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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 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, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

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

5. According to the source, in January 2000 Mr. Kljaic was released on “vacation” from the prison in Sremska Mitrovica and did not come back, like most of other inmates at the time.

6. After his release in 2000, Mr. Kljaic lived in Mladenovo, Republic of Serbia. The source notes that Mr. Kljaic did not evade Serbian authorities, having approached the police on numerous occasions in connection to his ID card, his driver’s license and his birth certificate. Despite the existence of the arrest warrant issued on 18th January 2000 by the prison in Sremska Mitrovica in the execution of judgment of District Court in Beli Manastir of the region Srpska Krajina (now Croatia), authorities did not take steps to arrest Mr. Kljaic until 2011.

7. The arrest of Mr. Kljaic took place on 29th November 2011 in Mladenovo Backa Palanka on the basis of the abovementioned warrant. Mr. Kljaic is now serving sentence in prison in Sremska Mitrovica.

8. On 5th of March 2013, a request for the release of Mr. Kljaic was sent to the Higher Court in Sremska Mitrovica and then forwarded to the Higher Court in Novi Sad. After the request was denied, an appeal to this decision was sent to the Court of Appeal in Novi Sad. The Court denied the appeal stating that court that convicted Mr. Kljaic (District Court in Beli Manastir) had jurisdiction and therefore the judgment is in accordance with the Serbian law.

9. The source claims that no clarification was provided as to whether this judgment is Serbian or foreign or, in the latter case, whether it underwent the official recognition procedure in accordance with the Serbian Criminal Code Procedure.

10. The source further notes that no clarification was provided by concerned courts so as to reasons why the detention occurred only in 2011, despite the existence of purportedly valid arrest warrant dating back to 2000 and the fact that Mr. Kljaic 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

12. Transfer of Mr. Kljaic under jurisdiction of Serbia.

13. In January 1996 Mr. Kljaic was sentenced to 10 years of imprisonment for murder¹ by District Court in Beli Manastir located, at that time, on the territory controlled by the self-proclaimed Republic of Srpska Krajina (RSK).

14. Later in 1996, this region was reintegrated into Croatia and Mr. Kljaic was transferred to prison on the territory of Serbia (Sremska Mitrovica) without formal consent of Croatia. As explained by the Constitutional Court of Republic of Serbia of 25 June 2015, this transfer “could not be executed in the framework of the international procedure of legal assistance” because Mr. Kljaic was “convicted by the court of RSK at the time, when its formal legal status as a State was not internationally settled.”²

15. In January 2000, Mr. Kljaic had been temporarily released from Sremska Mitrovica prison on “vacation” (according to the source) and did not return back. On 18th January 2000, the prison in Sremska Mitrovica issued arrest warrant in the execution of judgment of District Court in Beli Manastir to return Mr. Kljaic to the prison. In November 2011, Mr. Kljaic was arrested and returned to Sremska Mitrovica prison to serve the sentence.

16. The source also 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 Transdnistria” (the “MRT”):³

“The “Supreme Court of the MRT” 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 ...”

17. In this regard, the Working Group notes that, unlike the Ilaşcu case, in the case under consideration Mr. Kljaic, for 17 years after 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 of Croatia and, in fact, for 17 years he did not challenge the jurisdiction of the court which adjudicated his case. Furthermore, in the application the source has not provide the Working Group information of any violations of the rights of the accused either at trial or pre-trial stages in his case.

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

19. Application of statute of limitation.

20. According to the information provided by the source, the arrest warrant for returning of Mr. Kljaic to prison was issued in January 2000 and he was not arrested until 2011. According to article 105 of Serbian Criminal Code, the limitation of enforcement of penalty

¹ See para. 3 of the Constitutional Court of Republic of Serbia of 25 June 2015, which is in possession of the Working Group.

² Ibid., para. 5.

³ *Ilaşcu and Others v. Moldova and Russia*, [GC] 48787/99 Judgment, 8 July 2004, para. 436.

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 of Serbia, limitation shall be suspended by every act of competent authority for the purpose of enforcement of penalty.

21. However, the Working Group does not have reliable information of whether or not the competent authorities of Serbia undertook necessary acts for the purpose of enforcement of the sentence in this case which would interrupt the limitation. Despite the specific requests from the Working Group, the source failed to provide the decision of the court(s) and a copy of the decision concerning the application of the statute of limitation. Accordingly, the Working Group considers that it is lacking sufficient information on applicability of the statute of limitation in the case under consideration and conclude whether or not the detention of Mr. Kljaic is of an arbitrary nature.

22. Pursuant to paragraph 10 (f) of the Working Group's methods of work, the absence of a response by the source can authorize the Working Group to file the case.

Disposition

23. 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 according to paragraph 10 (f) of the Working Group's methods of work, the Working Group decides to file the case without prejudice

[Adopted on 3 December 2015]
