

OPINION No. 15/1998 (FEDERAL REPUBLIC OF YUGOSLAVIA)

Communication addressed to the Government on 17 July 1997

Concerning: Avni Klinaku, Mujë Prekupi, Libur Aliu, Dylber Beka, Gani Baliu, Nebi Tahiri, Shaban Beka, Hajzer Bejtullahu, Enver Dogolli, Emin Sallahu, Shukrie Rexha (f), Naser Tahiri, Dullah Sallahu, Ragib Berisha, Burhan Hasani, Majlinda Sinani (f), Arsim Retkoceri and Beton Retkoceri

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established pursuant to resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended in resolution 1997/50. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. (Same text as paragraph 3 of Opinion 1/1998.)
4. According to the source of the communication, a summary of which was transmitted to the Government, the above-mentioned 18 individuals, all ethnic Albanians of the province of Kosovo, were tried and convicted on 30 May 1997 to sentences of from 2 to 10 years' imprisonment, allegedly for having founded a clandestine organization called the National Movement for the Liberation of Kosovo, whose aim was to have Kosovo secede from the Federal Republic of Yugoslavia and to unify it with Albania. The above-mentioned individuals were also found guilty of having disseminated the journal of their organization (Clirimi - Liberation) and of having planned terrorist acts. Two other Kosovo Albanians, Fatmir Humoli and Agim Kuleta, were convicted in absentia. Out of the 18, 9 individuals whose prison sentences were under five years were released on bail pending determination of their appeal. The source does not indicate the length of time the 18 persons were held in pre-trial detention before 30 May 1997.
5. The source contends that the accused were deprived of their right to a fair trial. First, the judgment of first instance was based almost exclusively on self-incriminating evidence of the accused, alleged to have been made by the accused during the preliminary inquiry. The source maintains that very few other elements could have sustained a conviction. Secondly, several of the accused claimed to have given self-incriminating evidence as a result of ill-treatment and, according to the source, in at least one case medical evidence corroborates the claim of ill-treatment. Thirdly, during the preliminary inquiry, access of the accused to their legal representatives and access of their lawyers to the prosecution's files were severely limited.
6. The source recalls that the allegations have never been refuted by the Government, which had a chance to do so.

7. The Working Group notes that it was ready, in accordance with its methods of work, to examine whether the right to a fair trial as spelled out in articles 5, 9 and 10 of the Universal Declaration of Human Rights and articles 9, paragraphs 3 and 4, and 14, paragraph 3 (g), of the International Covenant on Civil and Political Rights, and principles 1, 6 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, was violated in the present cases.

8. The Working Group is however of the opinion that in order to assess whether there was a violation of the above-mentioned provisions of such gravity as to confer to the detention an arbitrary character, it would require more detailed information in respect of the allegations formulated in paragraph 5 above. Before pronouncing itself on the arbitrary or non-arbitrary character of the detention, the Working Group would require additional information about the outcome of the appeal proceedings and the release on bail of several of the above-named individuals.

9. Given that the source has not provided further clarification in respect of these issues, although requested by the Group to do so, the Working Group considers that it does not dispose of sufficiently precise information to formulate an Opinion on the present case. In the circumstances of the case, the Working Group further considers that it is not in a position to obtain additional clarification on the cases of the above-named individuals.

10. In the light of the above, and subject to the subsequent receipt of pertinent information or clarifications, the Working Group considers that it cannot adopt an Opinion on the arbitrary or non-arbitrary nature of the detention of the above-mentioned individuals and decides, in accordance with rule 17 (d) of its methods of work, to file the case provisionally.

Adopted on 16 September 1998.