

OPINION No. 28/2007 (Algeria)

Communication addressed to the Government on 17 August 2006.

Concerning Mr. Fouad Lakel.

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 thanks the Government for transmitting the requested information in a timely manner.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
4. Having seen the allegations made, the Working Group welcomes the cooperation of the Government. It transmitted the reply of the Government to the source and has received the source's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, taking account of the allegations made, the reply of the Government and the source's comments.
5. According to the source, Mr. Fouad Lakel, an Algerian secondary school [lycée] pupil born on 21 June 1973 and resident at Cité Ofaress Cosider, bat No. 2, Dergana, Bordj El Kiffan, was arrested on 31 May 1992 at la cité des Annassers, Kouba (a suburb of Algiers), by uniformed police following a dragnet operation in his neighbourhood. The police officials did not present an arrest warrant. They handcuffed him and went with him to his parents' home, where they carried out a search, before taking him for questioning to the police station, where he was tortured. After 15 days, Mr. Lakel was transferred to Châteauneuf prison, where the torturing continued.

6. Two months later, Mr. Lakel was transferred to El Harrach prison (where he was registered under the number 63631). His mother, Zakia Belkhaznadj, visited him there once. She noted that her son's body was badly bruised and that he had a broken nose and broken teeth. Subsequently, Mr. Lakel was transferred to Serkadji prison, in Algiers (registration number 30027).

7. The source adds that Mr. Lakel spent 18 months in detention without being brought before an examining judge or a representative of the public prosecution service. Throughout that period he was held with no legal justification.

8. On 22 December 1993, Mr. Lakel was sentenced by a special court to 15 years' imprisonment without remission for violating the anti-terrorism laws. He did not have the right to the services of a lawyer during the judicial proceedings.

9. After being sentenced, Mr. Lakel was transferred to Tazoult prison, 400 km east of Algiers, near the town of Batna (registration number 3159), where he was kept in solitary confinement. The members of his family were not informed of the transfer. His mother was told by another prisoner that her son was in Tazoult prison, where she visited him on 4 February 1994. He had a scalp injury and had become very thin.

10. During 1994, Mr. Lakel was transferred back to Serkadji prison. Despite permits to visit him granted to his mother by the public prosecutor of the Supreme Court, the first one dated 28 August 1995, the actual visits were declined. In 1996 he was officially deprived of the right to receive visits.

11. The source considers that Mr. Lakel's detention is arbitrary and illegal. Mr. Lakel was arrested without there being an arrest warrant. He was held for 18 months without being brought before an examining judge or a member of the public prosecution service. His trial, before a special court, was far from meeting the minimum conditions for a just and fair trial. Mr. Lakel was unable to benefit from the services of a lawyer, either before or after his trial.

12. The source adds that the solitary confinement of Mr. Lakel and the failure to honour the permits to visit him issued by the public prosecutor of the Supreme Court exposed him to the possibility of acts of torture and other forms of mistreatment.

13. Lastly, the source considers that 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, to which Algeria is a party, were not respected.

14. In its reply, the Government explains that during 1992 Mr. Lakel was wanted by the public prosecutor's office of the Hussein Dey district of Algiers on suspicion of setting up a terrorist organization, undermining the security of the State, inciting to insurrection, committing acts of aggravated theft, setting up a criminal association for the purpose of assassination, and possessing firearms.

15. According to the Government, Mr. Lakel was arrested together with several accomplices and placed under a committal order on 7 June 1992 by the examining judge of the Hussein Dey district court. After the judicial inquiry, he was tried by the competent court and sentenced on 22 December 1993 to 15 years' imprisonment.

16. Mr. Lakel submitted a cassation appeal to the Supreme Court, which rejected it, so that the sentence became final.

17. The Government states that Mr. Lakel was sentenced in a proper court of law. He availed himself of the remedies offered by the law, submitting an appeal to the Supreme Court.

18. The Government also states that no allegations of violence against Mr. Lakel were made during the proceedings, and nothing on the file suggests that violence occurred. Also, the Government refutes the source's allegation that Mr. Lakel was not defended. It maintains that he was defended by Maître Hassine Sisbene during his trial, as indicated in the court's judgement. The barrister even visited him 14 times during his detention, the visits being recorded in the prison visit log.

19. In its comments on the Government's reply, the source states that Mr. Lakel was arrested on 31 May 1992 without there being an arrest warrant and indeed sentenced on 22 December 1993, more than 18 months after his arrest. The Algerian authorities maintain that Mr. Lakel was tried by "the competent court" without saying which court that was. He was tried by a special court.

20. Moreover, the Algerian authorities state that Mr. Lakel submitted a cassation appeal to the Supreme Court, which rejected it. Article 313 of the Algerian Code of Criminal Procedure requires that, after the pronouncement of a sentence in a criminal court, the president of the court inform the sentenced person that he/she has eight days from the time of pronouncement in which to submit a cassation appeal. However, Algerian law does not accord to persons sentenced by a criminal court the right to have the conviction and sentence reviewed by a higher tribunal, contrary to the principle of the double degree of jurisdiction. The scope of a cassation appeal is limited to matters of form, so the sentence is not subjected to a complete review, of the substance as well as of the form. Thus, Algerian law does not conform to paragraph 5 of article 14 of the International Covenant on Civil and Political Rights in that respect and could not offer Mr. Lakel any remedies with regard to his fundamental rights.

21. The source does not contest the fact that Mr. Lakel was tried and sentenced. On the other hand, it maintains that he did not have the assistance of a lawyer when he was transferred to Tazoult prison.

22. In its reply, the Government states that Mr. Lakel was arrested together with several accomplices and placed under a committal order on 7 June 1992 by the investigating judge of the Hussein Dey district court. Once the judicial inquiry had been completed, Mr. Lakel was tried and sentenced on 22 December 1993 to 15 years' imprisonment, the sentence subsequently being confirmed by the Supreme Court, which rejected his cassation appeal. Throughout the trial, Mr. Lakel was assisted by Maître Sisbene Hassine.

23. In its comments on the Government's reply, the source does not contradict the clarifications contained in the reply, but simply emphasizes two points. First, the cassation appeal did not secure the right to the double degree of jurisdiction provided for in paragraph 5 of article 14 of the International Covenant on Civil and Political Rights. Second, although the Government denies that Mr. Lakel was subjected to violence, it has been established that he was mistreated following his arrest and did not have the assistance of a lawyer until his transfer to Tazoult prison.

24. Basing itself on the information provided by the Government, and not contradicted by the source, the Working Group concludes that Mr. Lakel was

brought before an investigating judge six days after being arrested, that he had the assistance of a lawyer, who visited him in prison, and that he was tried and sentenced. Also, the source does not deny that the sentence of first instance was the subject of a cassation appeal to the Supreme Court, which confirmed the sentence. In addition, the Working Group notes that, after stating that Mr. Lakel was tried without the assistance of a lawyer, the source simply states that he did not have the assistance of a lawyer when he was transferred to Tazoult prison, which, according to the source, happened after his conviction. The Working Group therefore concludes that Mr. Lakel did have the assistance of a lawyer.

25. As regards the conviction of Mr. Lakel by a special court, the source did not specify how the special court failed to comply with the norms of a fair trial. In its general observation No. 32 (2007), regarding article 14 of the International Covenant on Civil and Political Rights, the Human Rights Committee stated that the Covenant does not prohibit the trial of civilians in military or special courts, but requires that such trials be in full conformity with the provisions of article 14 and that the guarantees provided for in that article not be limited or modified because of the military or special character of the court concerned (para. 22). In the absence of statements contradicting the assertions of the Government, the Working Group cannot conclude that there was a violation of rights so serious as to warrant considering Mr. Lakel's detention to be arbitrary. Also, it cannot conclude that his detention should be considered arbitrary simply because the Algerian judicial system does not provide for the review of a conviction within the framework of a simple appeal – only within the framework of a cassation appeal.

26. As to the allegation of mistreatment and torture, the Working Group is empowered to pronounce on the matter only if it is asserted that Mr. Lakel's conviction was based on confessions obtained through torture. As the source does not make such an assertion, the Working Group cannot consider this allegation. Also, as the Working Group is not empowered to consider the conditions under which a sentence is being served, it cannot reach a conclusion regarding the arbitrary nature of detention on the basis of the fact that the person deprived of liberty was transferred to a place far from his/her family or that his/her family was deprived of the right to visit him/her.

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

The deprivation of liberty of Fouad Lakel is not arbitrary, in that it does not contravene the provisions of the Universal Declaration of Human Rights or those of the International Covenant on Civil and Political Rights.

Adopted on 27 November 2007