

DECISION No. 16/1993 (INDONESIA)

Communication addressed to the Government of Indonesia on 8 April 1992.

Concerning: Arswendo Atmowiloto, on the one hand, and Indonesia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the 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 appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as paragraph 3 of Decision No. 43/1992).
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Indonesia. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. Certain facts are not in dispute: that of the arrest of Arswendo Atmowiloto in October 1990 and his subsequent conviction in April 1991; that the arrest was a direct consequence of the publication in the weekly "Monitor" of which he is the editor, is also not in dispute. The publication reflected the results of an opinion poll on the popularity of personalities in which Prophet Mohammed ranked eleventh. This, according to the Government, "incited demonstrations in many quarters demanding that action be taken against the tabloid and the person who conducted the poll". The Government contends that Mr. Atmowiloto committed an offence in violation of the rights and duties of the press in articles 2 and 3 of (Press) Law No. 11/1966, in conjunction to Law No. 4/1967 and Law No. 21/1982. Mr. Atmowiloto, brought to trial, was found guilty of violating article 156 (a) of the Indonesian Penal Code (KUHP) and of article 4 of Presidential Decree No. 1/1965. The Court of First Instance of Central Jakarta sentenced Mr. Atmowiloto to five years imprisonment. On appeal the High Court of Jakarta reduced the sentence to four years and six months. In November 1991 the Supreme Court upheld the conviction and found Mr. Atmowiloto guilty of "intentionally misusing a publication for personal purposes, resulting in a violation of the functions and duties of the press".
6. On the basis of the above the Government contends that recourse to the applicable laws having afforded Mr. Atmowiloto an opportunity to use all legal processes conducted in a correct and fair manner in accordance with the existing criminal law procedure disentitles the Working Group to consider the case admissible, keeping in mind its own methods of work.

7. The Government's position does not take note of category II of the principles applicable in the consideration of cases submitted to the Working Group. The said category deals with cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of some of the rights and freedoms protected by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

8. Article 19 of the Universal Declaration of Human Rights stipulates that everyone has the right to freedom of opinion or expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Similarly, article 19 of the International Covenant on Civil and Political Rights ensures everyone the right to hold opinions without interference. The right to freedom of expression includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Such rights are subject only to such restrictions as are provided by law and necessary for the 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.

9. Arswendo Atmowiloto's publication in the weekly tabloid "Monitor" the result of the opinion poll on the popularity of personalities, which he himself carried out, was an exercise of the right to freedom of expression and, was in no way designed to, either directly or indirectly, adversely affect the rights or reputations of others. Nor does such a publication jeopardize national security, public order, public health or morals. The provisions of law that Mr. Atmowiloto is said to have violated have not been clearly stated. Assuming, however, that statuting provisions prohibiting publications of the nature we are dealing with were to be part of the law, such legislation would clearly not be in conformity with acceptable international norms and standards as set out above. The conclusion that Mr. Atmowiloto intentionally misused a publication for personal purposes, violating the functions and duties of the press does not specify the functions and duties said to have been violated. For such duties to be enforced, these must relate to respecting the rights and reputations of others or for the protection of national security or public order or public health or morals.

10. Prosecutions and convictions based on laws which do not protect the legitimate right to freedom of expression must be regarded as cases of deprivation of freedom. This principle applies squarely to Mr. Atmowiloto's prosecution and conviction.

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

The detention of Arswendo Atmowiloto is declared to be arbitrary being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and articles 9 and 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

12. Consequent upon the decision of the Working Group declaring the detention of Arswendo Atmowiloto to be arbitrary, the Working Group requests the Government of Indonesia to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 April 1993