

OPINION No. 15/1999 (EGYPT)

Communication addressed to the Government on 15 June 1998

Concerning Mahmoud Mubarak Ahmad

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group regrets that the Government has not replied to its request for information.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it is clearly impossible to invoke any legal basis constituting justification for the situation (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (ii) When the deprivation of liberty results from prosecution or from a conviction in connection with the exercise of the rights or freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the character of arbitrariness to the deprivation of liberty, whatever form the latter takes (category III).
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government. In the absence of any information from the Government, the Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged.
5. According to the source of the communication, of which a summary was transmitted to the Government, Mahmoud Mubarak Ahmad, a 28-year-old medical doctor, single, who was employed in a hospital in the Cairo district of Kitkata, was arrested on 24 January 1995 by officers of the State Security Investigations Department (SSI) as he was driving from Kitkata to the province of Sohag in Upper Egypt. Initially, he was held at the SSI branch offices in Sohag province, and was then transferred to Sohag prison, before again being transferred to Istiqbal Tora prison.

6. According to the source, no one was informed of Mr. Mubarak Ahmad's arrest until 14 July 1995, when his family learned that he was detained at Istiqbal Tora. Mahmoud Mubarak Ahmad reportedly was accused of membership in a secret organization; it is submitted that towards the end of 1995, an unspecified tribunal ordered his release. Instead of being released, however, he was subjected to a renewed detention order and was transferred to Al-Wadi Al-Gadid prison, where he continues to be held, without any charges and without trial. His health and treatment in prison are not known.

7. It is contended that in the instant case, 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 Egypt is a party, have not been respected.

8. The allegations by the source have not been refuted by the Government, which had an opportunity to do so. In accordance with its methods of work, the Working Group is in a position to consider whether the right to a fair trial guaranteed by 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 has been violated in the present case.

9. The Working Group considers that Mahmoud Mubarak Ahmad has been under detention for four years without an arrest warrant or decision by a body vested with public authority justifying this deprivation of liberty. He is detained without charge or trial at Al-Wadi Al-Gadid prison. In addition, from 24 January to 14 July 1995, he was held incommunicado in a secret place. The violation of articles 9 and 10 of the Universal Declaration and articles 9 and 14 of the International Covenant on Civil and Political Rights, as well as principles 35 to 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, is of such gravity as to confer an arbitrary character on the deprivation of liberty of Mahmoud Mubarak Ahmad.

10. In the light of the foregoing, the Working Group gives the following opinion:

The deprivation of the liberty of Mahmoud Mubarak Ahmad is arbitrary because it is in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, articles 9 and 14 of the International Covenant on Civil and Political Rights and principles 35 to 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and comes within category III of the categories applicable to the consideration of cases submitted to the Working Group.

11. Consequently, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Mahmoud Mubarak Ahmad and to bring it into conformity with the provisions of the International Covenant on Civil and Political Rights, to which Egypt is a party.

Adopted on 15 September 1999