

Decision No. 12/1994 (Tunisia)

Communication addressed to the Government of Tunisia on
22 April 1994.

Concerning: Ahmed Khalaoui, on the one hand, and the Republic of
Tunisia, 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 para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Tunisia. The Working Group forwarded the Tunisian Government's reply to the source of the information, which sent its comments on 4 August 1994. 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, the Government's reply and the comments made by the source.

5. According to the source, Ahmed Khalaoui, aged 50, teacher and trade unionist, was arrested on 4 March 1994 and accused of illicit distribution of leaflets (condemning the Hebron massacre), whereas he was peacefully exercising his right to freedom of opinion and expression. His application for release was rejected, and he is said to have been held in Tunis prison since 8 April 1994.

6. The Government, which confirms the date and circumstances of the arrest, gives the following explanations:

The leaflets, which the author produced at home, called for confrontation with all Jews, both in Tunisia and in other Arab countries, and a boycott of all conferences and scientific meetings attended by them.

He also advocated that there should be no economic or political dealings with Jews, stressing particularly the need for the Tunisian people to harass the Jewish community in Djerba.

It was in these circumstances that he appeared before the Tunis Correctional Court on 8 March 1994 for incitement of hatred between races, religions and peoples and for publication of leaflets liable to disturb public order.

After a series of postponements to 24 March, 31 March and 14 April, he was finally tried on 27 June 1994 and sentenced to two years' imprisonment and a fine of 1,000 dinars for incitement to racial hatred (Criminal Code, art. 52 bis) and to eight months' imprisonment for publication of leaflets and a fine of 100 dinars for violation of the provisions concerning statutory deposit (Press Code, arts. 12, 44 and 62).

7. In its comments on the Government's reply, received by the Working Group on 4 August 1994, the source expresses the view that "Ahmed Khalaoui is a political prisoner" and requests that he should be given a quick and fair trial "in accordance with the rules of international law".

8. In view of the foregoing, the Working Group considers, on the basis of the position adopted by the Human Rights Committee on 6 April 1983 (request 10/1981, JRT and WG. Party C. Canada), that the restrictions placed by Tunisian law on freedom of opinion in order to combat the dissemination of racist ideas or remarks - violently anti-semitic in the case in question - are compatible with the rules of international law, and in particular with articles 19 and 20 of the International Covenant on Civil and Political Rights, according to which:

Article 19, paragraph 3: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals."

"Article 20, paragraph 2: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

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

The detention of Ahmed Khalaoui does not fall into any of the three categories of the principles applicable in the consideration of the cases submitted to the Working Group, and in particular category II, inasmuch as incitement to racial hatred is an offence and not the expression of an opinion. The detention of Ahmed Khalaoui is accordingly declared not to be arbitrary.

Adopted on 28 September 1994.