtained citizenship. He reportedly lived in Hamburg.

8. Mr. Zammar was arrested in Morocco in October or November 2001, detained and interrogated there for two weeks and then secretly transferred to the Syrian Arab Republic. The newspaper *Washington Post* reported that senior Moroccan Government sources had informed it that agents of the United States of America had taken part in Mr. Zammar's interrogation in Morocco, and that United States officials had known that he would subsequently be transferred to Syria.

9. Since November 2001, Mr. Zammar has been detained at the Far' Filisteen (Palestine Branch 235) detention centre of the Military Intelligence Service in Damascus. During the summer or autumn of the year 2002, Mr. Zammar reportedly received one visit by representatives of Germany.

10. It is alleged that Mr. Zammar has not been given any opportunity to challenge the legality of his detention. He is being denied all access to his lawyer and his family. He has not been charged with any offence. It is thought that his arrest and detention are related to his alleged links to Al-Qaeda.

11. The source alleges that the detention of Mr. Ayman Ardenli and Mr. Muhammad Haydar Zammar is arbitrary. Mr. Ardenli has spent nearly three years in incommunicado detention without any judicial decision to that effect. Mr. Zammar has spent close to five years in incommunicado detention (with the exception of the visit by German officials in 2002), without any judicial decision to that effect. The deprivation of their liberty is accordingly manifestly devoid of any legal basis.

12. The allegations of the source have been brought to the attention of the Government on 5 July 2006. The Government's response, of 20 October 2006, states that Ayman Ardenli was released pursuant to a general amnesty issued by the President of the Syrian Arab Republic in 2005 and is, therefore, no longer in detention.

13. Concerning Muhammed Haydar Zammar, the Government states that he was in fact born in 1961, in Aleppo, Syria, is a German national and lived in Germany since 1971, as his father had legal residence in that country.

14. The Government states that he attended several military training courses in Pakistan and Afghanistan and joined the Hekmatyar forces to fight Russian military forces and other factions. He later took part in fighting in Bosnia. In late 1995, he was involved in an attempted attack on the United States Consulate in Hamburg (Germany) for which it was planned to make use of an exploding glider. He joined the ranks of the Taliban and Al-Qaeda, met with Osama Bin Laden, and collected money for the mujahidin.

15. He was arrested in Casablanca on 8 December 2001 and was handed over to the Syrian authorities on 31 December 2001. He was summoned to appear before the Syrian State Security

Court (SSSC) on allegations of being a member of an extremist organization that carries out terrorist activities in the Syrian Arab Republic. These acts are punishable under Syrian law pursuant to articles 288, 304 and 306 of the Syrian Criminal Code.

16. The reply of the Government has been brought to the attention of the source on 10 November 2006, which has made comments on it and provided updated information. As regards Ayman Ardenli, the source was neither in a position to confirm nor to deny the fact of his release.

17. The source explains that Muhammad Haydar Zammar appeared before the SSSC in October 2006. It alleges that he was convicted on four charges after an unfair trial on 11 February 2007. He was given a sentence of 12 years, which, according to the source, is the common penalty for membership of the outlawed Syrian organization with the name of "Muslim Brotherhood". Mr. Zammar stated during the trial that he had never been a member of the "Muslim Brotherhood". No evidence of such membership was presented in court, and the organization itself later issued a statement denying that Mr. Zammar had ever been a member or had established any ties with it or with any member.

18. The source further informs that he was also convicted on three charges carrying lesser sentences pursuant to article 306 of the Syrian Criminal Code, which makes it a criminal offence to be a member of an "organization formed with the purpose of changing the economic and social status of the state", to its article 278 for "carrying out activities that threaten the state or damage Syria's relationship with a foreign country", and to its article 285 for "weakening national sentiments and inciting sectarian strife". The source states that it is common in Syria to charge political prisoners with these kinds of offences and that Mr. Zammar remains subjected to incommunicado detention, solitary confinement, torture and ill-treatment.

19. The source also expresses its concern that Mr. Zammar's rights were violated by German and United States authorities. Apparently, officers from the German Federal Criminal Police Office (*Bundeskriminalamt* - BKA) provided information that was used for his arrest in Morocco. Officials from the German intelligence and law enforcement services interrogated Mr. Zammar in Syria for three days in November 2002 at a time when it was apparent that he was held in incommunicado detention and deprived of procedural rights and guarantees. United States officials reportedly provided written questions to his interrogators in Morocco, but did not have direct access to him. According to the source, Mr. Zammar was forcibly removed from Morocco to the Syrian Arab Republic in December 2001 in connection with the so-called "renditions" programme led by the United States.

20. The source states that, until the end of February 2007, Mr. Zammar had not received any visits by relatives in prison. He only had brief access to his lawyer and to members of his family during the court sessions before the SSSC between October 2006 and February 2007. Furthermore, it was not until 7 November 2006 that Mr. Zammar received his first visit from a German diplomat.

21. The Working Group observes that Mr. Ayman Ardenli has been arrested as an Australian resident, apprehended at Damascus airport and detained incommunicado at a military centre for a prolonged period of three years. He has not been given the opportunity at any time to challenge the legality of his detention, has not been charged with any offence, has been denied access to a

lawyer, and has not been judged in any trial. In accordance with its Revised Methods of Work, chapter C. (a), the Working Group reserves the right to render an opinion in this serious case of deprivation of liberty without any legal basis, notwithstanding that the Government of Syria informed it about the release of Mr. Ardenli.

22. As to the case of Mr. Muhammad Haydar Zammar, the Working Group notes that the allegations of his secret transfer from Morocco to Syria have not been denied. As a citizen of Germany, he was arrested in Morocco and held in custody for two weeks, interrogated and then sent to be kept in detention in Syria outside of any procedure contemplated by law. The Working Group has already stated that this practice known as “renditions”, i.e. the informal transfer of a person from the jurisdiction of one State to that of another on the basis of negotiations between administrative authorities of the two countries without procedural safeguards, is irremediably in conflict with the requirements of international law (A/HRC/4/40).

23. It has not been denied that he was held in incommunicado detention for a significant period of no less than five years. During this term, he did not enjoy his right to legal defence and procedural safeguards. When he was finally sent to a trial before the SSSC, the Working Group considers that despite the severity of the charges Mr. Zammar has not been able to challenge the accusations against him, which undermines their credibility.

24. As the Working Group has already expressed in other cases, there are serious concerns about this Court’s non-compliance with international standards on the right to a fair trial (Opinions Nos. 21/2000, 15/2006 and 16/2006). Lawyers are not granted access to their clients prior to the trial, proceedings are initiated before legal representatives have an opportunity to study the case file, and lawyers are frequently denied their right to speak on behalf of their clients. Lawyers require written permission from the Court’s President before they can see their clients in prison. Moreover, those sentenced by the SSSC and the Field Military Court have no right to appeal their sentences (A/HRC/4/40/Add.1). Therefore, the Working Group believes that in the case of Mr. Zammar, the violation of the international norms related to a fair trial is of such gravity as to confer on the deprivation of his liberty an arbitrary character.

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

The deprivation of liberty of Mr. Ayman Ardenli was arbitrary during the period of August 2003 until his release, as it contravened the principles and norms set forth in articles 9 of the Universal Declaration of Human Rights and 9 of the International Covenant on Civil and Political Rights and it falls into category I of the methods of work adopted by the Working Group on Arbitrary Detention.

The deprivation of liberty of Mr. Muhammad Haydar Zammar is arbitrary, as it contravenes the principles and norms set forth in articles 9 of the Universal Declaration of Human Rights and 9 and 14 of the International Covenant on Civil and Political Rights and falls into category III of the methods of work adopted by the Working Group on Arbitrary Detention.

26. Consequent upon the opinion rendered, and taking into account that Mr. Ayman Ardenli has been released, the Working Group requests the Government to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

Adopted on 10 May 2007.