

OPINION No. 27/2001 (MOROCCO)

Communication addressed to the Government on 13 June 2001

Concerning: Former Captain Mustapha Adib

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. The mandate of the Working Group was clarified and extended by resolution 1997/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time. The reply has been transmitted to the source.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
- (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (iii) When the complete or partial non-observance of the relevant international standards set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned relating to the right to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case in question.

5. According to the source, Mustapha Adib, born on 16 September 1968, of Moroccan nationality, was arrested by military personnel on 5 December 1999 at the military airbase of Sidi Slimane, 80 km north of Rabat, where he was posted at the time.

6. Mustapha Adib was responsible for equipment at the airbase of Errachidia, in the south of Morocco. He had occasion to witness illegal trafficking in fuel, organized by the most senior officer of the base. The unit received a fuel consignment for the operation of a large radar

system. The traffic consisted in diverting and selling the fuel oil received free to a neighbouring gas station. Some 120 tonnes of fuel oil are believed to have been involved over a period of 10 months.

7. As the person responsible for supplies, Captain Adib was required by his superiors to sign fuel vouchers. As he refused to become involved in corrupt dealings, he suffered various forms of pressure and then penalties, for refusing to obey.

8. In October 1998, he reported the illegal trafficking to Crown Prince Sidi Mohamed, as coordinator of the Royal Armed Forces. After an inquiry, the senior officers mentioned in the report were found guilty of diverting fuel supplies, complicity and failure to report offences by the Permanent Tribunal of the Royal Armed Forces. Captain Adib, on the other hand, was exonerated of any involvement in the trafficking he had reported. Looked upon thenceforth, however, as a “black sheep” in the army, he was subjected to harassment, bullying, close confinement and various other forms of punishment. He received four disciplinary sanctions. At the end of 1998, he was transferred to the base of Salé, then in February 1999 to the base of Sidi Slimane.

9. Mustapha Adib decided finally to appeal against the disciplinary sanctions. According to the source, those appeals merely made matters worse. A request for discharge from the army was refused. Feeling that he had exhausted all possible remedies, he contacted Mr. Jean-Pierre Tuquoi, a journalist with the French daily Le Monde specializing in Maghreb affairs. The interview took place on 30 November 1999. On 5 December, before anything was published, Mustapha Adib was arrested. He was sentenced to 60 days’ confinement in a military prison starting from 10 December 1999.

10. On 16 December 1999, Le Monde published an article under the title “Moroccan officers denounce corruption in the army”, signed by Jean-Pierre Tuquoi. Captain Adib was cited as one of the sources of the information. The Gendarmerie opened an investigation and Captain Adib was placed in pre-trial detention on 17 January 2000.

11. The source adds that, in a judgement on 17 February 2000, the Permanent Tribunal of the Royal Armed Forces found Captain Adib guilty of a violation of military rules and contempt of the army, on the basis of articles 159 and 178 of the Code of Military Justice. He received the maximum applicable sentence, namely five years’ imprisonment, and was discharged from the army. On 21 February 2000, Captain Adib initiated the only appeal action possible, for judicial review of his case by the Supreme Court. On 24 June 2000, the Supreme Court annulled the judgement for lack of reasons regarding the absence of attenuating circumstances and referred the case back to the Permanent Tribunal of the Royal Armed Forces, with a different composition. On 6 October 2000, Mustapha Adib was sentenced by the Permanent Tribunal to two and a half years’ imprisonment and to dismissal from the army. By decision of 22 February 2001, the Supreme Court rejected the appeal brought by Captain Adib against that judgement, thus making it irrevocable.

12. Still according to the source, Captain Mustapha Adib was not given a fair trial before the Permanent Tribunal of the Royal Armed Forces. His presumed innocence was violated and the Permanent Tribunal displayed a lack of impartiality with regard to the hearing of witnesses. By

ordering him to appear in civilian dress, the Tribunal had ignored the ruling of the Supreme Court, which had annulled Captain Adib's dismissal. The source also alleges that the Tribunal acceded to all the prosecution's requests and systematically rejected all those put forward by the defence. No preliminary hearing was held for the accused to explain his case. At the time of the second hearing before the Supreme Court, Captain Adib's counsel had not been informed of the case brought by the prosecution.

13. The source considers that the arrest, pre-trial detention and conviction of Mustapha Adib are due exclusively to the fact that he made use of his right to freedom of expression. The restriction imposed on Captain Adib was not referred to expressly in the law. Moroccan law makes no provision for restricting the right to denounce corrupt behaviour. On the contrary, it was Captain Adib's duty to report corrupt deeds that were prejudicial to the army's reputation. The effect of such restrictions was to stifle any attempts to report facts which are punishable under Moroccan law and to cover up corruption, rather than to punish contempt of the army or the violation of military rules.

14. In its reply, the Government merely recalled the facts which had led to Mustapha Adib's conviction for violating military rules and contempt of the army by the Permanent Tribunal of the Royal Armed Forces, and the various trials which had led to his last sentence of two and a half years' imprisonment.

15. In his rejoinder, the source maintains that Mustapha Adib did not enjoy a fair trial before the Permanent Tribunal of the Royal Armed Forces and that his pre-trial detention and conviction were due solely to the fact that he had used his right to freedom of expression.

16. With regard to the violation of the right to a fair trial, the Working Group notes that, in its reply, the Government did not reject or even discuss the facts and allegations contained in the communication, particularly those concerning the reasons for the arrest, detention and conviction of Mustapha Adib and those concerning the details of the trial proceedings.

17. Thus there was no denial of the fact that the Permanent Tribunal, on the basis of an administrative decision to dismiss Captain Adib and giving in to the demands of the prosecutor, had obliged the accused to appear in civilian dress, whereas, in its final judgement, it had again ordered his dismissal. That appeared to suggest that dismissal could be decided only by the Tribunal and that, therefore, prior to that ruling, the accused could still claim to belong to the army and was entitled to appear in uniform.

18. It was not denied, either, that the accused had been removed from the court room and judged in absentia and without his lawyers being present - since they withdrew once he had been removed - only because he had protested against the systematic rejection of his counsel's requests, particularly the request to call witnesses, and had called for a fair trial.

19. It appears from the foregoing that Mustapha Adib was judged by a military tribunal, which, owing to its composition and the form of appointment of its members, is a type of court whose independence from the executive power is often in doubt, but which, in addition, acted in that particular case in a way that cast doubts on its impartiality by infringing the presumption of innocence of the accused and by hindering his defence.

20. In this respect and in conformity with its methods of work, the Working Group considers that, under article 14, paragraph 1, of the Covenant, if a trial is not conducted by a competent, independent and impartial tribunal, the gravity of the violation of the right to a fair trial is such as to confer on the deprivation of liberty an arbitrary character.

21. It should be added, however, that in commenting on the arbitrary character of Mustapha Adib's deprivation of liberty, the Working Group took account of the special circumstances of the case; its conclusions should not therefore be interpreted as a position of principle regarding the incompatibility of justice rendered by military courts and the standards of fair trial.

22. With regard to enjoyment of the right to freedom of expression, in view of the fact that the person concerned was on active military service and expressed himself through the media, a doubt arises as to how far his right to freedom of expression extended.

23. Under article 19 of the Covenant, the enjoyment of the right to freedom of expression may, generally speaking, be subject to certain restrictions, if such restrictions are necessary, either for respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals. According to the Covenant, however, these restrictions must be expressly provided by law, and the Human Rights Committee has in the past taken the view that, when a State imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself (General Comment No. 10 on article 19 of the Covenant).

24. With regard to the specific case of military personnel, it is generally recognized that the right to freedom of expression of officials, police officers and the armed forces should be subject to certain restrictions owing to the special nature of the obligations and responsibilities by which they are bound. In the case in hand, Mustapha Adib, in a letter addressed to the Moroccan authorities and to the international community to protest against his conviction and detention, recognizes that Moroccan military personnel, under the regulations of the Royal Armed Forces, are generally forbidden to publish.

25. Yet even if there has been a breach of regulations, the question of the disproportionality of the sanction (60 days of military confinement and five years' imprisonment, including two and a half non-suspensive) in relation to the fault committed - which might have merited no more than a disciplinary sanction - still remains and deserves to be examined.

26. However, considering that neither the information supplied by the source, nor that supplied by the Government sheds sufficient light on the matter, the Working Group is not in a position to express an opinion in the circumstances, neither regarding compatibility of the restriction with the provisions of article 19 of the Covenant, nor regarding the proportionality of the sanction inflicted on Mustapha Adib for his violation.

27. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mustapha Adib is arbitrary, as being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

28. In view of the above-mentioned circumstances and since Mustapha Adib's deprivation of liberty has been considered arbitrary within category III of the categories applicable to the consideration of cases submitted to the Working Group, the latter has not considered it necessary to decide whether the deprivation of liberty also falls within category II.

29. Consequent upon the opinion rendered, the Working Group requests the Government of Morocco to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 3 December 2001