

OPINION No. 3/2011 (EGYPT)

Communication addressed to the Government on 19 January 2011

Concerning Mr. Tarek Abdelmoujoud Al Zumer (hereinafter Mr. Al Zumer)

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. The mandate of the Working Group was clarified and extended by resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102. The mandate was extended for a further three-year period by resolution 15/18 adopted on 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (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 the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by 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 deprivation of liberty an arbitrary character (Category III).

IV. When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);

V. When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

Submissions

Communication from the Source

3. The source reports that in October 1981, Mr. Al Zumer, 49 years old agricultural engineer, was arrested and charged with conspiracy in the case of assassination of President Anouar Al Sadate. In 1982, Mr. Al Zumer was convicted by the High State Security Court for a 15-year imprisonment.

4. The source states that, a few months later, Mr. Al Zumer was tried “for the same facts” by a military tribunal in Cairo. The tribunal convicted Mr. Al Zumer and

imposed another sentence of 7 years of imprisonment. The two sentences were then cumulated.

5. Having served both sentences in October 2003, after 22 years of imprisonment in Limah Torah prison, South of Cairo, Mr. Al Zumer, according to the source, was notified by the Egyptian authorities of their refusal to release him with reference to an administrative decision extending Mr. Al Zumer's detention. That decision was issued by the Minister of Interior on the basis of the Emergency Law dated 6 October 1981.

6. The source further reports that Mr. Al Zumer appealed the aforementioned Minister of Interior's decision before the High Administrative Court. The latter acceded to Mr. Al Zumer's request and issued an order for his release on 18 May 2004.

7. Despite the judicial order, the Ministry of Interior objected to Mr Al Zumer's release by resorting to its right of veto. According to Article 3 of the Emergency Law, the Minister of Interior, in his quality of the representative of the President of the Republic, has extensive powers, including that of ordering an administrative detention without charges or trial. Article 3 of the same law also provides that the Minister of Interior can place in detention any suspect of any person threatening the public order or security. Neither the office of the prosecutor nor any other judicial authority is entitled to intervene or control the administrative decisions of detention.

8. According to the source, Mr. Al Zumer has on several occasions lodged requests for release, which were upheld in decisions for release by the judicial authorities. The source contends that the Ministry of Interior has constantly refused to execute such decisions relying each time on a new administrative order extending the period of detention.

9. The source argues that Mr. Al Zumer is being detained in violation of Articles 9(2) and 14(1) of the International Covenant on Civil and Political Rights.

10. Furthermore, the source refers to the fact that Mr. Al Zumer was tried and convicted twice for the same facts, by different jurisdictions, i.e. by the High State Security Court and a military tribunal of Cairo, even though Mr. Al Zumer was not a military. Two sentences were imposed on Mr. Al Zumer and cumulated by the authorities. The source contends that Mr. Al Zumer's second conviction was in violation of the principle *non bis in idem* affirmed inter alia in Article 14(7) of the International Covenant on Civil and Political Rights.

11. In light of the foregoing, the source alleges that Mr. Al Zumer's continued detention is arbitrary for it lacks any legal basis since October 2003 and is in violation of the principle of *non bis in idem*.

Response from the Government

12. In its letter of 28 April 2011, the Government informed the Working Group that Mr. Al Zumer was released from custody on 10 March 2011.

Comments from the Source

13. The source confirmed that Mr. Al Zumer was released from custody.

14. The source, however, submits that Mr. Al Zumer's detention is a particularly serious case, given the length of detention Mr. Al Zumer and number of violations he endured, as well as the blatant disregard for court's rulings in his favour by the Ministry of Interior. The source therefore maintains its request for the Working Group

to issue an Opinion on the arbitrary nature of Mr. Al Zumer's detention, as set out by article 17(a) of the Working Group's methods of work.

Discussion

15. The Working Group reiterates its prior considerations on similar cases of detention in Egypt (such as its Opinions No. 27/2008 and No. 3/2007, as well as the views of the Committee against Torture and the Committee on Economic, Social and Cultural Rights, on the situation caused by the declaration of state of emergency in Egypt since 6 October 1981 (see, for instance, UN Doc. CAT/C/CR/29/4, para. 5 and UN Doc. E/C.12/1/Add.44, para.10).

16. In particular, the Working Group in its Opinion No. 27/2008, paragraph 82, recalled that pursuant to Articles 9 and 10 of the UDHR and Articles 9 and 14 of the ICCPR, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal. This shall be interpreted as meaning that if such independent and impartial judicial authority decides that an order issued by an administrative authority is not appropriate, those arrested should be immediately released. An arrest of these individuals again under the same charges by administrative authorities will have no legal basis and will imply a non-observance of a judicial decision.

17. The Working Group also concurs with the position taken by the Human Rights Committee in its general comment No. 29 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 State party's decision 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.

18. In Opinion No. 21/2007, paragraph 19, as well as on earlier occasions (Opinion No. 5/2005 (Egypt), paragraph 19, Decision No. 45/1995 (Egypt), paragraph 6, and Decision No. 61/1993 (Egypt), paragraph 6), the Working Group 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.

19. The Working Group reiterates its 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. In the present case, despite the judicial order of 18 May 2004 to release Mr. Al Zumer, he was kept in detention on the basis of administrative orders issued by the Ministry of Interior. The Working Group considers that maintaining a person in 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. Such an arbitrary detention violates Article 9 of the International Covenant on Civil and Political Rights. Thus, the case falls into category I of the categories applicable to the consideration of the cases submitted to the Working Group.

21. As to the violation of the principle of *non bis in idem*, the Working Group is not in possession of sufficient information to render an opinion as to the legality of the Mr. Al Zumer's second conviction in 1982. In particular, it is unclear whether the first conviction was final by the time when Mr. Al Zumer was again tried and convicted. Furthermore, while Article 14(7) of the ICCPR does prohibit a punishment for an offence for which the person has already been finally convicted, the international

human rights law does not prohibit cumulative conviction. It may be permissible, under certain circumstances, to enter multiple criminal convictions under different statutory provisions for the same conduct (where, for instance, each offence charged has a materially distinct element not contained in the other).

Disposition

22. Considering that Mr. Al Zumer was released on 10 March 2011, the Working Group, in accordance with paragraph 17 (a) of its methods of work, decides to file the case. However, pursuant to that paragraph, the Working Group 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.

23. In the present case notwithstanding Mr. Al Zumer's release, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Al Zumer was arbitrary, being in contravention of Article 9 of the International Covenant on Civil and Political Rights, and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

24. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Al Zumer and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

25. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to accord Mr. Al Zumer an enforceable right to compensation in accordance with Article 9(5) of the International Covenant on Civil and Political Rights.

26. As it is the state of emergency that gives the Ministry of Interior extensive powers to suspend basic rights, such as detaining persons indefinitely without charge or trial, the Working Group recalls that in November 2002 the Human Rights Committee recommended that Egypt lift its permanent state of emergency. Thus, the Working Group invites the Government of Egypt to consider repealing its Emergency Law.

Adopted on 3 May 2011