

AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: MDE 19/007/2009
15 December 2009

Libya: Guarantee rights of Swiss nationals caught-up in diplomatic dispute

Amnesty International is greatly concerned that Max Goeldi and Rachid Hamdani, two Swiss nationals now reportedly accused of commercial and tax offences, may not receive fair trials. Both men have been prevented from leaving Libya since July 2008. On 30 November 2009, Libya's Partial Irregular Migration Court sentenced them to 16 months' imprisonment and fined them for allegedly breaching immigration regulations by working in Libya without possessing the correct visas.

Amnesty International opposes imprisonment as a sanction for alleged immigration offences and is urging Libyan authorities to set aside these sentences.

The two men, who are effectively confined to the Swiss Embassy in Tripoli, are now expected to stand trial later this week on tax and commercial charges. According to the information available to Amnesty International, the Libyan authorities have not yet communicated the charges to the two men or their lawyers in writing, suggesting that they may not be allowed sufficient time to prepare their defence.

This has added to concern that the two men are being targeted by the Libyan authorities by virtue of their nationality and as part of a diplomatic dispute between the Libyan and Swiss governments. Relations between the two countries soured significantly after the Swiss police arrested Hannibal al-Gaddafi, son of Libyan Leader of the Revolution Mu'ammad al-Gaddafi, and his wife on 15 July 2008 in Geneva. They were released on bail on 17 July 2008, charges against them were later dropped and the Swiss authorities have since apologised for their arrest.

However, Max Goeldi and Rachid Hamdani were arrested shortly after the release of Hannibal and his wife in apparent reprisal for the offence caused to the Libyan authorities. The two men were initially detained without charge for 10 days and their passports were seized. They were then freed but not permitted to leave Libya, and then re-arrested on 18 September 2009 and detained incommunicado until 9 November, when they were released and handed into the custody of the Swiss Embassy in Tripoli. They were convicted of immigration breaches by the Partial Irregular Migration Court on 30 November 2009 after proceedings which did not meet international standards of fair trial. The appeal hearing is scheduled to take place on 22 December.

Amnesty International is urging the Libyan authorities to overturn the prison sentences imposed on them at that hearing and to ensure that their rights to fair trial are guaranteed in any future proceedings such as those expected to take place later this week. If there is no substance to the new charges being brought against them, those charges should be dropped immediately and the two men should be allowed to leave Libya and return to Switzerland without further delay.

Background

Amnesty International is concerned that the right to fair trial of Max Goeldi and Rachid Hamdani has not been upheld in accordance with Article 14 of the International Covenant on

Civil and Political Rights (ICCPR), to which Libya is a state party and which guarantees the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. For instance, trial proceedings against Max Goeldi and Rachid Hamdani were only initiated on 9 November 2009, while the two were arrested in relation to alleged immigration offences on 19 July 2008. This is in contravention to Article 14.3 (c) of the ICCPR which stipulates for the right to “be tried without undue delay”. In addition, their right to defence was not respected in accordance to Article 14.3 (b), which guarantees the right “to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”. Max Goeldi and Rachid Hamdani were brought into a hearing of the Partial Irregular Migration Court on 9 November 2009 without the presence of a lawyer, after having spent over 50 days in incommunicado detention. Their request to call their lawyer was rejected. It is also reported that the interpreter translating for Max Goeldi did not accurately relay the defendant’s answers to the court. Furthermore, their lawyer was not permitted to present his defence on 30 November, when the verdict was announced, and was only granted access to their files a few days before the court reached its decision.

Amnesty International fears that the charges facing the two men are politically-motivated and are a result of the dispute over the arrest of Hannibal al-Gaddafi and his wife in Switzerland. Such concerns are shared by Navi Pillay, the UN High Commissioner on Human Rights, who said on 8 December that the two Swiss appear to be victims of a state dispute and qualified their treatment as “unfair”.

When Max Goeldi and Rachid Hamdani were detained from 18 September 2009 to 9 November 2009, the conditions in which they were held violated legal safeguards to protect detainees contained in the Libyan Code of Criminal Procedure: for example, Libyan officials are reported to have arrested the two men without producing an arrest warrant, in breach of Article 30 of the Code, and they were not referred to the Department of Public Prosecution within 48 hours of their arrest, as required in all cases except those involving offences against the state or certain drug offences. Their rights not to be questioned without legal counsel, set out in Article 106 of the Code of Criminal Procedure, were also breached. Furthermore, the two men were not permitted access to their lawyers throughout their period of incommunicado detention, nor to Swiss consular representatives and members of a Swiss government delegation headed by Secretary of State Michael Ambühl, who visited Libya between 17 and 19 October 2009.

Amnesty International is concerned also that the two men’s right to leave any country, as enshrined in Article 12 of the ICCPR, has not been respected by the Libyan authorities. Other Swiss nationals who reportedly faced difficulties in leaving Libya following the arrest of Hannibal al-Gaddafi and his wife in Switzerland are reported to have been allowed to leave the country on 31 October 2008.

Since the diplomatic dispute arose, the Swiss authorities have sought to normalize relations with Libya and to secure the right of the two Swiss nationals, Max Goeldi and Rachid Hamdani, to leave the country. These efforts cumulated in the signing of an agreement between Swiss President Hans-Rudolf Mertz and the Secretary of Libya’s General People’s Committee, Dr Al-Baghdadi Ali Al-Mahmoudi, on 20 August 2009. It was agreed that the Swiss authorities would apologize for the arrests of Hannibal al-Gaddafi and his wife, a three member arbitration panel would be established to investigate the incident, and normal diplomatic ties between the two countries would be restored, including the provision of entry and exit visas to Libyan and Swiss nationals within 60 days.

For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566 or email: press@amnesty.org
International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW,
UK www.amnesty.org