

DECISION No. 51/1992 (TUNISIA)

Communication addressed to the Government of Tunisia on
8 April 1992.

Concerning: Hamadi Jebali and Mohammed al-Nouri on the one hand
and Tunisia on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases transmitted to it, within ninety (90) days from the transmittal of the letter by the Working Group.
3. (Same as in Decision No. 1/1992.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Tunisian Government. The Working Group transmitted the reply of the Tunisian Government to the source of the information, which to date has not responded. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, taking into account the allegations made and the Government's reply.
5. It is alleged in the communication from the source that Hamadi Jebali, a journalist and director/editor of Al-Fajr, the weekly magazine of an-Nadha (Islamic Renaissance Party), an unauthorized party, and Mohammed al-Nouri, a lawyer, were detained on 17 January 1991, just after being sentenced by the military court in Tunis to prison terms of one year and six months respectively, for defamation of a judicial institution. In an article published in Al-Fajr on 27 October 1990, Mohammed al-Nouri stated that military courts are unconstitutional in a democratic society and called for their abolition. He also cast doubt on the independence and qualifications of the judges presiding over those courts. According to the source, Hamadi Jebali and Mohammed al-Nouri were not permitted to appeal against the military court's decision. Both are alleged to be still in prison, despite the fact that they have completed their sentences.
6. In its reply, the Tunisian Government confirms the fact that the reason for the detention of Hamadi Jebali (which it says began on 31 January 1991 or 2 February 1991, and which the source says began on 17 January 1991) and of Mohammed al-Nouri (which it says began on 6 March 1991, and which the source says began on 17 January 1991) was the above-mentioned article reported by the source, published under the byline of Mohammed al-Nouri in the magazine Al-Fajr, of which Hamadi Jebali is director and editor. The Tunisian Government

also admits that Hamadi Jebali is still being detained although he has completed his one-year prison term. But it explains the situation by the fact that, while Hamadi Jebali was in detention, the examining magistrate for the military court in Tunis investigated a plot against internal State security attributed to the Ennahda movement, and established that the person in question, who allegedly remained a member of the Executive Bureau of the above-mentioned secret movement, was also implicated. Thus another detention warrant was issued against him. The case is following its course. The Tunisian Government also acknowledges that Mohammed al-Nouri was kept in detention on the expiry of his sentence for the same reasons, but says he was released on bail on 18 March 1992 at the decision of the examining magistrate for the military court. In addition, in a commentary sent together with the Tunisian Government's reply, entitled "Guarantees for persons tried by military courts in Tunisia", it is mentioned that the military court is competent to judge offences by military personnel covered in article 8 of the Code of Military Justice, on the one hand, and cases where civilians are implicated in the same trial as military personnel, on the other, because of the principle of unity of jurisdiction; in these circumstances it might be wondered whether the military court is competent to try two civilians, Hamadi Jebali and Mohammed al-Nouri, for a violation of the press laws. Furthermore, from the excerpts of the Code of Military Justice attached to the Government's reply, it appears that there is no appeal against judgements handed down by the military courts. Only application for judicial review is possible, even if it has the effect of suspending the execution of the conviction.

7. Thus, the foregoing clearly indicates that Hamadi Jebali and Mohammed al-Nouri were convicted by the military court and detained for freely and peacefully exercising, through the publication in the magazine Al-Fajr of the article in question, their right to freedom of opinion and expression, as guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights.

8. In the light of the above, the Working Group decides:

(a) The detention of Hamadi Jebali is declared to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) The Working Group notes with satisfaction the release on bail of Mohammed al-Nouri. Nevertheless, in accordance with its methods of work, the Group decides that Mr. al-Nouri's detention, following a six-month prison sentence, was also arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon its decision declaring the detention of Hamadi Jebali to be arbitrary, the Working Group requests the Tunisian Government to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.