

DECISION No. 41/1993 (MOROCCO)

Communication addressed to the Government of the Kingdom of Morocco on 22 February 1993.

Concerning: Abdesalam Yassin, on the one hand, and the Kingdom of Morocco, 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 appreciation the information forwarded by the Government concerned in respect of the case in question, within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as paragraph 3 of Decision No. 43/1992).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Morocco. The Working Group transmitted the Government's reply to the party making the allegations, which has provided the Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case in question, taking into consideration the allegations made and the Government's reply, as well as the comments by the source.
5. It emerges from the communication from the source that Abdesalam Yassin, the founder and spiritual guide of the "al-Adl 'al-Ihsan" (Justice and Charity) Islamic association has been under house arrest since January 1990, without being charged. According to the source, many members of the association were arrested by the police between October 1989 and March 1990; some were charged with establishing an illegal organization and were convicted; others were released after questioning. On 13 January 1990, five members of the association's board of directors were arrested in front of Abdesalam Yassin's home in the town of Sale and were tried in May 1990 and sentenced to two years' imprisonment. Abdesalam Yassin was placed under house arrest, apparently as a result of an administrative decision and, whereas the five members of the board of directors have served their sentence and are now free, Yassin is still under house arrest. His wife is the only person allowed to stay with him; his daughter is not allowed to visit him. In July 1992 three lawyers laid a complaint against the Minister of the Interior, the Director of National Security and the Governor of Sale, challenging the legality of Abdesalam Yassin's detention, but according to the source the courts have not up to now taken any steps in connection with the case. The source explains that the "al-Adl 'al-Ihsan" association has been authorized as an Islamic charity organization but not as a political party. The source adds that Abdesalam Yassin said in 1989 that the association was opposed to violence of any kind and that its aim was to obtain power by the consent of

the people. The source considers that Abdesalam Yassin was placed under house arrest for exercising the right to freedom of conscience and religion, without resorting to violence.

6. In its reply, the Government of Morocco points out that the "Al-Adl 'al-Ihsan" Association of which Abdesalam Yassin is the founder and guide, tried to engage in activities centred solely on Islam, in contravention of its statutes, as deposited with the courts and the local authorities and under the terms of which the Association should engage solely in public activities of a general character. Such a practice is, according to the Government, a threat to public order; since Islam is, under the Moroccan Constitution, the religion of the State, it does not lie with any group to turn Islam into its ideology.

7. As to the violation of the freedom of opinion and expression reported by the source, which maintains that, in his capacity as a member of an association, Abdesalam Yassin was doing no more than exercising that right peacefully, the Working Group considers that it is insufficiently informed of the nature of the association's activities and its objectives to decide on that point.

8. On the other hand, it considers that it is in a position to evaluate the legal conditions of Abdesalam Yassin's detention. It emphasizes that, paradoxically, while the conditions under which the five other members of the association were arrested, tried and then released after serving sentence seem, inasmuch as the source does not raise this question, to be in conformity with the provisions concerning the right to a fair hearing, but this does not apply to the house arrest of Abdesalam Yassin:

(a) First, with reference to its Deliberation 01, the Working Group takes the view that the conditions of this house arrest can be likened to detention in that it is carried out "in closed premises which the person is not allowed to leave" (E/CN.4/1993/24, para. 20);

(b) Second, this deprivation of freedom, which is purely an administrative matter ordered by the Executive, is a measure that has been taken without regard for all or part of the guarantees of the right of the person concerned to have his case heard in accordance with the terms of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. This measure involves non-observance of all or part of the international provisions relating to the right to a fair trial such that it confers on the deprivation of freedom an arbitrary character.

9. In the light of the above, the Working Group decides the following:

Abdesalam Yassin's house arrest can be likened to detention and, as such, is declared to be arbitrary, being in contravention of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights,

to which the Kingdom of Morocco is a party, and falls within category III of the principles applicable in the consideration of the cases submitted to the Group.

10. Consequent upon its decision declaring the detention of Abdesalam Yassin to be arbitrary, the Working Group requests the Government of the Kingdom of Morocco to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 September 1993