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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. 23/2013 (France)

Communication addressed to the Government on 20 June 2013

Concerning: Georges Ibrahim Abdallah

The Government replied on 21 August 2013.

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

1. The Working Group on Arbitrary Detention was established in 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, 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, as 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);



(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. The present case was submitted to the Working Group on Arbitrary Detention as follows.

4. Mr. Georges Ibrahim Abdallah, born on 2 April 1951 in Al Qoubaiyat (Kobayat) in northern Lebanon, is a Lebanese citizen and former pro-Palestinian communist militant, a former member of the Popular Front for the Liberation of Palestine and a founding member of Fractions armées révolutionnaires libanaises (Lebanese Armed Revolutionary Faction) (FARL). He was arrested in a police station in Lyon, where he had gone of his own volition, on 24 October 1984, and charged with forgery and making use of forged documents with intent to defraud.

5. On 10 July 1986, Mr. Abdallah was sentenced to 4 years in prison for conspiracy and possession of weapons and false documents (a false passport).

6. Mr. Abdallah was tried a second time for aiding and abetting murder. On 28 February 1987, the Special Assize Court sentenced him to life imprisonment for complicity in the murder of Lieutenant Colonel Charles Robert Ray, Deputy Military Attaché to the Embassy of the United States of America in France on 18 January 1982, and Yacov Barsimentov, Second Counsellor to the Embassy of Israel on 3 April 1982. Robert Onan Homme, the United States Consul in Strasbourg, was also targeted and seriously injured.

7. The source adds that, during the trial, Mr. Abdallah's lawyer provided information regarding his client to the Directorate-General for External Security. According to the source, that ought to have been sufficient reason to declare a mistrial.

8. In March 2002, an application for the release of Mr. Abdallah was rejected, and in September 2002 Mr. Abdallah was transferred to the prison at Fresnes.

9. The source states that in November 2003 the Pau parole board ordered the release of Mr. Abdallah on the condition that he should permanently leave French territory on 15 December 2003. The Minister of Justice appealed against that decision, and on 15 January 2004 the decision to grant conditional release was overturned by the national parole board.

10. In February 2007, an application for parole was refused after two years and three months. The Multidisciplinary Commission for Security Measures took 25 weeks to issue an opinion, such an opinion being required under the Preventive Detention Act of February 2008. According to the source, the Act was applied retroactively.

11. On 21 November 2012, the Sentence Enforcement Court of Paris granted the eighth application for release of Mr. Abdallah on the condition that he was subject to an exclusion order from French territory. The appeal judges upheld the decision of the Paris Court for the Enforcement of Sentences. However, Mr. Abdallah, who has been eligible for release for 10 years, remains arbitrarily detained in prison.

12. According to the source, Mr. Abdallah has offered all the assurances of successful reintegration required to qualify for parole under the French Criminal Code. He has demonstrated that he has engaged in a professional activity. He could therefore return to Lebanon, where he wishes to resume his position as a teacher. His family has pledged to provide compensation to the victims. His behaviour in prison has been exemplary, and he has fully complied with the rules of conduct.

13. Mr. Abdallah has been imprisoned for 28 years despite two decisions by the court of first instance and the court of appeal to grant parole. Mr. Abdallah remains in prison because the executive authorities have failed to issue the necessary exclusion order required for his release.

14. Mr. Abdallah is currently detained in the prison at Lannemezan in the department of Hautes-Pyrénées.

15. The source maintains that Mr. Abdallah's detention is contrary to articles 9 and 14 of the International Covenant on Civil and Political Rights, to which France is a party.

Response from the Government

16. In a letter dated 20 June 2013, the Working Group asked the Government to respond to these allegations, which it did in a note verbale dated 21 August 2013. The Government confirms that Mr. Abdallah was sentenced to life imprisonment with a 5-year exclusion order, and that the 15-year non-parole portion of that sentence had come to an end on 27 October 1999. Furthermore, the exclusion order banned Mr. Abdallah from certain places in France following his release.

17. The Government notes that parole is a procedure for the execution of sentences that allows for the early release of sentenced persons under certain conditions established by the courts, and that the applications for parole submitted in 2002 and 2007 had been duly refused.

18. On 25 February 2008, the Code of Procedure governing the execution of prison sentences made parole applications subject to review by a multidisciplinary commission as of 1 September 2008. Parliament had set the date of entry into force of the Code of Procedure, which in no way violated the principle of non-retroactivity of criminal law.

19. The Government further maintains that a new application for parole was submitted on 17 January 2012. In the light of conflicting opinions between the relevant commissions and the negative reaction of the victims, the Paris Court of Appeal, in a judgement dated 10 January 2013, upheld the lower court's decision supporting the granting of parole, subject to the issuing of an exclusion order, and proceeded to adjourn the hearing of the case until 14 January 2013.

20. On 15 January 2013, the Paris Prosecutor's Office lodged an appeal against this decision with the Court of Cassation and, in a judgement dated 4 April 2013, the Court declared the application for parole inadmissible and overturned the contested ruling without the right of appeal. On that basis, the Government argues that Mr. Abdallah does not meet the conditions for parole and that his detention cannot be regarded as arbitrary.

Further comments from the source

21. In comments dated 26 August 2013, the source fails to respond to the key questions contained in the Government's responses. Instead, the source criticizes the interference of the United States of America in the case, condemns the exceptional measures applied to Mr. Abdallah, contests the retroactive application of the Preventive Detention Act of 2008, states that Mr. Abdallah meets all the conditions for parole, and stresses the need to enforce such a measure, subject to the issuing of the exclusion order.

Discussion

22. Mr. Abdallah was arrested, prosecuted and convicted for criminal acts by the Special Assize Court of Paris and sentenced to life imprisonment and an exclusion order.

23. His first two applications for parole were denied, and the latest request was granted by the Paris Court for the Enforcement of Sentences in a decision dated 10 January 2013, subject to the issuing of an exclusion order.

24. The source claims that, despite being granted parole, Mr. Abdallah continues to be held in prison arbitrarily due to the executive authorities' reluctance to issue an exclusion order.

25. According to the information received from the Government and the documents provided, the decision of 10 January 2013 was brought before the Court of Cassation and was duly overturned on the grounds that the application for parole was inadmissible, owing to failure to meet prior requirements relating to the exclusion order.

Disposition

26. Accordingly, the Working Group, on the basis of paragraph 17 (b) of its methods of work, finds that, in the light of the judicial proceedings and decisions, which were undertaken in due and proper form and were uncontested, the detention of Mr. Abdallah cannot be regarded as arbitrary.

[Adopted 28 August 2013]
