

DECISION No. 17/1996 (ISRAEL)

Communication addressed to the Government of Israel
on 14 August 1995.

Concerning: Wissam Rafeedie and Majid Isma'il Al-Talahmeh, on the
one hand and the State of Israel, 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 concern that till date no information has been forwarded by the Government concerned in respect of the cases 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 each of the cases of alleged arbitrary detention brought to its knowledge.

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

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 cases, especially since the facts and allegations contained in the communication have not been challenged by the Government although it was given the opportunity to do so.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur of the Commission on Human Rights, Mr. H. Halinen, pursuant to Commission resolution 1993/2 A.

6. The communication submitted by the source, a summary of which was forwarded to the Government, concerned the following persons:

(a) Wissam Rafeedie, aged 36, journalist, resident of El Bireh in the West Bank, was reportedly arrested without a warrant, at his home, on 11 August 1994 by several IDF soldiers and GSS agents, and placed under a five-months administrative detention order. On 19 December 1994 the administrative detention was extended for six months, until 8 July 1995 and has recently again been extended until November 1995. According to the source, Rafeedie had been previously sentenced to 34 months' imprisonment for running a publishing house for the Popular Front for the Liberation of Palestine (PFLP), and was released in June 1994. The source affirmed that although Rafeedie was an opponent of the current peace process between Israel and the PLO, he has never engaged in any violent activity.

(b) Majid Isma'il Al-Talahmeh, aged 27, resident of Dhahiriya, Hebron district, a student at Birzeit University. He was reportedly arrested by the IDF on 29 October 1994 at a military checkpoint north of Ramallah, without a warrant, and was placed under a six-months administrative detention order. On 27 April 1995 the detention order has been extended by another six months. No charges have been brought against him and the reasons for his arrest were not known.

7. The sources alleged that detention under an administrative detention order was arbitrary for the following reasons: (a) no judicial or other procedures existed to challenge the legality of the arrest or detention; (b) even though there was an appeals committee consisting of a military judge who was a qualified lawyer, the relevant rules of evidence and procedure made it extremely difficult to effectively challenge an order of administrative detention. In particular, the appeals were always held in camera; the committee examined evidence in the absence of the detainee and his lawyer and it did not disclose the evidence to them if it was satisfied that such disclosure could endanger State security or public safety.

8. It appears from the above allegations, which, it may be recalled, the Government of Israel did not refute despite the opportunity given to it to do so, that Wissam Rafeedie and Majid Isma'il Al-Talahmeh, irrespective of the nature and motives of the accusations against them, are being denied their right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention. They are also denied their right to be tried without undue delay. These rights are guaranteed by articles 10 and 11.1 of the Universal Declaration of Human Rights and by articles 9.4 and 14.3 (c) of the International Covenant on Civil and Political Rights, to which the State of Israel is a party. The absence of an effective possibility to appeal against the administrative detention order, and the excessive duration of the detention - over 21 months in the case of Wissam Rafeedie and 19 months in the case of Majid Isma'il Al-Talahmeh - constitute a violation of the right to fair trial of such gravity that they confer on the deprivation of liberty an arbitrary character.

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

The detention of Wissam Rafeedie and Majid Isma'il Al-Talahmeh is declared to be arbitrary being in contravention of articles 10 and 11.1 of the Universal Declaration of Human Rights, and articles 9.4 and 14.3 (c) of the International Covenant on Civil and Political Rights, to which the State of Israel is a party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of Wissam Rafeedie and Majid Isma'il Al-Talahmeh 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 provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 23 May 1996.