



General Assembly

Distr.: General
2 April 2014
English
Original: French

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-eighth session, 13–22 November 2013

No. 54/2013 (Morocco)

Communication addressed to the Government on 22 August 2013

Concerning Mustapha El Hasnaoui

The Government replied on 17 October 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 resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in Council resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. 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 for 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. Mustapha El Hasnaoui, a 34-year-old Moroccan national living in the Sidi Moussa district of Salé, is a journalist for *Assabil*, a daily newspaper that is especially critical of the repressive treatment of persons accused of terrorism since the 2003 attacks in Casablanca, and a member of a Moroccan human rights NGO, the Forum de la dignité et des droits de l'homme. In the course of his activities as a journalist and human rights defender he has reported and gathered information on numerous cases of arbitrary detention and torture.

4. Mr. El Hasnaoui travelled to Turkey on 11 May 2013. When he arrived at Istanbul airport, he was subject to refoulement measures, for which no reasons were given, by the Turkish airport authorities. Upon his return to Casablanca, he was questioned for several hours by the border police before being released.

5. On 15 May 2013, Mr. El Hasnaoui received a telephone call from a criminal investigation officer informing him that he must report to the Al Maarif police station in Casablanca at 9.30 a.m. on the following day. On 16 May, he reported to the Al Maarif criminal investigation department as requested. The duty officer told him to return at 1 p.m. as he could not be seen at that moment. When he returned, he was placed under arrest without of any legal reasons being given.

6. The source states that Mr. El Hasnaoui was questioned for many hours about his journalistic activities, coverage of certain events, political beliefs, activities as a human rights defender and contact with the families of detainees accused of belonging to Salafia Jihadia. The source affirms that Mr. El Hasnaoui's mobile telephone was then seized and examined, in contravention of the Code of Criminal Procedure, which contains legal safeguards with regard to such measures.

7. The source states that the criminal investigation officers did not charge Mr. El Hasnaoui with any specific offence or accuse him of any particular act. According to the source, the only clearly stated problem the police officers appeared to have with Mr. El Hasnaoui was his refusal to agree to their repeated suggestions that he should work with them and keep them informed of the activities of persons close to Salafist circles with whom he had a relationship of trust because of his work as a journalist and human rights defender. The source maintains that Mr. El Hasnaoui was threatened several times with reprisals by the security services because of his refusal to cooperate.

8. The source reports that Mr. El Hasnaoui was kept in police custody for 12 days. The initial 96-hour period for custody was extended twice without any legal foundation or need arising from police inquiries. According to the source, there were absolutely no grounds for his being held in custody, given that he was not formally charged with or accused of any terrorism-related act.

9. On his 12th day in custody, a criminal investigation officer asked Mr. El Hasnaoui to sign a written record of his statement, assuring him that the procedure had come to an

end, that he was not accused of anything and that he would be released after completing that simple formality. It is reported that the police officer pressed him to sign without reading through what was contained in the written record, assuring him that his statements had been taken down faithfully. The source states that Mr. El Hasnaoui, who was in a poor state after his long period in custody, agreed to sign the document without reading it through.

10. On 27 May 2013, Mr. El Hasnaoui was brought before Salé Court's Crown prosecutor, who requested the opening of a judicial inquiry into acts relating to terrorist activities. The examining magistrate questioned him about a trip he had made to Turkey in 2009 and about his links with Salafist groups.

11. After the hearing, the magistrate found that there were grounds for prosecuting Mr. El Hasnaoui for "having formed a criminal gang to carry out acts of terrorism as part of a broader group, the aim of which was to seriously undermine public order through intimidation, terror and violence" and ordered his placement in pretrial detention in Salé prison.

12. The source notes that no one besides Mr. El Hasnaoui was named or even identified in the criminal proceedings as being involved in or a member of the so-called "criminal gang" working as part of a "broader group" and that no specific act that could be construed as being of a criminal nature had been established during either the preliminary inquiry or the pretrial proceedings.

13. Mr. El Hasnaoui was brought before the Rabat Court of Appeal on 11 July 2013. During the hearing, he denied having committed any punishable offence and rejected all the charges against him. He justified his links with Salafist groups on the basis of his activities as a human rights defender and as a journalist interested in that subject. During the same hearing, he told the court about the threats and pressure to which he had been subjected by the intelligence services as a result of his refusal to work with them. Mr. El Hasnaoui was sentenced to 4 years in prison.

14. The source alleges that Mr. El Hasnaoui was prosecuted and convicted solely because of his activities as a human rights defender and journalist and that he was arbitrarily deprived of his liberty solely because of his opinions and political views. The source considers that, in such circumstances, the current detention of Mr. El Hasnaoui can only be considered as arbitrary deprivation of liberty.

15. The source points out that neither the examining magistrate nor the trial court found that any act that could be construed as a criminal offence had been committed. The source maintains that the arrest of Mr. El Hasnaoui was aimed at "muzzling" a journalist and human rights defender and preventing him from peacefully expressing his political positions through his articles in the press.

16. The source considers his detention in police custody, extended without legal foundation or any need arising from inquiries, and which allegedly lasted 12 days, to have been abusive and unjustified. Moreover, his statements before the examining magistrate and when he was on trial reveal that he was compelled to sign the police record without reading it. The trial court based its conviction solely on that written record, thereby violating the defendant's right to "a fair and public hearing by a competent, independent and impartial tribunal".

17. The source recalls that the Human Rights Committee, in its concluding observations of 3 November 2004, expressed concern about the fact that the independence of the judiciary was not fully guaranteed and specifically recommended that Morocco take the necessary steps to guarantee its independence and impartiality (CCPR/CO/82/MAR, para. 19).

18. The source affirms that the arbitrary deprivation of liberty of Mr. El Hasnaoui constitutes a violation of the International Covenant on Civil and Political Rights and the Constitution of Morocco.

Response from the Government

19. In its response of 17 October 2013, the Government states that Mr. El Hasnaoui, a 34-year-old Moroccan national, is not a journalist but rather a blogger-cum-journalist, that he has fought against secularism and that, in 2004, he joined the Islamist Al Adl Wal Ihsane movement, which is outlawed in Morocco, where his fundamentalist convictions regarding the need to wage holy war against the Western enemy, no matter where, deepened. Mr. El Hasnaoui has established good relations with persons who go by the names of Abdelkadir Kebir and Abdelwahab Harraoui and are known for recruiting persons wishing to fight in Afghanistan. After his trip to Turkey in 2009, Mr. El Hasnaoui began to write constantly about Islamist movements and trials involving their members, and to organize protests in prisons and other public places. He has also come into contact with movements that revealed to him that they were fighting against the regular Syrian army. That information prompted his trip to Istanbul in May 2013, whence he was sent back immediately after arrival.

20. The Government adds that Mr. El Hasnaoui contacted the Geneva-based Alkarama organization and Islamists in Switzerland when he learned that a terrorist had been detained in Germany. The Government provided a list of meetings between Mr. El Hasnaoui and Islamists in different countries, among them the United Kingdom.

21. The Government states that, during trial proceedings, the defendant gave no guarantee that he would appear in court if he was set free. Mr. El Hasnaoui has always had the assistance of a lawyer. In the end, he was sentenced to 4 years' imprisonment. The convicted person did not appeal against the sentence.

22. Mr. El Hasnaoui is not a journalist but a blogger. Under Moroccan law, he cannot work as a journalist if he does not belong to a professional association. The legally required time frame for trials involving terrorism was scrupulously respected. Mr. El Hasnaoui's family was kept constantly informed of his personal situation and apprised of the details of the trial proceedings. The decision to hold this person in police custody was made by necessity by the seriousness of his offence.

23. According to the Government, international standards were fully adhered to during trial proceedings. That is demonstrated by the fact that Mr. El Hasnaoui did not appeal against his conviction.

24. The Government rejects the assertion that the charges laid against this person or his trial or conviction were aimed at infringing his rights to the freedom of thought and opinion. The pretrial proceedings conducted by the first examining chamber began with testimony by Mr. El Hasnaoui, who was assisted by counsel provided by means of legal aid. Mr. El Hasnaoui repeated all his previous statements to the court. In his hearing before the criminal division of the Salé branch of the Rabat Court of Appeal, Mr. El Hasnaoui stated that he had left for Turkey to receive military training. The allegations made by the source are wholly devoid of any factual or legal substance.

Comments from the source

25. The source reported on 29 October 2013 that the sentence imposed on Mr. El Hasnaoui had been reduced from 4 to 3 years' imprisonment by the Salé Court of Appeal. Nevertheless, the source stands by all the allegations made.

26. The source repeated that no specific charges were brought against the journalist and that the written record of his statement to the police had been altered. According to the source, Mr. El Hasnaoui was detained because of his religion and political views. His status as a journalist has been demonstrated by the great number and quality of his articles.

27. Mr. El Hasnaoui's contacts as a journalist with Salafists do not constitute an offence. His contact with Alkarama and other organizations is perfectly legitimate.

28. Mr. El Hasnaoui was denied access to a lawyer in the early stages of his trial. He was not allowed to see the police record of his statement or any other relevant documents. Moreover, under Moroccan law, police records of statements are only valid in court in the absence of contradictory evidence, which in this instance is not the case.

Discussion

29. The Working Group considers Mr. El Hasnaoui to be an independent journalist and a member of a Moroccan human rights NGO. He has dedicated his work in Salé to defending of persons who are persecuted because they are accused of terrorist activity and has reported and gathered information on detentions carried out by the Turkish police. It is indeed for that reason that he was refused entry into Turkey and obliged to return to Morocco. Upon arrival in his country, Mr. El Hasnaoui was questioned for many hours by the Moroccan police before being released.

30. On 15 May 2013, Mr. El Hasnaoui was called in by the police in Casablanca. He was detained without being informed of the reasons for his detention or of any charges against him. He was closely questioned about his work as a journalist, the articles he had written and his political views. He was also questioned about his activities as a human rights defender and his links with people close to the Salafist movement. His mobile telephone was confiscated illegally.

31. The Working Group is of the view that no specific criminal charges were brought against Mr. El Hasnaoui and that he was not accused of any acts of violence. The Working Group does not exclude the possibility that the persecution of Mr. El Hasnaoui may have been linked to his contact with persons involved in the Salafist movement, which had already led to him receiving threats.

32. Mr. El Hasnaoui was held in custody initially for a period of 96 hours, which was extended twice to make a total of 12 days, after which he was told that he would be released without charge if he agreed to sign a written record. Exhausted after 12 days of custody in difficult conditions, Mr. El Hasnaoui was pressured into signing the record without reading its contents.

33. Only on 24 May 2013 did Mr. El Hasnaoui appear before the Crown prosecutor in Salé. He was accused of terrorism and questioned about his trip to Turkey, from where he had been sent back, and about his contacts with people linked to the Salafist movement.

34. Mr. El Hasnaoui testified before the Rabat Court of Appeal on 11 July 2013. He denied all the charges and accusations, except with regard to his contacts in the Salafist movement, which he accounted for by way of his profession as a journalist and his activities as a human rights defender. At the trial, he stated that he had received threats because of his refusal to work with the police.

35. The accusations against Mr. El Hasnaoui make no mention of any violent, let alone terrorist, activity. He was not charged with any act of terrorism. His activities as a human rights defender, an intellectual and a journalist appear to be entirely legitimate. Neither the examining magistrate nor the trial court found that any act that could be construed as a criminal offence had been committed.

Disposition

36. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Mr. Mustapha El Hasnaoui is arbitrary in that it arises from the exercise of his rights to freedom of thought, opinion, expression and religion, and his activities in defence of people persecuted for their thoughts, ideologies or opinions, as provided for in articles 18 and 19 of the Universal Declaration of Human Rights and in articles 18 and 19 of the International Covenant on Civil and Political Rights, to which Morocco is a party, and therefore falls within category II of the Working Group's working methods. The detention is also arbitrary because of the grave violations of the international norms relating to the right to a fair trial, such as the signing of a police record without having read it, the importance attached to that record, the absence of a lawyer in the initial stages of the trial and so on, and falls within category III of the Group's working methods.

37. The Working Group therefore requests the Government of Morocco to release Mr. Mustapha El Hasnaoui immediately and unconditionally and compensate him appropriately for the harm caused.

[Adopted on 13 November 2013]
