

DECISION No. 17/1993 (ISRAEL)

Communication addressed to the Government of Israel on 10 December 1992.

Concerning: Sami Abu Samhadanah, on the one hand, and the State of Israel, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it 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 concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Israel. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. Sami Abu Samhadanah was first arrested on 27 June 1981 at the age of 18. Upon his release after conviction, he has subsequently suffered detention intermittently by a string of administrative detention orders each effective for six months. It is alleged that on 10 June 1990, soon after he got married in April of the said year, he was again arrested pursuant to the issuance of a 12-month administrative detention order dated 28 May 1990. Since then, he is alleged to be continuously in detention. A fresh order issued while in detention extended the period of detention till May 1992. Before the expiration of the period of detention, in January 1992 the then Government of Israel ordered the expulsion of Sami Abu Samhadanah, along with 11 others. While petitions challenging the expulsions were pending before the High Court of Justice, the new Israeli Government, while cancelling the said orders, issued fresh administrative detention orders. The result being that Sami Abu Samhadanah continues to be in detention.

6. Following the cancellation of his expulsion order but before the issuance of a fresh order of detention, Sami Abu Samhadanah gave his lawyer on 27 August 1992 an affidavit the following extracts of which are relevant:

"I am convinced that had I been released, I would have been able, as a free and independent man, to contribute to the well-being of others. By 'others' I mean my family and in particular my mother and my old

father (and) my wife with whom I lived for just two months and my little daughter Beirut who has met me only behind the bars. By others I also mean my community and my people.

"I have never practised violence nor advocated it as means to achieve political, social or national aims, let alone personal. It was the deportation order that had thrown me off my mental balance to such a degree that in my testimony before the appeal committee I said: 'if I am deported, I will return to my homeland armed'."

7. The apparent reason for Sami Abu Samhadanah's continued administrative detention is the allegation that he was an activist in the Unified National Leadership (UNL) of the Intifada on behalf of "al-Fatah", a faction of the Palestine Liberation Organisation (PLO). While dealing with the challenge to the detention order of 28 May 1990, the judge, after perusing the classified information provided by the General Security Service (GSS), none of which was shown to Sami Abu Samhadanah or his lawyer, found that his activities intended to harm the security of the region and its inhabitants. The detention without charge, trial or interrogation was held to be justified. The withholding of information from Sami Abu Samhadanah or his lawyer was for protection of the GSS sources of information.

8. It is significant to note that when the detention of Sami Abu Samhadanah effected under the detention order of 28 May 1990 was extended, before its expiration, by the issuance of a fresh order of detention, it was allegedly based on the ground that he had continued his activities in his place of detention. It is also reported that Sami Abu Samhadanah has not been interrogated since 1987. Also, no attempt has been made to bring him to trial since his administrative detention began in 1985.

9. It is no doubt true that the al-Fatah movement has been advocating violence against Israel. Even accepting the fact that Sami Abu Samhadanah is a member of an organization associated or connected with the PLO, no evidence has been brought on record to establish even prima facie his direct or indirect complicity in specific acts of violence. There is nothing to suggest that he has ever advocated violence. Indeed the affidavit of 27 August 1992 is an affirmation by him of his never having practised violence or advocated it. He considers resort to violence as an act of mental imbalance. Seven years of almost continuous administrative detention in these circumstances, must be considered to be arbitrary.

10. None can doubt that Sami Abu Samhadanah, in continuing his activities, seeks to achieve certain political, social or national aims. The authorities having issued a fresh order of detention effective till 29 May 1992, while he was already under detention by virtue of an order dated 28 May 1990, on the ground that he had continued his activities in his place of detention, indicates, in the absence of any material to the contrary, that the period of detention was extended, not for his active or indirect involvement in any act of violence but for his opinions and non-violent activities.

11. The issuance of a string of detention orders, spreading over a period of almost seven years, leads to the presumption that the act of detention is punitive rather than preventive. The fact that Mr. Samhadanah has not been

interrogated since 1987 and that no attempt has been made, since 1985, to bring him to trial, reinforces the conclusion as to the punitive nature of the detention. Besides, by the issuance of a string of detention orders Mr. Samhadanah has suffered administrative detention for an obviously abusive period of time.

12. In the light of the above the Working Group decides:

The detention of Sami Abu Samhadanah is declared to be arbitrary being in contravention of articles 9 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

13. Consequent upon the decision of the Working Group declaring the detention of Sami Abu Samhadanah to be arbitrary, the Working Group requests the Government of Israel 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.

Adopted on 30 April 1993