

OPINION No. 22/2007 (Egypt)

Communication addressed to the Government on 23 February 2007.

Concerning Mr. Abdeldjouad Mahmoud Ameer Al Abadi.

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

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
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 and received its comments.
5. The case summarized below was reported to the Working Group on Arbitrary Detention as follows: Mr. Abdeldjouad Mahmoud Ameer Al Abadi, aged 52, of Egyptian nationality, worked in an electrical company in Ajhour, Al Kubra, Al Qalubia, where he is also domiciled.
6. It was reported that he was arrested during the night of 6 February 1994 by agents of the State Security Intelligence Services (SSI) and was held in incommunicado detention for one month at its headquarters in Qalubya during which he was allegedly tortured and threatened with death.

7. The officials did not produce an arrest warrant or any other relevant decision by a public authority, or informed him orally about the reasons for his arrest.
8. Mr. Al Abadi was then detained at Abou Zabel High Security Prison for more than three years without being brought before a judge or an official authorized to exercise judicial power.
9. It is said that the agents of the SSI imputed Mr. Al Abadi for having openly articulated his political views opposed to the Government and criticising the Head of State.
10. The source indicates that Mr. Al Abadi was, however, able to challenge his detention before competent judicial authorities, which ordered his release. Irrespective of these orders, administrative authorities of the Ministry of the Interior refused to do so on several occasions.
11. In March 1997, the detainee, in spite of being a civilian, was brought before a military court. In the course of an alleged unfair trial, during which he could not be assisted by a defence lawyer of his choice, he was sentenced to 10 years of imprisonment on charges of a being a member of a banned Islamist organization.
12. Although Mr. Al Abadi had served his sentence as of February 2004, he was not released at that date and was kept in detention pursuant to a new administrative order.
13. According to the source, these administrative orders are issued following the regulations on the state of emergency, which has been in force without interruption since 6 October 1981 and which has been extended on 30 April 2006 for another three years. According to the source, the Emergency Law, Law N° 162 of 1958 permits arbitrary arrest and indefinite detention without trial. The source considers that it creates an atmosphere of impunity which may give rise to cases of torture and ill-treatment.
14. The source alleges that in spite of the fact that the Egypt is a party to the International Covenant on Civil and Political Rights its Government has never informed the other State parties of its intention to derogate from some of its provisions, as required by article 4 of the Covenant.
15. Furthermore, it adds that article 3 of the Emergency Law stipulates that the Minister of the Interior may take appropriate measures to maintain security and public order through imposing restrictions on individuals' freedoms. Suspects may be subjected to administrative detention without being tried for prolonged periods. Even though a complex process to dispute these administrative measures is provided by the Law, the source mentions that the judicial rulings ordering the release of the said detainee has been frequently overturned by a new administrative detention order, making the dispute process ineffective.
16. Mr. Al Abadi was sentenced to 10 years of imprisonment and must have already been released but is nevertheless kept in detention. According to the source, his detention is thus devoid of any legal basis and is, in consequence, arbitrary.
17. The source further alleges that Mr. Al Abadi's detention was the result from the expression of his political opinions and the exercise of his right to freedom of expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. Finally, the

source considers that Mr. Al Abadi was sentenced after a trial in which the international norms relating to the right to a fair trial were not observed.

18. In its response, the Government indicates that Mr. Al Abadi was arrested in 1994 in the framework of a State security case carrying the number 123/93, but he was released in 1994 and left Egypt for Saudi Arabia where he stayed up until 1998, date of his return to Egypt. The Government points out that upon his return, Mr. Al Abadi resumed his links and contacts with radical elements who advocate for the use of violence. On 30 January 1999, he was arrested again in the framework of the military case file No. 8/1998 related to an organization so-called "The Returnees from Albania" and was condemned to five years of imprisonment for having committed crimes of a military nature.

19. The Government adds that Mr. Al Abadi was released on 24 September 2003, after purging his penalty, but was rearrested pursuant to the Emergency Act No. 162 of 1958, for having resumed his activities promoting radicalism among the public. The Government recognizes that Mr. Al Abadi has obtained court rulings ordering his release, but it asserts that every time Mr. Al Abadi was released, he reverted to his activities propagating extremist ideas, raising concerns that he might commit acts of terrorism. The Government adds that Mr. Al Abadi's last arrest dates back to 3 January 2007 and that he remains in detention. Mr. Al Abadi has not contested his detention before the competent courts. The Government concludes that Mr. Al Abadi is detained in pursuance of the Emergency Act No. 162 of 1958 in order to prevent him from committing any acts of terrorism.

20. The commentaries of the source on the government reply contain the following precisions. On the claimed liberation of Mr. Al Abadi following his arrest in 1994 and his stay in Saudi Arabia between 1994 and 1998, the source points out that since Mr. Al Abadi arrest on 6 February 1994, he has never been released. Consequently, he was not in Saudi Arabia during this period, contrary to that reported in its response by the Government. The source invites the Government to bring the proof of its assertion that Mr. Al Abadi travelled to Saudi Arabia.

21. During the first three years of his detention, Mr. Al Abadi was not charged nor subjected to penal pursuits but he was simply kept in administrative detention. Later, he was subjected to an inequitable judicial process before a military court, being condemned without having benefited of the right to a fair trial.

22. The source also notes that, contrary to the affirmations of the Government, Mr. Al Abadi was not released on 24 September 2003, at the end of his prison term, being instead transferred from the prison to a detention centre belonging to the Security Services. Some days later, he was brought back to the same prison in a new measure of administrative detention. The source points out that the Government has recognized that Mr. Al Abadi is currently being held in administrative detention since 3 January 2007.

23. The source underlines that following each judicial ruling providing for Mr. Al Abadi's release, Mr. Al Abadi was extracted from prison and transferred to a detention centre belonging to the Security Services and some days later brought back to the same prison or transferred to other prison.

24. Of what precedes, it appears that the allegations from the source and the declarations from the Government differs in several important points and notably on

the length of the administrative detention of Mr. Al Abadi; on his supposed stay in Saudi Arabia and on the modalities of execution of the judicial resolutions ordering his liberation. The Working Group will limit itself in its assessment of the case to those allegations from the source which have not been contested by the Government, i.e. Mr. Al Abadi's trial before a military court; the violation of the fair trial norms and Mr. Al Abadi's maintenance in detention after having served his judicial sentence.

25. Concerning Mr. Al Abadi's trial before a military tribunal, the Working Group notes that the Government has recognized that Mr. Al Abadi, who is a civilian, was tried and condemned to five years' imprisonment by a military court.

26. The Working Group recalls that in its general comment No. 32 concerning the interpretation of article 14 of the International Covenant on Civil and Political Rights, the Human Rights Committee has clarified that although the Covenant does not prohibit the trial of civilians in military or special courts, it requires such trials to be in full conformity with the requirements of article 14 as well as its guarantees be not limited or modified because of the military or special character of the court concerned. The Committee also notes that the judgement of civilians in military or special courts should be exceptional, i.e. limited to those cases in which the State can show that resorting to such trials is necessary and justified by objective and serious reasons or when the regular civilian courts are unable to undertake the trials considering the specific categories of persons and offences at issue.

27. The Working Group notes that the Government has not provided any explanation to justify the trial of Mr. Al Abadi, who is a civilian, by a military court. The Government has solely pointed out that Mr. Al Abadi has committed offences of a military character but it has not specified in what consisted those offences nor the facts which gave place to such qualification. The Working Group also notes that the Government has not refuted the allegation that Mr. Al Abadi could not benefit from the norms of due process. The Government has not refuted the allegations that Mr. Al Abadi was arrested during the night of 6 February 1994 without an arrest warrant, that he was subjected to torture and ill-treatment during a month and that he was tried without the assistance of a defence lawyer of his choice.

28. The Working Group concludes that in the afore-mentioned circumstances, the judgement of Mr. Al Abadi and his condemnation by a military jurisdiction were incompatible with the prescription of article 14 of the International Covenant on Civil and Political Rights to which the Egypt is a party. These violations are of such gravity to confer to the deprivation of liberty an arbitrary character (category III).

29. Concerning Mr. Al Abadi's administrative detention, the Working Group notes that according to the Government, Mr. Al Abadi was released on 24 November 2003 after serving his sentence but was re-arrested and placed in administrative detention pursuant to the Emergency Act No. 162 of 1958 given the fact that he pursued his propaganda activities in favour of extremist ideas. The above-mentioned Law authorizes the Minister of the Interior to order the administrative detention of persons who represent a danger for the public security. The Working Group notes nevertheless that the Government has not specified the time Mr. Al Abadi spent at liberty nor when he was re-arrested nor the exact nature of the facts he would be responsible and that had justified his re-arrest. The Government has not explained

why the civilian courts, competent to appreciate the lawfulness of the detention, ordered the liberation of Mr. Al Abadi in several occasions.

30. The Working Group, which has already had to pronounce itself on similar cases of administrative detention in Egypt⁴ considers that the maintenance of a person in administrative detention once his liberation has been ordered by a court having competence to control the lawfulness of the detention is deprived of any legal basis. The Working Group considers that in this case, no legal basis can be invoked to justify the maintenance in detention of this person, and less an administrative decision taken to circumvent a judicial resolution ordering the liberation of the detainee.

31. The Working Group concurs with the position taken by the Human Rights Committee in its general comment No. 29 (2001) that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during the state of emergency and that in order to protect non-derogable rights, the right to take proceedings before a court and to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a decision of the State party to derogate from the Covenant. This implies that release orders of courts competent to exercise control over the legality of detention must be honoured by the Government even in a state of emergency. The Working Group concludes that the deprivation of liberty of Mr. Al Abadi is arbitrary being devoid of any legal basis (Category I).

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

The deprivation of liberty of Mr. Abdeldjouad Mahmoud Ameer Al Abadi is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights and falls within categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

33. Consequent upon this Opinion rendered the Working Group requests the Government 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. The Working Group believes that the adequate remedy would be his release.

Adopted on 22 November 2007

⁴ Opinion No. 21/2007 (Egypt), Opinion No. 24/2007 (Egypt) (both to be published in Addendum 1 of the Working Group on Arbitrary Detention's annual report for 2008), Opinion No. 5/2005 (Egypt), paragraph 19 (E/CN.4/2006/7/Add.1), Decision No. 45/1995 (Egypt), paragraph 6 (E/CN.4/1997/4/Add.1), and Decision No. 61/1993 (Egypt), paragraph 6 (E/CN.4/1995/31/Add.1). See also Opinion No. 3/2003 (Egypt) (E/CN.4/2004/3/Add.1).