

Decision No. 3/1994 (Morocco)

Communication addressed to the Government of Morocco on
3 August 1993.

Concerning: Ahmed Belaichi, 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 a case of alleged 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 within ninety (90) days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of decision No. 43/1993.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Morocco. The Working Group transmitted the reply of the Government to the source and received their comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. The communication, a summary of which was forwarded to the Government, alleges that Ahmed Belaichi, a teacher, was arrested on 20 November 1992 in his house in al-Hoceima by police officers. It states that the police carried out a search at the time of his arrest and confiscated manuscripts, books and poems. Mr. Belaichi was brought to Casablanca prison. He was accused of having "disseminated reports undermining the morale of the army" (arts. 263 and 265 of the Criminal Code) and of having breached the Press Code (arts. 42 and 43 of the Code). He was tried by the Casablanca Court of First Instance, which convicted him on 23 December 1992 and sentenced him to a three-year term of imprisonment and a fine of 1,000 dirhams.
6. According to the source, Mr. Belaichi's arrest followed shortly after he had commented, on 11 November 1992, on the Moroccan television channel "2M International", on the Moroccan policy with regard to Moroccans and other Africans crossing the strait between Morocco and Spain in order to go to Europe. The source adds that the arrest and imprisonment of Mr. Belaichi for having commented on the policy of the Government and on possible violations of human rights by the Government constitute a violation of his right to freedom of expression that is guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights to which the Kingdom of Morocco is a party.
7. The Government of Morocco, in its recapitulation of the various phases of the case, which it provided to the Working Group, expresses the view that the judicial proceedings against and conviction of Ahmed Belaichi were well

founded and consistent with article 19, paragraph 3, of the International Covenant on Civil and Political Rights. The Government also considers that the trial was properly conducted in a manner consistent with the international norms guaranteeing a fair trial.

8. In its comments on the reply of the Government, the source considers that the statements for which Ahmed Belaichi was convicted constitute no more than the free exercise of the right to freedom of expression guaranteed by article 19 of the above-mentioned Covenant. The source also considers that the procedure followed was vitiated by serious irregularities, such as a *a posteriori* modification of the charge so as to permit preventive detention from the start of the proceedings, something which, according to the source, is not possible if the charge is stated at the outset. A further irregularity was the rejection of the request for postponement made by the defence counsel in the appeal proceedings. The source therefore considers that Ahmed Belaichi's right of defence was violated and that he was unable to present his arguments to the higher court.

9. Article 19 of the International Covenant on Civil and Political Rights guarantees the right to freedom of opinion and of expression, including freedom to impart ideas of all kinds, in any form or through any media. The question is whether the restrictions of this freedom introduced by the national law are consistent with the terms of paragraph 3 (b) of the said article. The Government of Morocco confines itself to stating this to be the case without explaining the grounds for the restriction of freedom of expression. Failing to see how, in the present case, this restriction might be based on respect of the rights or reputations of others (subpara. (a) of para. 3 of art. 19), or on the protection of public order or of public health or morals (subpara. (b) of the same para.), the Working Group considered whether, in their practical application, articles 262 and 265 of the Moroccan Criminal Code and articles 35, 42 and 72 of the Press Code, as legislation restricting freedom of expression, might or might not be consistent with the terms of article 19 of the above-mentioned Covenant providing for the protection of national security.

10. The Working Group wondered whether, in a situation where there was no denying the presence of the Moroccan army in the north of Morocco and its operations being in connection with migration to Spain, the statements that the army "is committing abuses when it moves in an unreasonable fashion, destroying everything in its path", that it "is carrying out security operations" and that "it is moving boats by helicopter and then destroying them", can be regarded as reports or comment expressing a critical view of the situation in the north of Morocco. The Working Group considers that the statements attributed to Ahmed Belaichi constitute only critical comment. Furthermore, the Government of Morocco, in its reply, referred to these statements as "falsified reports" without further clarification.

11. The Working Group considers that national law, whatever its nature, cannot impose restrictions on the right to freedom of expression of such scope as to make unlawful the three statements attributed to Ahmed Belaichi. The Working Group considers that these statements cannot be covered by any restriction provided for in article 19, paragraph 3, of the International Covenant on Civil and Political Rights.

12. The facts as described above indicate that the detention of Ahmed Belaichi since 20 November 1992 and his trial, in which he was sentenced to three years' imprisonment, are solely the consequence of the free exercise by Ahmed Belaichi of his right to freedom of opinion and of expression that is guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

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

The detention of Ahmed Belaichi 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, to which the Kingdom of Morocco is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

15. Consequent upon the decision of the Working Group declaring the detention of Ahmed Belaichi to be arbitrary, the Working Group requests the Government 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 17 May 1994.