United Nations A/HRC/WGAD/2015/48

General Assembly

Distr.: General
15 March 2016

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November-4 December 2015

Opinion No. 48/2015 concerning Djuro Kljaic (Serbia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 26 January 2015 the Working Group transmitted a communication to the Government of Serbia concerning Djuro Kljaic. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 sentence or despite an amnesty law applicable to him) (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);

(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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. Djuro Kljaic, a Serbian national, was convicted in January 1996 by the District Court in Beli Manastir, in the Serbian Krajina region (now in Croatia) and sentenced to 10 years of imprisonment. In 1996 Mr. Kljaic was transferred to a prison in Sremska Mitrovica in the Republic of Serbia, when the Serbian Krajina region began reintegration into Croatia. The source claims that this transfer was done without a legal basis, such as an official agreement between the Republic of Serbia and Croatia.

5. According to the source, in January 2000 Mr. Kljaic was released on leave from the prison in Sremska Mitrovica and, like most inmates granted leave at the time, did not return.

6. After his release on leave in 2000, Mr. Kljaic lived in Mladenovo, in the Republic of Serbia. The source notes that Mr. Kljaic did not evade Serbian authorities, having approached the police on numerous occasions in connection with his identification card, his driver's licence and his birth certificate. Despite the existence of an arrest warrant issued on 18 January 2000 by authorities at the prison in Sremska Mitrovica in the execution of the judgement of the District Court, authorities did not take steps to arrest Mr. Kljaic until 2011.

7. Mr. Kljaic was arrested on 29 November 2011 in Mladenovo, Backa Palanka on the basis of the above-mentioned warrant. He is now serving his sentence in the prison in Sremska Mitrovica.

8. On 5 March 2013, a request for Mr. Kljaic's release was sent to the Higher Court in Sremska Mitrovica, then forwarded to the Higher Court in Novi Sad. Following the denial of the request, an appeal was sent to the Court of Appeal in Novi Sad. The Court rejected the appeal, stating that the court that had convicted Mr. Kljaic, namely, the District Court in Beli Manastir, had jurisdiction, and therefore the judgement was in accordance with Serbian law.

9. The source claims that no clarification was provided as to whether that judgement is Serbian or foreign or, in the latter case, whether it has undergone the official recognition procedure in accordance with the Criminal Procedure Code of Serbia.

10. The source further notes that no clarification was provided by the courts concerned as to the reasons why Mr. Kljaic was detained only in 2011, despite the existence of a purportedly valid arrest warrant dating back to 2000 and the fact that he had approached authorities on numerous occasions prior to 2011.

Response from the Government

11. The Working Group regrets that the Government has not responded to the allegations transmitted to it on 26 January 2015.

Discussion

Transfer of Mr. Kljaic to territory under the jurisdiction of the Republic of Serbia

12. In January 1996, Mr. Kljaic was sentenced to 10 years of imprisonment for murder by the District Court in Beli Manastir,[1] which was located, at that time, on territory controlled by the self-proclaimed Republic of Serbian Krajina.

13. Later in 1996, that region was reintegrated into Croatia and Mr. Kljaic was transferred to a prison on the territory of Republic of Serbia (Sremska Mitrovica) without formal consent from Croatia. As explained by the Constitutional Court of the Republic of Serbia in a decision dated 25 June 2015, the transfer "could not be executed in the framework of the international procedure of legal assistance" because Mr. Kljaic was "convicted by the court of [the Republic of Serbian Krajina] at the time, when its formal legal status as a State was not internationally settled".

14. In January 2000, Mr. Kljaic was temporarily released from Sremska Mitrovica prison on "leave" and did not return. On 18 January 2000, authorities at the prison in Sremska Mitrovica issued an arrest warrant to return Mr. Kljaic to the prison, in execution of the judgement of the District Court in Beli Manastir. In November 2011, Mr. Kljaic was arrested and returned to the prison to serve his sentence.

15. In additional correspondence with the Working Group, the source refers to the judgement of the Grand Chamber of the European Court of Human Rights in the case *Ilaşcu and others v. Moldova and Russia*. The Working Group is aware of this judgement and notes that the Grand Chamber expressed the following position as to the legitimacy of the sentence imposed by the "Supreme Court" of the self-proclaimed "Moldavian Republic of Transdniestria":

> The "Supreme Court of the [Moldavian Republic of Transdniestria]" which passed sentence on Mr. Ilaşcu was set up by an entity which is illegal under international law and has not been recognised by the international community. That "court" belongs to a system which can hardly be said to function on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention. That is evidenced by the patently arbitrary nature of the circumstances in which the applicants were tried and convicted, as they described them in an account which has not been disputed by the other parties. …
>
> The judgment of the Supreme Court of Moldova setting aside the applicant's conviction … confirmed the unlawful and arbitrary nature of the judgment.[2]

16. In this regard, the Working Group notes that in the case under consideration, unlike the Ilaşcu case, Mr. Kljaic, in the 17 years following his conviction for murder, did not appeal the conviction before a court, either in Croatia or Serbia. His conviction has never been reviewed by a court in Croatia and, in fact, for 17 years he did not challenge the jurisdiction of the court that adjudicated his case. Furthermore, in the application the source has not provided the Working Group with information on any violation of the rights of the accused occurring either at trial or during the pretrial stages.

17. Taking into account all the circumstances of the case, including the gravity of the offence for which Mr. Kljaic was convicted (murder), and the fact that he has never

[1] See paragraph 3 of the relevant decision of the Constitutional Court of Republic of Serbia, dated 25 June 2015, available in the files of the Working Group.

[2] *Ilaşcu and others v. Moldova and Russia*, application No. 48787/99, judgement of 8 July 2004, paras. 436-437.

challenged the conviction in relevant courts, the Working Group considers that it does not have sufficient elements to find the detention arbitrary.

Application of a statute of limitations

18. According to the information provided by the source, the arrest warrant for returning Mr. Kljaic to prison was issued in January 2000 and he was not arrested until 2011. According to article 105 of the Criminal Code of Serbia, the limitation on the enforcement of a penalty of over 5 years of imprisonment is 10 years. In this case, the sentence was not enforced for 11 years. Pursuant to article 107 (4) of the Criminal Code, the limitation shall be suspended by every act of competent authority undertaken for the purpose of enforcement of penalty.

19. However, the Working Group does not have reliable information as to whether or not in this case the competent authorities of Serbia undertook acts for the purpose of the enforcement of the sentence that would suspend the limitation. Despite specific requests from the Working Group, the source failed to provide copies of the decisions of the courts and a copy of the decision concerning the application of the statute of limitations. Accordingly, the Working Group considers that it does not have sufficient information on the applicability of the statute of limitations in the case under consideration to conclude whether or not the detention of Mr. Kljaic is arbitrary.

20. Pursuant to paragraph 10 (f) of the Working Group’s methods of work, the absence of a response by the source may lead the Working Group to terminate its consideration of the case.

Disposition

21. Taking into account all the circumstances of the case, the Working Group considers that it does not have sufficient elements to issue an opinion. Therefore, and in accordance with paragraph 10 (f) of its methods of work, the Working Group decides to terminate its consideration of the case without prejudice.

[Adopted on 3 December 2015]