

OPINION No. 28/2001 (ALGERIA)

Communication addressed to the Government on 14 June 2001

Concerning: Abassi Madani and Ali Benhadj

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 sent its comments concerning that case in good time.

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, 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 complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned 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, but regrets that it did not provide the Group with all the information it sought, notably concerning the applicable legislation in this case, as well as the conformity of the judgement rendered with domestic legislation and the relevant international instruments such as the Universal Declaration of Human Rights and the international instruments ratified by the Republic of Algeria.

5. The Working Group transmitted the Government's reply to the source on 3 September 2001. To date, the latter has not provided the Working Group with its comments.

6. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto.

7. According to the information submitted to the Group by the source, Abassi Madani, university professor, President of the Front islamique du salut (Islamic Salvation Front - FIS), was arrested by military security on 30 June 1999 at FIS headquarters. On 2 July 1991, he was brought together with other leaders of his party before the investigating judge at the court of Blida and charged with jeopardizing the security of the State and the national economy. He was particularly blamed for having organized and led a strike described as subversive. His counsel rejected proceedings before a military tribunal. The defence maintained that such a tribunal did not have jurisdiction to judge the case, being authorized only to deal with offences against the penal law and the Code of Military Justice committed by military personnel in the performance or at the time of their duties.

8. The military tribunal composed of a civilian appointed by the military authorities and assisted by two senior officers designated by the Defence Ministry sentenced Mr. Madani to 12 years' rigorous imprisonment by a judgement pronounced in his absence, on 15 July 1992. The appeal for judicial review lodged against that judgement was rejected by the Supreme Court in a ruling on 15 February 1993, which made the penal sentence final.

9. Abassi Madani was held in complete isolation in the military prison of Blida, where he is alleged to have received ill treatment. During this period of detention, political negotiations were initiated at the same prison between the then Defence Minister and the leaders of the party led by Abassi Madani. When these negotiations broke down, the latter was subjected to particularly severe coercive measures, despite his age and poor state of health, having been subjected for a very long period to complete isolation and denied all visits by his counsel or members of his family.

10. Further negotiations were initiated in June 1995, whereupon Abassi Madani was transferred to a State residence in Algiers. When this second round of negotiations broke down, he was returned to the military prison of Blida, where he was held for another two years.

11. He was finally released on 15 July 1997. Forty-five days later, on 1 September 1997, following an interview with a foreign journalist in which he expressed his political opinions, and after he had written a letter to the United Nations Secretary-General offering to find a solution to the crisis, he was placed under house arrest and completely forbidden to leave the premises, which consisted in a small, two-room flat situated in a neighbourhood of Belouizdad, Belcourt, in Algiers.

12. The flat is guarded round the clock by the security services, which prevent all visits except for those of close relatives. He is denied all means of communications with the outside world and not allowed to consult his own doctor.

13. According to the source, the deprivation of liberty in Madani's case, both that resulting from his arrest on 30 June 1991 and sentencing by the military tribunal on 15 July 1992, and that resulting from his house arrest on 1 September 1997, was arbitrary. Abassi Madani was

arbitrarily arrested for exercising his political rights. The charge brought against him of jeopardizing State security is also strictly political, since no specific fact related in any way to a criminal offence could be established by the prosecution.

14. The house arrest to which Abassi Madani was sentenced by the authorities rests on no legal foundation in domestic Algerian law. The reasons for his house arrest are the same as those that gave rise to his arrest and conviction by the military tribunal, namely the free exercise of his political rights.

15. According to information communicated by the source, Ali Benhadj, college teacher and Vice-President of the FIS, currently detained at the military prison of Blida, was arrested by military security forces on 29 June 1991 at the State television headquarters, where he had gone to claim a right of reply concerning the strike decided by his electoral party. On 2 July 1991, he was brought with other leaders of his party before the military prosecutor of Blida and charged with jeopardizing State security and the national economy. He was mainly blamed for having initiated and led a strike described as subversive. Ali Benhadj's counsel rejected the jurisdiction of the military tribunal, which was hierarchically subordinated to the Ministry of Defence.

16. The military tribunal, composed of a civilian judge appointed by the military authorities and assisted by two senior officers designated by the Defence Ministry, sentenced Mr. Benhadj to 12 years' rigorous imprisonment in a judgement on 15 July 1992. The judgement was rendered in the absence of the accused, who had been expelled from the courtroom by order of the military prosecutor. This judgement was subsequently confirmed by a ruling of the Supreme Court on 15 February 1993, which precluded all further appeals.

17. Ali Benhadj is starting his tenth year in detention. All those accused, arrested and convicted with him under the same proceedings, to sentences of 4, 6 and 12 years' imprisonment, were released after serving only part of their sentences. According to the source, during this period, Ali Benhadj went through different forms of imprisonment and was treated differently according to whether he was considered by the authorities to be a political interlocutor or an opponent.

18. From July 1991 to April 1993, Ali Benhadj was detained in the military prison of Blida, where he is said to have suffered ill treatment on several occasions. He was subsequently transferred to the civilian prison of Tizi-Ouzou, where he was held in solitary confinement on death row for several months, then transferred back to the military prison of Blida, where political negotiations were said to have been opened between the leaders of his party and the Defence Ministry. When those negotiations broke down, he was transferred, on 1 January 1995, to military barracks at the extreme south of the country, where he was allegedly held in solitary confinement in a tiny cell, without ventilation or any hygienic facility.

19. Meanwhile new negotiations had been opened between a national commission chaired by General Liamine Zeroual and FIS leaders. Ali Benhadj was then transferred to a State residence. When this second round of negotiations broke down, he was transferred back to the extreme south of the country, where he was held in a secret detention place, probably in military security

barracks. In autumn 1997, he was again transferred to the military prison of Blida, where he was kept in total solitary confinement. In March 1999, his family was authorized to visit him. In January 2001, his family noted that his general state of health had deteriorated and expressed serious fears for his life.

20. According to the source, the tribunal that sentenced Ali Benhadj manifestly had no jurisdiction, and could be neither fair nor impartial, since it depended on the Ministry of Defence and not on the Ministry of Justice, while its judges were appointed by the Ministry of Defence. His trial was held in his absence, in camera, and was not fair.

21. In its reply the Government limited itself to state that in both cases “(...) Algerian law has been correctly applied on the basis of precise and established charges, the proper procedure has been set in motion and scrupulously followed, and the matter has been laid before the competent judicial authorities, which have reached an independent and impartial verdict in conformity with the law”. It further added that “(...) during the entire process the persons referred to have been able to exercise all the rights and safeguards which are guaranteed to them by law. Accordingly, they have been able to select their own counsel (...) and they have freely exercised their right to appeal against the judgement handed down by the trial court. In the case of Mr. A. Benhadj, the judgement was upheld by ruling of the Supreme Court. Mr. A. Madani’s application for judicial review of the judgement was rejected by the Supreme Court”.

22. The Government further asserted that the Working Group overstepped its mandate by embarking on the consideration of this communication, since, in the view of the Government, this mandate is limited to dealing with cases only in which no judicial decision has been handed down, but in no circumstances to question properly formulated judgements taken by a court of a sovereign State.

23. As to the allegation of the Government challenging the competence of the Working Group, the Group wishes to refer to resolution 1997/50 of the Commission on Human Rights, which considers that deprivation of liberty is not arbitrary if it results from a final decision of a domestic judicial instance and which is (a) in accordance with domestic law, and (b) in accordance with other relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the State concerned. It follows that if the detention results from a judicial decision which is not in keeping with international standards, the detention may be considered as arbitrary. Since in the present case what the source contends is that the judgement on the basis of which the two individuals are detained was taken in breach of the international standards embodied in the relevant international instruments, the task of the Group is to ascertain whether this allegation withstands a thorough scrutiny. This is what the Working Group will do below.

24. The source formulates the following arguments to support the assertions that the procedures conducted against Abassi Madani and Ali Benhadj were not in keeping with international human rights standards:

- (i) Both cases were heard by military tribunals composed of a civilian appointed by the military and two officers designated by the Defence Ministry, which is incompatible with the requirement of the independence and impartiality of courts. Furthermore the source asserts that the trial was conducted and the judgement pronounced in the absence of the persons charged.
- (ii) As to the question whether the composition and the status of the military tribunal trying the cases was in keeping with the relevant international standards and instruments, the information made available to the Group and not denied by the Government casts serious doubts on the independence and impartiality of a panel, two members - the majority - of which, after having been designated by the Defence Ministry from among military personnel, remained dependent on and hierarchically directly subordinated to their military superior while hearing the cases and handing down the judgement.
- (iii) As to the question that the trial was conducted and the judgement pronounced in the absence of the persons charged, the Working Group points out that international instruments, inter alia, the International Covenant on Civil and Political Rights which Algeria ratified, require that persons charged are tried in their presence.

25. It is also alleged that Abassi Madani was placed under house arrest on 1 September 1997 - a measure not provided for under Algerian law. He is ordered to stay permanently in a small apartment guarded by the security service, which he is prohibited to leave. He may not possess any means of communication. He may not receive visitors, either, except his family. The Government offered no comment on this allegation.

26. It is also asserted that Abassi Madani and Ali Benhadj, respectively president and vice-president of an opposition party, have been prosecuted and sentenced because of their opinions and convictions on political issues. The Government made no comments on these arguments.

27. In the absence of further information and substantiation concerning this allegation, the Working Group could not reach a conclusion as to whether the trial and conviction of Messrs Madani and Benhadj raises a separate issue concerning deprivation of liberty used to punish the exercise of freedom of expression.

28. On the basis of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Messrs Abassi Madani and Ali Benhadj is arbitrary, 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. The Working Group notes with regard to the house arrest imposed on Mr. Abassi Madani that it considered, in conformity with its Deliberation 01, this house arrest as a form of deprivation of liberty.

29. Consequent upon the opinion rendered, the Working Group requests the Government 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 the International Covenant on Civil and Political Rights.

Adopted on 3 December 2001