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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-sixth session, 29 April–3 May 2013

No. 1/2013 (Tunisia)

Communication addressed to the Government on 3 October 2012

Concerning Abdelwaheb Abdallah

The Government did not reply.

The State is 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 clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council approved the Working Group's mandate in its decision 2006/102 and extended it for a further three-year period in 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 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 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 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. The case below was submitted to the Working Group on Arbitrary Detention in the following terms:

4. Mr. Abdelwaheb Abdallah, a Tunisian national born in Monastir on 14 February 1940, was Ambassador of Tunisia to the United Kingdom and Ireland between 1988 and 1991. On his return to Tunis, he was appointed Minister Counsellor and spokesperson for the Office of the President. During that period, he was responsible for communications, a position which he relinquished on 7 November 2003. Between November 2003 and August 2005, Mr. Abdallah retained the post of Minister Counsellor. In August 2005, he was appointed Minister for Foreign Affairs, a post that he held until January 2010. He was then appointed Minister Counsellor at the Office of the President until 11 January 2011, at which date he was removed from office.

Concerning his pretrial detention in the case concerning the financing of the Rassemblement constitutionnel démocratique (Democratic Constitutional Rally) (RCD) (No. 19855/5)

5. On 10 March 2011, Mr. Abdallah was placed in pretrial detention by order of the Minister of the Interior in connection with the case concerning the financing of the Rassemblement constitutionnel démocratique (Democratic Constitutional Rally), without a request for assistance on the part of the investigating judge in charge of the case and prior to being questioned by an investigating judge.

6. On 11 March 2011, Mr. Abdallah appeared before the State prosecutor and the investigating judge of the court of first instance of Tunis. Both refused to question him on the grounds that he had neither been called nor summoned to appear. An investigation was officially opened the next day, on 12 March 2011, and announced in the media. While media coverage was being organized, Mr. Abdallah was summoned to the court on 16 March 2011 to be heard by the investigating judge in connection with the case of the “misappropriation of money through and on behalf of the RCD party” and the “collection of funds from private citizens and businesses to finance its activities”.

7. On 23 April 2012, the investigating judge decided that legal proceedings were not necessary in this case, on the grounds of a judicial expertise showing that Mr. Abdallah had no connection with it. This conclusion was later confirmed by the indictments chamber on 23 May 2012.

8. Mr. Abdallah remained in pretrial detention for 14 months in connection with this case, more than the maximum legal limit prescribed by article 85 of the Code of Criminal Procedure. According to the source, Mr. Abdallah should have been granted provisional release pending the results of the judicial expertise, especially since most of the accused in this case had already been released pending those results, and because this decision had

been challenged on points of law by the public prosecutor's office, which did not approve it. Mr. Abdallah's requests for provisional release were refused on several occasions.

Concerning his pretrial detention since 24 June 2011 in the Cactus case (No. 20303/1)

9. On 24 June 2011, Mr. Abdallah was placed in pretrial detention in connection with another case, number 20303/1 (the Cactus case). This case arose from a complaint lodged by the Tunisian Television Establishment concerning suspected breaches of the law related to various works and contracts carried out jointly with the private production company Cactus Productions.

10. Mr. Abdallah was charged with aiding and abetting as defined in article 96 of the Criminal Code, despite having no connection with the case, since the Tunisian Television Establishment, the plaintiff did not even include his name in the list of persons against whom the complaint was brought.

11. According to the source, Mr. Abdallah's name had been added to the case on the basis of a handwritten note communicating the instructions of the former President of the Republic concerning a change in the title of a television programme, which had never in the event materialized. This handwritten note, which does not in itself constitute a crime or an offence, seems to be the only evidence put forward to justify the legal proceedings against Mr. Abdallah in this case and his subsequent remand in custody, with no further legal justification.

12. In this case, the investigating judge issued a detention order against Mr. Abdallah on 24 June 2011 without having questioned him, in breach of article 80 of the Code of Criminal Procedure, which provides that "after questioning of the accused, the investigating judge can, on the findings of the State prosecutor, issue a detention order if the crime is punishable by a prison sentence or heavier sentence". According to the source, the minutes of the questioning of Mr. Abdallah show that the two aforementioned conditions, namely his interrogation and consultation with the State prosecutor, had not been met.

13. On 24 June 2011, the senior investigating judge of the court of first instance of Tunis issued a detention order against Mr. Abdallah without having questioned him. The decision to remand him in custody was taken in the absence of his counsel and without hearing his arguments, without even assessing the evidence for and against him, and without giving him the opportunity to explain or to recognize the facts, as provided for in article 69 of the Code of Criminal Procedure.

14. Mr. Abdallah was questioned on 1 July 2011. The investigating judge systematically refused the successive requests for release that were subsequently submitted to him. Meanwhile, all the main persons accused in the case, who were suspected of having caused financial losses to the Tunisian Television Establishment or of having made illegal profits, had been granted provisional release.

15. Similarly, the source maintains that the deprivation of liberty is arbitrary because the conditions of pretrial detention provided for in article 85 of the Code of Criminal Procedure were not complied with. Mr. Abdallah does not have any connection with the plaintiff or his co-accused and he is in no position to commit any new crimes or offences in connection with the case. Nor is he in a position to hinder the progress of the investigation since, as the two judicial expertises carried out in the case have already demonstrated, he did not have any connection with it.

16. Moreover, the investigating judge refused the successive requests for release and even extended Mr. Abdallah's pretrial detention on two occasions, merely on the basis of his handwritten note. The investigating judge did not take account of the evidence in his defence in the case, namely the two judicial expertises mentioned above and more than 30

testimonies and interrogations exonerating Mr. Abdallah. According to the source, this constitutes a breach of article 53 of the Code of Criminal Procedure, which provides that the investigating judge is obliged to consider the evidence both against and in favour of the accused.

17. When Mr. Abdallah had been in pretrial detention for more than a year, the investigating judge ordered a third expertise. In the present case Mr. Abdallah, who is charged with aiding and abetting, is the only accused person held in pretrial detention, while the main perpetrators have been granted provisional release. According to the source, his pretrial detention contravenes the principle of equality before the law, which is enshrined in article 14, paragraph 1, of the International Covenant on Civil and Political Rights, as well as in the provisions of article 9, paragraph 3, of the Covenant, according to which anyone arrested or detained on a criminal charge must be tried within a reasonable time or released, and those of article 14, paragraph 3 (c), according to which all accused persons should be tried without undue delay.

18. Lastly, the source points out that Mr. Abdallah has been subjected to other intrusive measures since his arrest. All his movable and immovable property has been confiscated, as well as his pension, without any court order being issued against him and without any opportunity for him to appeal against such measures.

Government reply

19. The Working Group wrote to the Government on 3 October 2012 to request its observations on the allegations mentioned above. The Government failed not only to reply within the given time limit, but even to request an extension, as authorized by the provisions of paragraph 16 of the working methods of the Working Group. In the circumstances, the Working Group considers itself justified in rendering an Opinion on the basis of all the information it has obtained.

Discussion

20. The Working Group notes with regret that after seven months there has been no reaction on the part of the Government in a case in which the allegations are particularly serious. This is especially so in view of the fact that Tunisia, which has been undergoing a difficult period in its history since the events of January 2011, must remain resolutely committed to democracy and compliance with the rule of law and human rights.

21. In this instance, two different proceedings have been opened against Mr. Abdallah. In the first, known as the “Rassemblement Constitutionnel Démocratique (Democratic Constitutional Rally) (RCD) case”, the allegations essentially rest on his arrest and detention without a warrant, and on his continued detention despite a decision to grant him provisional release being made by the investigating judge and confirmed by the indictments chamber while most of his co-accused had been released.

22. In the second case, known as the “Cactus” case, he was remanded in custody on 24 June 2011. The source maintains that Mr. Abdallah was prosecuted as an accessory in this case merely because his name had been added by hand to the list of accused persons. The source adds that while the facts on the basis of which he is being prosecuted do not constitute a breach of criminal law, all the main perpetrators have been granted provisional release, which amounts to discrimination, besides the fact that the investigating judge failed to consider the evidence in Mr. Abdallah’s favour.

23. These allegations, which have not been contested, constitute violations of the provisions contained in articles 9, 10 and 11 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights and paragraphs 1, 2,

and 3 (e) of article 14 of the Covenant, and contravene categories I and III of the working methods of the Working Group.

Disposition

24. In the light of the foregoing, the Working Group regards Mr. Abdallah's detention as arbitrary, contrary to the aforementioned provisions and falling within Categories I and III of the working methods of the Working Group. It therefore requests the Government to release the person concerned forthwith, to grant him appropriate compensation, to comply with its international commitments with respect to human rights and to cooperate better in the future with the Working Group, as recommended by the resolutions of the Human Rights Council.

[Adopted on 30 April 2013]
