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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixtieth session, 2–6 May 2011

No. 7/2011 (Egypt)

Communication addressed to the Government on 22 December 2010

Concerning: Mahmoud Abdelsamad Kassem

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. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

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 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 the 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; 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. According to the source, on 6 April 2009, Mr. Kassem, a 35 year-old building worker, was arrested at his home by agents of the Al Marej Branch of the State Security Intelligence Services (SSI). According to the source, Mr. Kassem was not presented with a warrant for his arrest.
4. The source informs that Mr. Kassem was taken to the SSI premises in Nasr City, where he was held for nearly 50 days and allegedly tortured on several occasions. Reportedly, the reason for the use of torture was to obtain information from Mr. Kassem regarding his alleged relation with a terrorist group.
5. According to the source, Mr. Kassem was subsequently transferred to Abou Za'bal Prison where he remains detained.
6. The source contends that Mr. Kassem had challenged his administrative detention before the Emergency Supreme State Security Court, in accordance with the Emergency Law.
7. On 13 July 2010, the Emergency Supreme State Security Court issued an order for Mr. Kassem's release. On 8 August 2010, the same Court confirmed its decision following the appeal submitted by the Minister of Interior. However, to date, the court order requesting Mr. Kassem's release has not been executed by the authorities.
8. The source alleges that instead of releasing Mr. Kassem, the Ministry of Interior transferred him to another location before issuing a new administrative detention order.
9. In the source's view, Mr. Kassem has been detained without any legal basis. In particular, the source contends that Mr. Kassem was arrested and detained without a court order and he was not informed of any reasons justifying his arrest and detention.
10. The source refers to article 41 of the Egyptian Constitution which stipulates that "individual freedom is a natural right not subject to violation except in cases of *flagrante delicto*. No person may be arrested, inspected, detained or have his freedom restricted in any way or be prevented from free movement except by an order necessitated by investigations and the preservation of public security. This order shall be given by the competent judge or the Public Prosecution in accordance with the provisions of the law".
11. The source argues that Mr. Kassem is being detained in violation of article 9, paragraph 2, and article 14, paragraph 1, of the International Covenant on Civil and Political Rights. In particular, the source opines that Mr. Kassem has not been given the right to a fair trial. He was not informed of any charges against him either at the moment of his arrest or thereafter.

Response from the Government

12. In its letter of 22 December 2010, the Working Group provided the Government with the summary of the case and requested any information that it might wish to provide regarding the allegations. The Working Group regrets that the Government did not respond to the allegations transmitted within 90 days, as provided for in paragraph 15 of the Working Group's methods of work, nor did the Government request an extension of the time limit within the 90-day period.

13. According to paragraph 16 of the Working Group's methods of work, the Working Group may grant an extension of the time limit upon submission of a justified request. In the present case, however, the Working Group notes that the request for an extension of the time limit to reply was received on 4 May 2011, that is, long after the expiry of the 90-day period. In such circumstances, and although appreciative of the Government's cooperation, the Working Group considers that it cannot delay further in rendering its opinion.

Discussion

14. Despite the absence of information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Mr. Kassem in conformity with paragraph 16 of its methods of work.

15. As stated in opinion No. 21/2007, paragraph 19, as well as on other occasions (see for example opinion No. 5/2005, para. 19; decisions No. 45/1995, para. 6; and No. 61/1993, para. 6), the Working Group considers that maintaining a person in administrative detention once his release has been ordered by the court competent to exercise control over the legality of detention, renders the deprivation of liberty arbitrary.

16. The Working Group reiterates its opinion that, in such cases, no legal basis can be invoked to justify the detention, least of all an administrative order issued to circumvent a judicial decision ordering the release.

17. In the present case, despite the court order of 13 July 2010 to release Mr. Kassem, he is still being held in detention under an administrative order. As mentioned above, in the Working Group's view, maintaining a person in detention once his release has been ordered by a competent court, renders the deprivation of liberty arbitrary. Such arbitrary detention violates article 9 of the International Covenant on Civil and Political Rights. Thus, this case falls into category I of the categories applicable to the consideration of the cases submitted to the Working Group.

18. Since his arrest on 6 April 2009, Mr. Kassem has not been formally charged or tried. In the Working Group's view, due to the facts of non-observance of the right to a fair trial, as provided for in article 14 of the International Covenant on Civil and Political Rights, the case also falls into category III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Mr. Kassem is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

20. Consequent upon the opinion rendered, the Working Group requests the Government of Egypt to take the necessary steps to remedy Mr. Kassem's 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.

21. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Kassem and accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 4 May 2011]