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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013

No. 20/2013 (Argentina)

Communication addressed to the Government on 8 May 2013

Concerning Guillermo Luis Lucas

The Government has not replied to the communication.

The State has been a party to the International Covenant on Civil and Political Rights since 8 August 1986.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

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

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) 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 deprivation of liberty an arbitrary character (category III);

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(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Guillermo Luis Lucas, a citizen of Argentina born on 27 August 1965, a practising lawyer and government official in Córdoba Province since 1994, married to Marta María Piñero, father of two, resident of Córdoba, was arrested on 23 August 2011 at his workplace in the Ministry of Agriculture, Livestock and Food of Córdoba Province in the presence of his colleagues by officers of the Córdoba Provincial Police.

4. Following his arrest, Mr. Lucas was handcuffed and transferred to Reverend Father Luchesse Prison Complex No. 1 in Bouwer, Córdoba, a maximum security prison that should not be used to hold persons who have just been arrested or are in pretrial detention.

5. Following his arrest, a statement should have been taken within 24 hours, in accordance with article 306 of the Code of Criminal Procedure of Córdoba Province, and his situation should have been resolved within a maximum period of 10 days, either by releasing him or by placing him in pretrial detention, as stipulated in article 336 of the Code. Neither of those legal provisions was respected.

6. Mr. Lucas was detained for 43 days in which no notification of custody was issued. It was not until 6 October 2011 that the public prosecutor ordered his pretrial detention, which was confirmed by the supervising judge on 30 November 2011. Provision for notification of custody is made in articles 281 to 283 of the Córdoba Code of Criminal Procedure. In his brief, the supervising judge acknowledges the absence of any direct evidence, documents handwritten or signed by the defendant, or eyewitnesses. He acknowledges that he does not know how or under what circumstances Mr. Lucas was involved in the offences with which he has been charged. The defendant is thus required to prove that he had no involvement in the alleged facts, which constitutes a reversal of the burden of proof and a serious violation of the principle of the presumption of innocence.

7. According to the source, the pretrial detention order that Mr. Lucas has been under since 23 August 2011 is inappropriate because of Mr. Lucas's personal background and the absence of any procedural risks. Mr. Lucas has a stable job, has been a lawyer and public official in Córdoba Province for more than 17 years, has a family, is a married father of 2, has maintained a permanent address for 16 years, is a member of the board of directors of the parents' association in the school attended by his children, and is also a member of the steering committee of the Córdoba Judo Federation.

8. The source adds that Mr. Lucas has no police, administrative or criminal records. When the so-called Land Registry Megatrial (MASIP case, Mario Rubén and others on charges of tampering with a public instrument, etc. M-18/2011 – SAC No. 271,448) began, he voluntarily and spontaneously appeared before chief prosecutor Alejandro Moyano of the public prosecutor's office in district 1, No. 5, and made himself available to the judicial authorities. More than 200 people were charged with offences in that case, and more than 80 have already been convicted.

9. The source asserts that judicial authorities in Córdoba Province view pretrial detention as the rule and the granting of release as the exception, in contradiction with

article 9, paragraph 3, of the International Covenant on Civil and Political Rights, which clearly establishes the exceptional nature of detention in custody. The source adds that, although ordering pretrial detention is fairly common in Córdoba Province, it is reserved for offences considered to be particularly serious, such as homicide, sexual abuse, aggravated theft, etc., and not for the kind of offences that Mr. Lucas has been accused of committing (falsifying a public instrument, tampering with a public instrument and repeated misrepresentation, committed concurrently and as a direct participant, as defined in articles 292 and 293 of the Criminal Code). According to the source, this constitutes unequal and discriminatory treatment.

10. According to the source, the prosecutor has based all his conclusions on dogmatic statements and evidence founded on false premises. At no point has he been able to specify how or in what way Mr. Lucas was involved in the alleged facts, what exactly he had done or what his role had been. In the case, there is no convincing evidence of Mr. Lucas's involvement in the incidents in question to support the issuance of a pretrial detention order, as required under article 281 of the Code of Criminal Procedure.

11. There are no legal grounds to justify pretrial detention, as the offences in question are not particularly serious and there is no procedural risk. According to the source, it would appear that a pretrial detention order was issued to give the impression that corruption cases are being investigated in Córdoba Province, and as an extortionary measure intended to make the defendant crack and take responsibility for something that he did not do.

12. The source adds that the principal of natural justice has also been violated through the establishment of a special commission comprising two prosecutors (Alejandro Moyano and Enrique Gavier), a judge (Esteban Díaz) and three appeal court members (Juan José Rojas Moresi, Óscar Iglesias and Rodolfo Cabanillas). When processing the appeal against the pretrial detention order before the Indictment Division, the Supreme Court of Justice ruled that a special panel of judges different from the usual one should sit in the Division, contrary to article 18 of the Constitution.

13. The same prosecutor Gavier who investigates the cases will also take part in the trial. In other words, the source points out, he conducts the hearings, submits arguments, negotiates with the defendant and requests punishments. All verdicts will be handed down by the Indictment Division, whose members have been previously selected by the Supreme Court of Justice, thereby ensuring, according to the source, that all the defendants will be convicted regardless of whether they are innocent or guilty.

14. Mr. Lucas has presented various items of evidence during the trial, the submission and processing of which were not admitted. In contrast, unsuitable individuals have systematically been called forth as witnesses and experts. For example, a provincial employee, Carlos Rodríguez, is acting as the main expert on notarial matters, despite possessing no relevant qualifications. Police officer Alberto Bietti is being used as a witness in all trials, offering his opinions on topics related to notarial and registration law, of which he lacks any knowledge.

15. The source asserts that there have been serious violations of the right to a defence: flimsy accusations have been made, purported evidence has been concealed, the submissions of defence lawyers have been ignored, there has been a refusal to supply lawyers with copies of the case records on account of the supposed complexity of the case, etc. Moreover, the public prosecutor's office has made illegal offers, such as proposing house arrest in return for abandoning appeals and reduced sentences for persons who assume responsibility for offences that they did not commit.

16. The source asserts that Mr. Lucas's only crime is that of having worked for the Land Registry. That single fact has been transformed into proof of guilt. The simple fact of being named in a diary and exchanging telephone calls with a defendant has been viewed as evidence of complicity and sufficient reason for him to be arrested and charged. According

to the source, the investigations conducted by the public prosecutor's office are frivolous and biased. It would be obvious to any impartial observer that Mr. Lucas never altered his lifestyle or increased his wealth, nor did he stop working every day to support his family.

17. Article 17 of Provincial Act No. 5805 establishes that: "In the performance of their duties, lawyers shall be equal to magistrates in terms of the respect and consideration that must be shown to them." Mr. Lucas was treated with no respect or consideration at the time of his arrest, given that he was needlessly arrested at his place of work in the presence of co-workers and colleagues and led out of the Ministry in handcuffs. Moreover, the prosecutor maintained in his indictment that, as a lawyer, Mr. Lucas is an even more dangerous individual.

18. The source considers that Mr. Lucas is also a victim of discrimination compared with other defendants who had ties to the authorities and whose cases were dismissed in record time with no further investigation.

19. In summary, the source believes that Mr. Lucas has been held in pretrial detention for more than 20 months, and that he has been charged simply on the grounds that he worked for the Land Registry.

20. Mr. Lucas stands no chance of having a fair trial that conforms to the international principles and standards that the State must uphold. Given the conditions in which the legal proceedings are unfolding, the source fears that Mr. Lucas will be summarily sentenced.

21. Mr. Lucas's defence considers that, in the present case, there is no proof of the procedural risks required by the Code of Criminal Procedure in order for a person to be deprived of his or her liberty during the trial. Accordingly, the defence lodged several appeals before the Seventh Court of Investigation of Córdoba District, the Indictment Division and the Criminal Division of the Court of Justice, all of which were rejected. A remedy of complaint filed with the Supreme Court of Justice in connection with the refusal to grant an extraordinary federal appeal is currently pending.

22. The source concludes that there has been a violation of Mr. Lucas's right to remain at liberty during proceedings until such time as his guilt is proven by means of a sentence having the force of *res judicata*. The institutional gravity, the seriousness of the offence charged and the prospective penalty are not sufficient grounds for depriving a person of his or her liberty. Mr. Lucas satisfies all the necessary personal criteria to invalidate the presumption that he will attempt to evade justice or hinder the course of the investigation.

23. Mr. Lucas has no criminal record, placed himself at the disposal of the judiciary from the outset of the investigation and has been imprisoned despite the existence of any procedural risk whatsoever.

24. According to the source, Mr. Lucas's right to due process has been severely infringed. Consequently, his detention is arbitrary.

Response from the Government

25. Given that 111 days have passed since the Working Group addressed the communication to the Government of Argentina and that no response has been received, the Working Group considers that it is in a position to render an opinion on the case.

Discussion

26. From the account of the facts of the case, which have not been disputed, it can be concluded that the lawyer was arrested on 23 August 2011 — in other words, more than two years ago — by officers from the Córdoba Provincial Police. During those two years, he has been held in pretrial detention, and none of the various appeals launched by his defence — before the Seventh Court of Investigation of Córdoba District, the Indictment

Division, the Criminal Division of the Court of Justice and the Supreme Court of Justice, concerning the refusal to grant an extraordinary federal appeal — has proved effective.

27. Furthermore, his statement ought to have been taken within a maximum of 10 days from the day of his arrest, after which time he should either have been placed in pretrial detention or released. That did not occur, and the statement was taken long after the legal deadline; worse still, he was not committed to trial until 6 October 2011, which constituted an undue violation of article 336 of the Code of Criminal Procedure of Córdoba Province.

28. The source also complains that the evidence provided by the defence was not accepted by the judiciary of Córdoba, and that the latter has applied discriminatory criteria. In the view of the Working Group, this constitutes a violation of article 14, paragraph 3, of the Covenant, particularly subparagraphs (a), (b) and (c).

29. The Working Group does not, however, have any grounds for issuing an opinion as to the probatory value of the evidence put forward by the Public Legal Service, or for validating the source's assertion that "there is no evidence of Mr. Lucas's possible involvement in the alleged offences to support the issuance of a pretrial detention order".

30. The Working Group considers that the fact that the defendant has been deprived of his liberty for more than two years, during which time the majority of the preliminary investigation has been carried out, and that he was not, at the very least, granted bail constitutes a violation of the human right to be at liberty during judicial proceedings, a right guaranteed under article 9, paragraph 3, of the Covenant.

31. The Working Group believes that the length of the deprivation of liberty and of the proceedings conducted by the judicial authorities constitute a violation of the entitlement to trial within a reasonable time and without undue delay (enshrined in article 9, paragraph 3, and article 14, paragraph 3 (c), of the Covenant).

32. The information set out in the above paragraphs leads the Working Group to consider the entire period of deprivation of liberty of the lawyer Mr. Guillermo Luis Lucas as arbitrary, under category III of the Working Group's methods of work.

Disposition

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

The entire period of deprivation of liberty of Guillermo Luis Lucas is arbitrary under category III of the Working Group's methods of work.

34. The Working Group recommends that the Government of the Argentine Republic order the immediate release of Guillermo Luis Lucas, award reasonable compensation for the serious material and human damage done to him, and inform the Working Group of the measures taken in that regard.

[Adopted on 27 August 2013]