

## **Opinion No. 20/2008 (Egypt)**

**Communication addressed to the Government on 24 October 2007**

**Concerning Mr. Islam Subhy Abd al-Latif Atiyah al-Maziny**

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

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. The case summarized below was reported to the Working Group as follows: Dr. Islam Subhy Abd al-Latif Atiyah al-Maziny, born on 21 October 1971, is a well known physician and a prestigious writer, resident at Al Gharbiyah. He is not a member of any political association. He has published, among other books, a family medical guide entitled *Before You Go to the Doctor*; *The Diary of the Unfortunate Doctor between Addicts*; *When Men Stagger*; *The Wonder of Muslim Doctors* and an Islamic medical history encyclopaedia; *Cataract and Glaucoma*; *Our Sexual Troubles before and after Marriage* and *Social and Medical Study about Addiction: My Enemy Inside my Cage*.
5. It was reported that Dr. Al-Maziny was requested to travel to Saudi Arabia in order to temporarily work in a medical centre. After obtaining a work permit from the relevant authorities, he went to the security headquarters of Tanta, in Egypt, on 7 April 2007, and was arrested. He was informed by the security chief that the purpose of his arrest was to facilitate an investigation. He was held in incommunicado detention in an exiguous, unhygienic and unsanitary cell for 50 days. Guards often prevented him from going to the bathroom. According to the source, Dr. Al-Maziny was ill-treated while in detention. He was not interrogated about a precise fact or accused of having committed a concrete offence.
6. On 27 May 2007, Dr. Al-Maziny was transferred to Wady Natroune Prison. It is believed that an administrative decision for his detention was issued by the Minister of the Interior, although Dr. Al-Maziny has never received a formal notification of this order nor any detention warrant. On 7 July 2007, a civil court ordered his immediate release. The court considered that there was no evidence against the detainee and that his detention was

not justified, particularly considering his good standing and reputable position in the Egyptian society.

7. However, Dr. Al-Maziny was re-arrested when he was leaving the prison by State Security Services agents who brought him to their headquarters in Tanta, and where he was again put in incommunicado detention. According to the source, this re-arrest shows contempt for the rule of law and disrespect for the civil court decision. On 16 July 2007, Dr. Al-Maziny was again transferred to Wady Natroune Prison.

8. In July 2007, the Head of the Health Unit of the Prison ordered the immediate transfer of Dr. Al-Maziny to the hospital, given that he considered that Dr. Al-Maziny's state of health had seriously deteriorated while in prison. Dr. Al-Maziny is currently suffering from several illnesses, among them, of an anastomotic ulcer with a gastritis presenting a hemorrhagic risk; disc pathology with compression of the vertebrae; urethral calculus and a retinal ischemia. The penitentiary administration did not accept his transfer to the hospital, instead aggravating Dr. Al-Maziny's already extremely difficult conditions of detention.

9. The source reports that Dr. Al-Maziny is being kept in detention in virtue of article 3 of Emergency Act No. 162 of 1958. This law of exception allows the Minister of Internal Affairs to administratively detain any individual without charge or judicial order; with the security services entitled to appreciate the "suspect" nature of any individual, and the potential "threat" the person represents to "public order". The security services are not obligated to sustain or defend their considerations or fears about an individual. Dr. Al-Maziny has never received a notification about his detention, its possible length or about the reasons to be deprived of his liberty. He has not been charged nor accused of having committed any offence. No trial has been scheduled.

10. The source adds that contrary to the disposition contained in article 9, paragraph 4, of the International Covenant on Civil and Political Rights, Dr. Al-Maziny does not have at his disposal any effective resource to challenge the lawfulness of his detention. He is being kept in detention in spite of a specific judicial decision ordering his release. He has not been charged, accused nor tried and does not know for what fact he is now being considered responsible.

11. According to the Government, Dr. Islam Subhi Abd al-Latif Al-Maziny was an active member of an extremist movement. The Minister for Internal Affairs therefore ordered his detention under the Emergency Act No. 162 of 1958, as amended, in order to put a stop to his activities. He received the necessary treatment at his place of detention and his condition at the time was stable. The above-mentioned citizen was released on 19 December 2007.

12. The Government states that the concept of exceptional circumstances is a fundamental element of all national legal systems. It allows the national authorities to take certain emergency measures to deal with threats to social stability and security. Provisions to this effect are contained in article 4 of the International Covenant on Civil and Political Rights, article 15 of the European Convention [on Human Rights] and article 26 of the American Convention [on Human Rights]. Egypt has followed the approach of the previous law regulating the state of emergency since 1962. That law was amended to bring it into line with international standards and Egypt's legal obligations in this regard.

13. As stated above, Dr. Al-Maziny was detained in accordance with the Emergency Act, which allows administrative detention for a period limited by law. As is well known, the state of emergency is about to be lifted and, as a consequence, the Emergency Act will no longer be applied once the Counter-terrorism Act has been enacted.

14. The Government concludes that the detention of Dr. Al-Maziny was not arbitrary, but was based on objective grounds related to his activities, and was imposed lawfully and in accordance with the legislation in force in this country, taking into account the terms of article 4 of the International Covenant on Civil and Political Rights concerning states of emergency.

15. The source confirmed that Dr. Al-Maziny, whose health has severely degraded during his detention, was indeed released on 19 December 2007. He was thus detained for more than eight months, without any legal basis and only upon a simple decision by the Minister of Internal Affairs, a fact uncontested by the Government in its response. The Government persists in justifying arbitrary detentions and detentions of lengthy duration by virtue of the Emergency Act of 1958, a law in effect for more than 50 years, while invoking article 4 of the Covenant, an international instrument designed to protect human rights and not to justify violation of such rights by States.

16. Furthermore, according to the source, the Government neither elaborates on nor contests the allegations made, in particular, that:

(a) Dr. Al-Maziny was indeed arrested on 7 April 2007 at his place of residence by agents of the State Security Services, without any warrant and detained in secret during 50 days without any possibility of contact with outside world;

(b) He was never notified of any legal charges, nor brought before to any court or any other judicial authority;

(c) He was arrested and detained during this whole period, as a “preventative measure”, only in light of his presumed “affiliation to an extremist movement”, this being understood as because of his political opinions; while no material fact was ascertained against him;

(d) In spite of a judicial decision ordering his release on 7 July 2007, he was maintained in detention in absence of any legal proceeding, therefore rendering any appeals or recourse to justice concerning the lawfulness of his detention completely unproductive and ineffective.

17. In accordance with the Working Group’s methods of work, if the person has been released, for whatever reason, following the reference of the case to the Working Group, the case should in principle be filed. The Working Group, however, reserves the right to render an Opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.

18. The legal basis for the deprivation of liberty of Dr. Al-Maziny follows from the state of emergency declared on 6 October 1981 according to the Emergency Act No. 162 of 1958, by the Arab Republic of Egypt, and which has been maintained in effect without interruption for more than 26 years. The state of emergency gives the Ministry of the Interior extensive powers to suspend basic rights, such as detaining persons indefinitely without charge or trial. The length of this state of emergency has been a constant concern of the human rights community, including the Working Group.

19. Indeed, the Working Group considers that, contrary to the Government’s argument, the state of emergency as declared by the executive branch of Egypt, does not conform to the requirements of the International Covenant on Civil and Political Rights, because its article 4 prescribes that an exceptional “time of public emergency” should exist, which would “threaten the life of the nation”. Not all the obligations contracted by virtue of the Covenant can be suspended, and only as long as this suspension is not incompatible with the other obligations imposed by international law, and does not involve any causal relation to prohibited discrimination. All temporal derogation of obligations in the Covenant must be strictly limited the exigencies of the invoked situation.

20. The declaration of the state of emergency was made on 6 October 1981 according to the Emergency Act No. 162 passed in 1958 under the Government of Gamal Abdul Nasser, by Decree of the interim President, Dr. Soufy Abu Talib, then President of the People's Assembly, the same day of the assassination of the former President of the Republic, Anwar Sadat. From that day on, the state of emergency has been periodically renewed, and on 26 May 2008, it was extended for a further two-year period, prevailing therefore until 31 May 2010. The state of emergency has allowed the Government to detain prisoners indefinitely and without charge.

21. Although undoubtedly the assassination of President Sadat in 1981 and its eventual consequences could have been considered a "danger for the life of the nation", clearly the argument seems invalid today, as to affect rights of people who objectively are not linked to this situation. State of emergency is associated with times of international or internal war, disturbances or natural disasters which endanger security or public order. This long duration of the state of emergency has also been denounced in a report of the Committee against Torture ("The fact that a state of emergency has been in force since 1981", hindered "the full consolidation of the rule of law in Egypt", the Committee noted in its report CAT/C/CR/29/4, para. 5 (a)), as well as by the Committee on Economic, Social and Cultural Rights ("the state of emergency that has been in place in Egypt since 1981 limits the scope of implementation of constitutional guarantees for economic, social and cultural rights", noted the Committee in its report E/C.12/1/Add.44, para. 10). In November 2002, the Human Rights Committee recommended that Egypt lift its permanent state of emergency.

22. It must be considered that although one court, acting in accordance with strict legal criterion, had ordered for the release of Dr. Al-Maziny, on 7 July 2007, the Government, unbeknownst to the judicial mandate, ordered his re-arrest and secret detention, without formulating charges against him.

23. In light of the above, although Dr. Al-Maziny enjoyed a right to appeal to contest his detention, this was not effective in absolute terms, as required by article 8 of the Universal Declaration of Human Rights.

24. The Working Group lacks precedents and enough background information to pronounce itself on the detention of Dr. Al-Maziny as being motivated by the legitimate exercise of some of the rights mentioned in Category II of its methods of work (see above paragraph 3).

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

(a) The deprivation of liberty of Dr. Al-Maziny during the period of 7 April 2007 to 7 July 2007 (the date on which the court ordered his release), was arbitrary; according to articles 9 and 10 of the Universal Declaration of Human Rights and article 9, paragraphs 1, 2, 3 and 4, and article 14, paragraphs 1, 2 and 3, of the International Covenant on Civil and Political Rights, and falling within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group;

(b) The detention of Dr. Al-Maziny during the period of 8 July 2007 to 19 December 2007 (day of his release), was arbitrary, according to applicable Category I, for the inexistence of any valid legal basis to justify his deprivation of liberty.

26. Consequent upon the Opinion rendered, the Working Group calls on the Government to ensure that everyone has the right to liberty and security of person and requests it to arrange for effective right to compensation for Dr. Al-Maziny, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights, and to inform the Working Group therewith.

Adopted on 10 September 2008