

OPINION No. 7/2011 (EGYPT)

Communication addressed to the Government on 22 December 2010

Concerning Mr. Mahmoud Abdelsamad Kassem (hereinafter Mr. Kassem)

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 case has been reported to the Working Group as follows: on 6 April 2009, Mr. Kassem, a 35 years old building worker, was arrested at his home, by agents of the State Security Intelligence (SSI) Services of the Al Marej Branch. According to the source, Mr. Kassem was presented with no warrant for his arrest.

4. The source informs that Mr. Kassem was taken to the SSI premises in Nasr

City, where he was held for nearly 50 days and allegedly tortured on several occasions. Reportedly, the reason for the use of torture was to obtain information from Mr. Kassem regarding his alleged relation with a terrorist group.

5. According to the source, Mr. Kassem was subsequently transferred to Abou Za'bal Prison where he remains detained.

6. The source contends that Mr. Kassem had challenged his administrative detention before the Emergency Supreme State Security Court in accordance with the Emergency Law.

7. On 13 July 2010, the Emergency Supreme State Security Court issued a judicial order for Mr. Kassem's release. On 8 August 2010, the same Court confirmed its decision following the appeal submitted by the Minister of Interior. However, to date, the judicial order requesting Mr. Kassem's release has not been executed by the authorities.

8. The source alleges that instead of releasing Mr. Kassem, the Ministry of Interior transferred him to another location before issuing a new administrative detention order.

9. In the source's view, Mr. Kassem has been detained without any legal basis. In particular, the source contends that Mr. Kassem was arrested and detained without a judicial order and he was not informed of any reasons justifying his arrest and detention.

10. The source refers to Article 41 of the Egyptian Constitution which stipulates that "[i]ndividual freedom is a natural right not subject to violation except in cases of *flagrante delicto*. No person may be arrested, inspected, detained or have his freedom restricted in any way or be prevented from free movement except by an order necessitated by investigations and the preservation of public security. This order shall be given by the competent judge or the Public Prosecution in accordance with the provisions of the law".

11. The source argues that Mr. Kassem is being detained in violation of Articles 9(2) and 14(1) of the International Covenant on Civil and Political Rights. In particular, the source opines that Mr. Kassem has not been given the right to a fair trial. He was not informed of any charges against him either at the moment of his arrest or thereafter.

Response from the Government

12. In its letter of 22 December 2010, the Working Group provided the Government with the summary of the case and requested any information which the Government would wish to provide regarding the allegations. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group within 90 days as provided for in paragraph 16 of the Working Group's Methods of Work. The Government did not request extension of this time limit either within 90 days.

13. According to paragraph 16 of its Methods of Work, a timely submitted request for extension of time may be granted by the Working Group. In the present case, however, the Working Group notes that the request for the extension of the reply was received on 4 May 2011, i.e. long after the expiry of the 90 days period. In such circumstances, and although appreciative of the Government's cooperation, the Working Group considers that it cannot afford a further delay in rendering its Opinion.

Discussion

14. Despite the absence of any information from the Government, the Working Group considers it is in the position to render its Opinion on the detentions of Mr. Kassem in conformity with paragraph 16 of its Methods of Work.

15. In its Opinion No. 21/2007, paragraph 19, as well as on earlier occasions (see 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.

16. 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.

17. In the present case, despite the judicial order of 13 July 2010 to release Mr. Kassem, he is still being kept in detention subject to an administrative order. 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.

18. Since his arrest on 6 April 2009, Mr. Kassem has not been formally charged or tried. In the Working Group's view, due to these facts of non-observance of the right to fair trial, as provided for in Article 14 of the International Covenant on Civil and Political Rights, the case also falls into category III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

19. In light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Kassem is arbitrary, being in contravention of Articles 9 and 14 of the International Covenant on Civil and Political Rights and falls within categories I and III of the categories applicable to the cases submitted for the consideration of the Working Group.

20. Consequent upon the Opinion rendered, the Working Group requests the

Government to take the necessary steps to remedy the situation of Mr. Kassem 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.

21. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Mahmoud Abdelsamad Kassem and accord him an enforceable right to compensation in accordance with article 9(5) of the International Covenant on Civil and Political Rights.

Adopted on 4 May 2011