

OPINION No. 20/1999 (ALGERIA)

Communication addressed to the Government on 12 August 1997

Concerning Rachid Mesli

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group expresses its appreciation to the Government for providing timely information.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it is clearly impossible to invoke any legal basis constituting justification for the situation (as when a person is kept in detention after completion of his sentence or despite an amnesty law applicable to him) (category I);
 - (ii) When the deprivation of liberty results from prosecution or from a conviction in connection with the exercise of the rights or freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the character of arbitrariness to the deprivation of liberty, whatever form the latter takes (category III).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the Government's reply to the source of the communication and the source made a number of comments.
5. Mr. Rachid Mesli, a human rights lawyer, was arrested on 31 July 1996. An urgent appeal on his behalf was sent to the Government on 15 August 1996. According to information received from the source, he was tried on 16 July 1997 in the court of Tizi-Ouzou (100 km to the east of Algiers) and was sentenced to three years' imprisonment for "encouraging terrorism" (article 87 (bis) 4 of the Algerian Penal Code), following a trial in which international standards concerning the right to a fair trial were allegedly not respected.
6. Allegedly, it was not possible for international observers or his family to attend the trial, which was held in camera, and the defendant's lawyers lodged a complaint about the failure of

the court to call any witnesses for the defence. Rachid Mesli was charged with belonging to a terrorist group (articles 86 and 87 (bis) 3 of the Penal Code), and during the trial both the prosecutor and his lawyers referred to this charge only.

7. However, when the court announced the verdict, Mr. Mesli was acquitted of the charges for which he had been tried but at the same time was found guilty of “encouraging terrorism” (article 87 (bis) 4 of the Penal Code), a charge which did not appear in the indictment against him and which was not mentioned during the trial itself. It is claimed that this contravenes article 14 of the International Covenant on Civil and Political Rights and also article 305 of the Algerian Penal Code, which states that if the court wishes to add a charge to the defendant’s original indictment, then the proceedings must be reopened so as to allow both the prosecution and the defence to present their arguments.

8. The source adds that the allegations concerning Mr. Mesli’s arrest (his abduction and incommunicado detention during which he was reportedly subjected to ill-treatment and threatened with death) were not taken into consideration by the court. The source believes that Rachid Mesli was sentenced because of his human rights activities.

9. In its response the Algerian Government makes the following main points:

(a) Mr. Rachid Mesli was not abducted but was taken in for questioning by the security services on 31 July 1996 in connection with terrorism-related cases;

(b) He acknowledged that he had been in contact with certain terrorist groups, which he had met with in secret on four occasions;

(c) After his time in custody, which passed without any incident of note, he was brought before the prosecutor and then the examining magistrate, who, in accordance with due procedure, charged him with forming a terrorist group in order to inflict massacre or destruction, sow terror among the population at large and impede the smooth running of public institutions, all of which are offences under articles 77, 84, 87 (bis) and 87 (bis) 1 of the Penal Code;

(d) Although Mr. Mesli did not ask to see a doctor during his custody, the examining magistrate, at the request of his lawyers, did order a medical inspection by a medical examiner. In his report the examiner stated that Mr. Mesli was fully in possession of his mental faculties and that he had an injury to his right eye rendering him unfit to work for two days. On the subject of this injury, neither the party concerned nor his lawyers deemed it appropriate to lodge a complaint;

(e) At the end of the pre-trial proceedings, Mr. Mesli was brought before the correctional court of Tizi-Ouzou, where he was sentenced on 16 July 1997 to three years’ imprisonment and fined 10,000 Algerian dinars, after the court had reclassified the charges against him as constituting advocacy of crime, an offence under articles 87 (bis) and article 87 (bis) 4 of the Penal Code by application of article 306 of the Code of Penal Procedure. The criminal court had in fact previously responded in the negative to questions relating to the two charges levelled against him by the committal order of the indictment division;

(f) His trial took place publicly and was widely reported by the media. No one, whether an observer or a member of his family, was denied access to the courtroom;

(g) Mr. Mesli was defended by a group of 39 lawyers, 25 of whom were present in court. After consultation, they decided that nine of them should plead on Mr. Mesli's behalf;

(h) No request to defend him was submitted by a foreign lawyer.

10. The response of the Government of Algeria was transmitted to the source on 11 May 1998 for comments, as well as for answers to detailed questions put by the Working Group. In reply, the source reaffirmed its belief that Rachid Mesli is a prisoner of conscience, who was detained solely because of his activities as a human rights advocate.

11. On 23 December 1998, the Working Group asked the source to provide it with a copy of the Algerian Penal Code, in French if possible, in order to allow it to render an opinion during its twenty-fourth session. The source responded on 2 March 1999 by transmitting to the Group a copy of article 305 of the Algerian Penal Code, the only relevant provision in the source's opinion, and did not send the entire Code.

12. The source regrets that the Group has not yet given a ruling on the case of Mr. Mesli. Furthermore, according to the source, on 8 December 1998, the Supreme Court overturned the sentence of three years' imprisonment handed down against Mr. Mesli, who should therefore be retried. Finally, the source's letter drew the attention of the Group to the urgency of giving an opinion on the detention of Mr. Mesli, who will complete his sentence in July 1999.

13. The Working Group notes that the Government's response was transmitted to the source on 28 April 1998 for observations. Unfortunately, the source, in further comments dated 2 March 1999, merely reiterates the belief that Rachid Mesli is a prisoner of conscience, without providing any other elements which would serve to demonstrate that the detention of Mr. Mesli is attributable to his work as a human rights advocate.

14. In order to establish whether Mr. Mesli belongs to, or collaborates with, a terrorist group, it is essential to know whether any contacts he may have had with persons suspected of belonging to armed groups were in his capacity as defender of individuals detained, persecuted or illegally confined, or in that of a member of, or collaborator with, such groups. Neither the source nor the Government was able to produce information allowing this point to be determined.

15. In the light of the foregoing, the Working Group, in accordance with paragraph 17 (d) of its working methods, has decided to shelve the case of Mr. Rachid Mesli provisionally, since it is not able to obtain sufficient information on the case.

Adopted on 16 September 1999