

OPINION No. 24/2007 (Egypt)

Communication addressed to the Government on 14 June 2007.

Concerning Mr. Mustapha Hamed Ahmed Chamia.

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. According to the source, Mr. Mustapha Hamed Ahmed Chamia (hereinafter Mr. Chamia) is a citizen of Egypt, aged 54. He used to be a low-level employee and resident at Ahmed Arabi Avenue 3, Chebra Al Kheima, Mufahadat Al Qalubia.
6. During the night of 15 to 16 January 1994 agents of the State Security Service (Amn Addaoula) arrested Mr. Chamia at his home. They did not show an arrest warrant or any other document justifying his arrest, but told him that he was arrested because of his membership of a prohibited religious organization. Mr. Chamia was taken to their facilities where he was tortured and ill-treated over several months. The security agents torturing him told Mr. Chamia that they had to punish him for having publicly expressed fundamentalist and extremist religious ideas.
7. During the more than 13 years since his arrest Mr. Chamia has been held at various high security prisons. He is currently held at Liman Tara high security prison.

8. Mr. Chamia is detained under article 3 of Law No. 162 of 1958 on the state of emergency, which allows the Minister of the Interior as representative of the President of the Republic to order administrative detention of individuals. Mr. Chamia has never been brought before a judicial authority or been charged with any offence. Agents of the State Security Service have explained to Mr. Chamia orally that he will never be brought before a judge “because there are no precise facts he could be charged with”.

9. Mr. Chamia has filed numerous written requests to be released. Each time, a judicial authority has accepted his request and ordered his release. The Minister of Interior, however, has each time issued a new administrative detention order and refused to release Mr. Chamia.

10. Mr. Chamia’s mental and physical health is still suffering from the torture he was subjected to 13 years ago. Since 2006 his state of health has further deteriorated. He was denied medical treatment until he fell into a coma at the beginning of February 2007. He is now held at the hospital of Liman Tara prison, where he is not allowed to receive visits by his lawyer and his family, who are very concerned about his state of health.

11. The source alleges that the detention of Mr. Chamia is arbitrary because it is devoid of any legal basis. Article 3 of the Egyptian Emergency Law stipulates that the President of the Republic may take appropriate measures to maintain security and public order through imposing restrictions on an individual’s freedom such as administrative detention of suspects without trial for prolonged periods. Such administrative detention orders are issued without any control by the judicial authority or the Prosecutor’s office. A complex process to challenge these administrative measures before the courts is provided for by the Law. However, all judicial rulings ordering the release of Mr. Chamia have been made in vain in view of new administrative detention orders passed, rendering judicial control over the legality of detention futile. Hence, according to the source, the deprivation of liberty of Mr. Chamia is devoid of a legal basis since the Egyptian courts have ordered his release.

12. The source further recalls that the security agents who arrested Mr. Chamia told him that he was detained because of his membership of a prohibited religious organization and that while tortured he was explained that he was being punished for having publicly expressed fundamentalist and extremist religious ideas.

13. In its comments, the Government affirms that Mr. Chamia “belongs to extremist organizations which use violence in pursuit of their objectives. He was placed in preventive detention in accordance with the Emergency Act No. 162 of 1958 in order to avert the criminal threat that he posed and prevent him from engaging in any hostile operations.”

14. The Government further indicates that the “Ministry of the Interior is bound to implement judicial rulings providing for the release of elements in preventive detention. Security checks made it clear, however, that the elements in question continued to advocate radical ideas which threaten stability and public safety. Measures were taken to keep those elements in preventive detention, which did not contravene the law.” The Government informed that a “recent re-evaluation of the attitude of the person in question in this case revealed that his views have moderated and that he no longer presents a criminal threat. He was therefore included among

the group of persons benefiting from a ministerial release order issued to commemorate the 23 July Revolution.”

15. The source, in its comment on the government response, indicates that Mr. Chamia, whose health condition worsened after the communication addressed by the Working Group, was indeed released on 23 July 2007. The source emphasizes that Mr. Chamia was detained without judgment or judicial procedure during 13 years and 6 months under preventive detention only because of his religious ideas, considered as extremist. The source further highlights that he was not reproached with any material fact.

16. Having assessed all information before it, the Working Group decides that the case of Mr. Chamia, because of the gravity of the allegations made and the length of his period of detention without charges or trial (13 years and 6 months) is a serious case of deprivation of liberty and consequently, acting in accordance with its methods of work, paragraph 17 (a), reserves the right to render an opinion, notwithstanding the information received from the Government about Mr. Chamia’s release.

17. The Working Group notes that the Government, in its response, does not discuss or deny the allegations made by the source, which are the following: Mr. Chamia was arrested during the night of 15 to 16 January 1994 without arrest warrant; he was subjected to torture and ill-treatment during several months; and he was deprived of liberty during 13 years without indictment and judgement.

18. The Government also acknowledges that Mr. Chamia, despite numerous court decisions ordering his release, was kept in detention in accordance with the Emergency Act No. 162 of 1958 which authorizes the Minister of Interior to take such measures against persons representing a threat to stability and public safety.

19. The Working Group has on earlier occasions⁷ considered that maintaining a person in administrative detention once his release has been ordered by the court competent to exercise control over the legality of detention renders the deprivation of liberty arbitrary. The Working Group is of the opinion that in such cases no legal basis can be invoked to justify the detention, least of all an administrative order issued to circumvent a judicial decision ordering the release.

20. It is the position of the Working Group that not even a state of emergency may justify such long administrative detention and the non-observance of the guarantees of a fair trial. Insofar the Working Group concurs with the position taken by the Human Rights Committee in its general comment No. 29 (2001)⁸ 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

⁷ Opinion No. 21/2007 (Egypt) above, Opinion No. 22/2007 (Egypt) above, 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).

⁸ Paragraph 16.

honoured by the Government even in a state of emergency. The Working Group concludes that the deprivation of liberty of Mr. Chamia was arbitrary being devoid of any legal basis (Category I).

21. Moreover, the Government has not further specified what crimes the holding of “radical religious ideas” may constitute and in what way the activities of Mr. Chamia pose a threat to the stability and public safety of the country. In the absence of such specifications the Working Group has no reason to question the allegation of the source that his detention is solely connected to the exercise of his right to freedom of religion and to freedom of opinion and expression as guaranteed by articles 18 and 19 of the International Covenant on Civil and Political Rights to which Egypt is party. Furthermore, the Government confirms implicitly that Mr. Chamia had been detained solely for holding specific view since he was released after they were found by the Government to have moderated. The deprivation of liberty of Mr. Chamia, thus, falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

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

The deprivation of liberty of Mr. Mustapha Hamed Ahmed Chamia from 15 January 1994 to 23 July 2007 was arbitrary, being in contravention of Articles 9, 18 and 19 of the International Covenant on Civil and Political Rights to which Egypt is party and falls under categories I and II of the categories applicable to the consideration of cases submitted to the Working Group.

Adopted on 22 November 2007