

DECISION No. 5/1996 (TUNISIA)

Communication addressed to the Government of Tunisia on
3 October 1996.

Concerning: Aïcha Dhaouadi, Tourkia Hamadi, Mahfoudhi Abderrazak
and Najib Hosni, on the one hand, and Tunisia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised 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 cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Tunisian Government. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working 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 cases, 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, concerned the following persons:

(a) Aïcha Dhaouadi, a primary school teacher in Bizerte, who is said to have been taken into custody on 4 November 1993, questioned for the whole day and then released in the evening. This form of detention is alleged to have continued for several consecutive days. In early 1994 Aïcha Dhaouadi was reportedly tried and sentenced to imprisonment for two years and three months for having supported a political party (al-Nahda), and for the unauthorized collection of donations, but was released on bail. In early 1995, her sentence was reduced on appeal to nine months, and on 19 May 1995 she was arrested in order to serve that sentence. According to the source, her conviction was based on a misapplication of the law of 8 May 1922 on the unauthorized collection of funds and donations. The source reports Aïcha Dhaouadi as saying that she was forced to sign a self-incriminating statement by the police without having been allowed to read it beforehand.

(b) Tourkia Hamadi, aged 29 and a mother of two children, has reportedly been held since 10 July 1995 in the Tunis prison, a very long way from her family home in Gabes. Mrs. Hamadi was tried on 5 May 1995 on charges of having helped her husband to flee from Tunisia and of belonging to al-Nahda, in contravention of the Organization of Associations Act of 7 November 1959, and sentenced to six months' imprisonment. She was arrested on 10 July after confirmation of her sentence on appeal by the Gabes court.

According to the source, from 1992 onwards, and especially as of October 1994, Tourkia Hamadi had frequently been taken into custody and questioned about the activities of her husband (who had left for France in 1991 to request political asylum). The source further states that relatives and especially the wives of al-Nahda sympathizers in prison or exile are often being taken into custody for questioning on the whereabouts of their husbands and sources of income. The source affirms that Tourkia Hamadi has neither advocated nor used violence, and that her detention is due solely to her participation in non-violent political activities.

(c) Mahfoudhi Abderrazak, aged 52 and an anaesthetist at the Menzel Bourguiba hospital, was reportedly arrested at his home on 4 July 1995 by four inspectors. Following a search of his home, the inspectors are said to have seized the detainee's telephone. Mahfoudhi was reportedly questioned about and asked to explain two recent journeys, one to Mecca and the other to France. Other persons working in the same hospital were reportedly also arrested at the same time. According to the source, the family has no news of Mahfoudhi. It would appear that the arrest was made not by the police but by the services of the Ministry of the Interior. Mahfoudhi was reportedly being detained without charge or trial.

(d) Najib Hosni, a lawyer known for his human rights activities, was reportedly arrested on 15 June 1994. He is said to have been held in custody since then, for a period exceeding the 14 months authorized by article 85 of the Tunisian Code of Penal Procedure. The source states that the complaints made against Hosni are of a civil character not justifying detention. With the exception of one visit from the former head of the Tunisian Bar Association, Hosni has reportedly not been allowed to meet his lawyers since January 1995, following his refusal to agree to the conditions for such visits, which would entail degrading body searches.

6. In its reply, the Tunisian Government essentially states that all the above-mentioned persons were formally arrested, prosecuted and sentenced for offences under the Tunisian Penal Code and, particularly as regards the first two persons, for their membership of an unrecognized extremist movement called "Ennahda", which promotes hatred and racial and religious fanaticism, and for the assistance they gave to that movement either by collecting money on its behalf (case of Aicha Dhaouadi), or by helping a member of the movement to escape (case of Tourkia Hamadi, who is said to have given her husband the passport of a deceased student to enable him to flee to France). Abderrazak Mahfoudhi was arrested on 17 July, and was charged and then committed to the Bizerte prison on 24 July 1995 for association with criminals and membership of a clandestine organization inciting to hatred and racial and religious fanaticism. Thus, contrary to the allegations of the source, the Government states that he had not been detained without charge. Concerning Najib Hosni, the Government points out that his inculpation for forgery and use of forged instruments was effected under ordinary law and therefore not related at all to his human rights activities. The Tunisian Government further states that all the said persons throughout the judicial proceedings enjoyed full guarantees of a fair trial and of the observance of the rights to defence. They were also allowed visits from their families during custody and were able to appeal against their convictions in first instance. Thus, the Court of Appeal reduced from two years to eight months the sentence imposed on

Mrs. Dhaouadi for membership of an unrecognized movement and upheld the sentence against Mrs. Tourkia Hamadi. Likewise, Najib Hosni applied for judicial review of the decision of the Indictment Divisions, which referred him to the Criminal Chamber of the Court of Appeal at Kef, for a hearing on 11 October 1995. On 8 November 1995 the Court of Cassation rejected the appeal and the case was enrolled at a hearing on 27 December 1995 of the Criminal Chamber.

7. A consideration of the facts as they emerge from the communication from the source and, from the reply of the Tunisian Government enabled the Working Group to make the following observations:

(a) The persons in question were prosecuted and sentenced under provisions of Tunisian criminal law. The offences of which they are accused, such as membership of an illegal or unauthorized movement, are not in themselves incompatible with the relevant international human rights instruments.

(b) The source alleges only that the courts before which they appeared or were tried were not independent and impartial and that they were not assisted by counsel of their own choosing.

(c) They had access to remedies which proved to be effective in the case of Mrs. Aïcha Dhaouadi.

8. In the light of the above, the Working Group decides that the detention of the above-mentioned persons is not arbitrary.

Adopted on 23 May 1996.