UNITED
NATIONS

CCPR

International covenant on civil and political rights

Distr.
RESTRICTED*

CCPR/C/86/D/1085/2002
16 May 2006

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE
Eighty-sixth session
13-31 March 2006

**VIEWS**

**Communication No. 1085/2002**

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| *Submitted by*: | Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi (represented by counsel) |
| *Alleged victims*: | The authors |
| *State party*: | Algeria |
| *Date of communication*: | 5 January 1999 (initial submission - registered on 23 May 2002 following additional submissions from the authors) |
| *Document references*: | Special Rapporteur's rule 91 decision, transmitted to the State party on 23 May 2002 (not issued in document form) |
| *Date of adoption of Views*: | 15 March 2006 |
| *Subject matter*: | Pretrial detention, failure to comply with the right to trial within a reasonable time |

* Made public by decision of the Human Rights Committee.

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| *Procedural issues*: | Exhaustion of domestic remedies, allegations insufficiently substantiated for the purposes of admissibility, admissibility *ratione materiae* |
| *Substantive issues*: | Pretrial detention, failure to comply with the right to trial within a reasonable time |
| *Articles of the Covenant*: | 7, 9, paragraphs 1 and 3, 10, paragraph 1, 14, paragraphs 1, 2 and 3 (c), 16 and 17 |
| *Articles of the Optional Protocol*: | 2, 3 and 5, paragraph 2 (b) |

On 15 March 2006, the Human Rights Committee adopted the annexed draft as the Committee's Views, under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1085/2002. The text of the Views is appended to the present document.

**[ANNEX]**

**Annex**

**VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Eighty-sixth session**

**concerning**

**Communication No. 1085/2002***

| | |
|---|---|
| *Submitted by*: | Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi (represented by counsel) |
| *Alleged victims*: | The authors |
| *State party*: | Algeria |
| *Date of communication*: | 5 January 1999 (initial submission - registered on 23 May 2002 following additional submissions from the authors) |

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting* on 15 March 2006,

*Having concluded* its consideration of communication No. 1085/2002, submitted on behalf of the authors by Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amara Yousfi under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the authors of the communication and the State party,

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Nisuke Ando, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. Rafael Rivas Posada, Mr. Ivan Shearer, Mr. Hipólito Solari-Yrigoyen and Mr. Roman Wieruszewski.

*Adopts* the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1. The authors of the communication, dated 5 January 1999, are Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi, Algerian citizens residing in Algeria. They claim to be victims of violations by Algeria of article 7; article 9, paragraphs 1 and 3; article 10, paragraph 1; article 14, paragraphs 1, 2 and 3 (c); and articles 16 and 17 of the International Covenant on Civil and Political Rights. The authors are represented by counsel. The Optional Protocol entered into force for Algeria on 12 December 1989.

**The facts as submitted by the authors**

2.1 On 9 March 1996, Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi, respectively chairman of the board of directors, general manager, financial director and director of supplies of the State-owned company COSIDER, were charged with misappropriation of public funds, forgery and use of forged documents and placed in pretrial detention. On 30 March 1996, the investigating judge appointed an expert to review the management of COSIDER within one month. By order of the investigating judge on 12 May 1996, the bank accounts of all the authors were blocked. By a further order of the investigating judge on 8 June 1996, Abdelhamid Taright's property assets were seized.

2.2 Several requests for provisional release were submitted. The application by Abdelhamid Taright on 29 June 1996 for provisional release was refused by the investigating judge in an order of 30 June 1996, confirmed by a decision of the Indictments Chamber of 16 July 1996. A second application dated 19 November 1996 was refused in a decision of the Indictments Chamber of 17 November 1996. A third application dated 28 March 1998 went unanswered. A fourth application was again refused in a decision of the Indictments Chamber of 2 August 1998. A further application for the provisional release of all the authors was rejected in a decision of the Indictments Chamber of 30 December 1998. The authors add that several more applications for release, dates unspecified, were submitted by Ahmed Touadi, Mohamed Remli and Amar Yousfi. The authors were released provisionally under court supervision in a decision of the Indictments Chamber of 7 September 1999. In the case of Abdelhamid Taright, court supervision was lifted in a judgement of 27 December 1999.

2.3 With regard to the expert opinions, on 17 November 1996 the Indictments Chamber dismissed as inaccurate and confused the report of the first expert delivered on 5 August 1996, and appointed a panel of three experts. In a decision of 10 February 1998 the Indictments Chamber decided to relieve the experts of their mission on the grounds that their fees were excessive and to entrust the mission to the General Inspectorate of Finance (IGF). In a decision of 2 August 1998 it ordered an additional expert opinion from the IGF. On 6 January 1999, the authors filed a complaint alleging forgery on the part of the experts, which was dismissed on 24 March 1999.

2.4 As far as the confiscation of the authors' property was concerned, the application of 16 September 1996 to lift the seizure concerning Abdelhamid Taright was refused by the investigating judge in an order of 28 September 1996. The appeal against the order was rejected by the Indictments Chamber in a decision of 17 November 1996.

2.5 In a decision of 30 December 1998 the Indictments Chamber referred the accused to the criminal courts (for embezzlement of public property and placing of contracts contrary to the company's interests). On 31 January 1999 the authors filed an appeal on points of law. On 8 June 1999 the Supreme Court quashed the judgement in question for failure to comply with the rights of the defence and referred the case back to the Indictments Chamber. On 27 February 2001 the Indictments Chamber once again handed down a referral to the criminal courts. The authors then appealed once more on points of law on 7 April 2001. On 29 April 2002 the Supreme Court this time confirmed the referral order. The authors appeared before the Algiers criminal court in October 2002 and were acquitted on 16 July 2003.

**The complaint**

3.1 The authors consider that in their case justice was exploited for the purposes of a so-called morality and anti-corruption political campaign. They assert that their complaints concern their arbitrary detention, the failure to comply with their right to a trial within a reasonable time and the forfeiture of all their civil rights.

3.2 With regard to the first complaint, the authors explain that their pretrial detention from 9 March 1996 to 7 September 1999, lasting 3 years and 6 months, is a flagrant violation of article 125 of the Algerian Code of Criminal Procedure, according to which such detention must not exceed 16 months. Several applications for provisional release had been rejected, although magistrates were alone responsible for the excessive delays in the investigation proceedings. The authors submit that this constitutes a violation of article 9, paragraph 1, of the Covenant.

3.3 Concerning the second complaint, the authors were not tried and acquitted until 16 July 2003, although they had been charged on 9 March 1996, without any responsibility being attributable to them for the accumulated delays in proceedings, since it was the Indictments Chamber which had changed experts several times. In the authors' opinion, the various expert reports reveal neither embezzlement nor misappropriation but merely report losses due to alleged mismanagement. Lastly, they consider that the presumption of innocence was breached and that, more generally, the conditions for the right to a fair trial were impaired. The authors allege violations of articles 9, paragraph 3, and 14, paragraphs 1, 2 and 3 (c).

3.4 With regard to the third complaint, the authors consider that the confiscation of Abdelhamid Taright's property assets and the blocking of all their bank accounts contravene article 84 of the Algerian Code of Criminal Procedure and the relevant case law, which permits the seizure only of property directly related to the offence, excluding personal property. They add that the applications from counsel to have the seizure lifted were unsuccessful. The authors therefore find that they were deprived of recognition as persons before the law (art. 16 of the Covenant) and subjected to forfeiture of their civil rights, which in their view constitutes cruel and inhuman treatment (art. 7 of the Covenant) and impairment of the inherent dignity of the human person (art. 10, para. 1) and of their honour and reputation (art. 17).

3.5 With regard to their appeals to domestic courts, where the first complaint was concerned, after recalling their appeals to the investigating judge and the Indictments Chamber, the authors point out that under article 495 (a) of the Algerian Code of Criminal Procedure, no appeal on points of law may be brought against judgements of the Indictments Chamber concerning pretrial detention. With regard to the second complaint, the authors submit that the excessive delay in

respect of a judgement was to be blamed on the judicial authorities in Algiers. As for the third complaint, apart from the appeals mentioned above, the authors state that they did not appeal on a point of law against the judgement of the Indictments Chamber of 17 November 1996 partly because, since the seizure was a provisional measure on which the trial court was required to take a decision, an appeal had no chance of success, and partly because the appeal would have had the effect of suspending the entire proceedings for approximately a year pending a ruling by the Supreme Court.

**The State party's submissions on admissibility and merits**

4.1 In a note verbale of 11 July 2002 the State party begins by questioning the admissibility of the communication. It takes the view that the authors have not exhausted the domestic remedies available under Algerian law and themselves acknowledge that the case was still under investigation and still pending before the Indictments Chamber when they submitted it to the Committee on 5 January 1999. The State party adds that the authors continued to pursue domestic remedies which had not yet been exhausted after submitting the case to the Committee. They in fact appealed on points of law against the decision of the Indictments Chamber of 30 December 1998, which had referred the case back to the criminal courts.

4.2 The State party retraces the timing of events and points out that the investigating judge, deeming the facts to be sufficiently serious and after informing the authors of the charges brought against them and taking their statements, ordered that they should be placed in pretrial detention, in accordance with the Algerian Code of Criminal Procedure. It notes that the complexity of the case required a series of judicial expert opinions and recalls that when the criminal court was ready to try the case, the authors chose to appeal on two occasions on points of law, which prolonged the proceedings.

4.3 The State party considers not only that domestic remedies have not been exhausted, as the case was still before the courts,[1] but also that the authors' appeals produced results insofar as they led to the annulment of the first referral judgement, a modification of the charges and a lower estimate of the damage. The appeals also enabled the authors to be released before their trial although the Indictments Chamber was allowed by law to keep them in custody until the criminal court hearing. Consequently, since the authors have not exhausted all domestic remedies, their communication is inadmissible.

4.4 With regard to the validity of the communication, the State party insists that the interim protective or investigative measures were ordered by an investigating judge apprised of the case in accordance with the law, as part of a judicial investigation. It considers that the authors benefited from all the guarantees set forth in the Covenant in respect of their arrest, detention and indictment.

4.5 With reference to the pretrial detention, the State party recalls that it was ordered on 9 March 1996 as part of a criminal investigation, which allows the investigating judge to keep the accused in custody for a period of not more than 16 months under article 125 of the Code of Criminal Procedure. It notes that the investigating judge closed the file by a transmission order to the Principal State Prosecutor within the deadline established in the Code of Criminal Procedure. It explains that the custody of the authors was extended beyond the 16-month period under article 166 of the Code of Criminal Procedure, which stipulates that:

> If the investigating judge considers that the facts constitute an offence classed as a crime by law, he shall order the file of the proceedings and the evidence to be transmitted without delay by the public prosecutor to the Principal State Prosecutor at the Court for examination as set out in the chapter concerning the Indictments Chamber. The arrest warrant or detention order shall be enforceable until the Indictments Chamber hands down its decision.

The State party notes that the Indictments Chamber had deemed the investigation incomplete, had ordered additional information to be provided and had kept the authors in custody pending its decision on the merits, handed down on 30 December 1998. After they were referred to the criminal court, the authors remained in custody until they appeared before the trial court, in accordance with article 198 of the Code of Criminal Procedure, which provides that:

> The Indictments Chamber shall furthermore issue an arrest warrant for any accused prosecuted for a crime specified by the Chamber. Such warrant is immediately enforceable. […] It shall continue to be enforceable in respect of the accused held in custody until the criminal court hands down its judgement.

4.6 The State party emphasizes that the authors would have been tried early in 1999 if they had not filed so many appeals on points of law. It notes that the Indictments Chamber nevertheless used the prerogatives allowed by law to order the release of the authors before they appeared before the criminal court and gave one of them permission to leave the national territory for health reasons. The State party therefore considers unfounded the allegations of a violation of articles 9 and 14.

4.7 In any case, and should the trial court decide to acquit the authors,[2] the State party points out that they will be entitled to appeal to the Compensation Commission in the Supreme Court for compensation for the injury sustained as a result of their pretrial detention, in accordance with article 137 bis et seq. of the Code of Criminal Procedure.

4.8 With regard to the alleged forfeiture of civil rights and the violation of articles 7, 10 and 16 of the Covenant, resulting from the decision of the investigating judge to seize land belonging to Abdelhamid Taright and to block the bank accounts of all the authors, the State party specifies that, while this was an interim measure of protection, it did not affect all the authors' property; it was taken by the investigating judge to safeguard the rights of the parties and the Treasury, and in any case it is the responsibility of the trial court to take a decision as to its legality and the appropriate follow-up.

**Authors comments and State party's observations**

5. In a letter of 17 March 2003, counsel stated that he did not wish to comment on the State party's submissions.

6. In a note verbale of 12 November 2003, the State party notified the Committee that it had no further submissions to make.

**Issues and proceedings before the Committee**

**Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

7.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 Concerning the requirement that domestic remedies should be exhausted, the Committee has taken note of the State party's arguments that the authors had not exhausted domestic remedies when the case was submitted to the Committee and that they then continued to make use of domestic remedies that had not yet been exhausted. The Committee recalls that its position is that the issue of exhaustion of domestic remedies is to be assessed at the time of its consideration of the case, save in exceptional circumstances,[3] which do not arise in this communication.

7.4 As to the complaint of a violation of article 9, paragraphs 1 and 3, the Committee has taken note of the authors' arguments that the decisions of the Indictments Chamber concerning pretrial detention cannot be appealed against on points of law, according to article 495 (a) of the Code of Criminal Procedure. Since the State party has not contested this information and in view of the fact that the authors were released on 7 September 1999 by order of the Indictments Chamber, the Committee considers that domestic remedies have been exhausted.

7.5 With regard to the complaint of a violation of article 14, paragraph 3 (c), the Committee notes that the problem of the failure to respect the right to a trial within a reasonable time was raised by the authors in the domestic courts on numerous occasions. It further notes that on 26 January 1998 the authors lodged an application protesting against the delay incurred by the three experts appointed on 17 November 1996, i.e. 14 months earlier. The Committee accordingly finds that with regard to a possible violation of article 14, paragraph 3 (c), the communication is admissible.

7.6 Concerning the authors' arguments that the confiscation of their property is a violation of articles 7, 10, paragraph 1, 16 and 17 of the Covenant, the Committee considers that those allegations are insufficiently substantiated for the purposes of admissibility.

7.7 As to the complaints of a violation of article 14, paragraphs 1 and 2, the Committee considers that the authors' allegations are insufficiently substantiated for the purposes of admissibility.

7.8 The Committee finds that the authors' complaints of violations of articles 9, paragraphs 1 and 3, and 14, paragraph 3 (c), have been sufficiently substantiated and are admissible. Accordingly, it proceeds with the examination of the merits.

**Consideration of the merits**

8.1 The Human Rights Committee has considered the present communication in the light of all the written information made available to it by the parties, in accordance with article 5, paragraph 1, of the Optional Protocol.

8.2 As regards the complaints of violations of article 9, paragraphs 1 and 3, the Committee notes that the authors' allegations concern the duration and the arbitrary nature of their detention. The Committee observes that the authors were held in pretrial detention for three and a half years from 9 March 1996 to 7 September 1999. The Committee has taken note of the information provided by the State party concerning the charges brought against the authors, the legal bases for holding them and the procedural requirements stemming from the Code of Criminal Procedure. It has furthermore noted the State party's assertion that the complexity of the case had required a series of expert reports, leading up to the decision of the Indictments Chamber of 30 December 1998 to refer the accused to the trial court, and that this procedure, and consequently the detention of the authors, had also been prolonged by the latter's appeal on points of law on 31 January 1999.

8.3 The Committee reaffirms its prior jurisprudence that pretrial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party. The drafting history of article 9, paragraph 1, confirms that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and illegality. Further, continued pretrial detention following legal arrest must not only be lawful, but also reasonable in all respects. The Committee is of the view, however, that the State party has not sufficiently justified its arguments, either concerning the reasons for placing the authors in pretrial detention or concerning the complexity of the case such that it might justify keeping them in custody.

8.4 The Committee further considers that the authors' responsibility for delays in the procedure due to their appeals has not been shown. It is of the view that the succession of expert reports was solely the result of a decision by the authorities and in the case of some of them on grounds that cannot be regarded as reasonable. It notes the decision of the Indictments Chamber in its ruling of 10 February 1998 to relieve the panel of three experts of their mission because of their excessive fees, although these experts had been appointed by the Chamber itself in a decision of 17 November 1996, following its rejection of the report of the first expert appointed on 30 March 1996. The Committee also notes that the first appeal by the authors on points of law led the Supreme Court to refer the case back to the Indictments Chamber because of violations of the rights of the defence relating to the expert reports. In the absence of further information or sufficiently convincing justification as to the need and reasonableness of keeping the authors in custody for three years and six months, the Committee finds that there was a violation of article 9, paragraphs 1 and 3.

8.5 Concerning the complaint of a violation of article 14, paragraph 3 (c), the Committee notes that although the authors were charged with a number of criminal offences on 9 March 1996, the investigation and consideration of the charges did not lead to a judgement of first instance until

16 July 2003, in other words seven years and three months after the charges had been brought. Under article 14, paragraph 3 (c), everyone has the right "to be tried without undue delay". In the Committee's opinion, the arguments put forward by the State party cannot justify excessive delays in judicial procedure. The Committee also considers that the State party has not demonstrated that the complexity of the case and the appeal by the authors on points of law were such as to explain that delay. It therefore finds a violation of article 14, paragraph 3 (c).

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it reveal violations of article 9, paragraphs 1 and 3, and article 14, paragraph 3 (c), of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with appropriate reparation. The State party is also under an obligation to take measures to prevent similar violations in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, that State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in the event that a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Notes

[1] The State party's submissions date from November 2002.

[2] The State party's submissions date from November 2002.

[3] See communication No. 925/2000, *Kuok Koi v. Portugal*, decision of inadmissibility adopted on 22 October 2003, para. 6.4.

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