



General Assembly

Distr.: General
23 November 2012

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

No. 35/2012 (Thailand)

Communication addressed to the Government on 15 June 2012

Concerning Somyot Prueksakasemsuk

The Government replied to the communication on 29 June 2012.

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 its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), 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 justifying 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);

(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. Somyot Prueksakasemsuk, a 50-year old citizen of Thailand, is a labour activist, human rights defender and a magazine editor affiliated with the Democratic Alliance of Trade Unions. Mr. Prueksakasemsuk has also acted as editor of *Voice of Taksin* magazine (voice of the oppressed).

4. The case of Mr. Prueksakasemsuk's detention, ongoing since 30 April 2011, was the subject of a previous urgent appeal by the Working Group on Arbitrary Detention together with other special procedures mandate holders dated 20 December 2011.

5. On 30 April 2011, Mr. Prueksakasemsuk was arrested at Aranyaprathet district, Sa Kaeo province, and charged with contravening the lèse majesté law, or Section 112 of the Criminal Code of Thailand, which states that "whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent shall be punished with imprisonment of three to fifteen years."

6. Mr. Prueksakasemsuk's arrest came only five days after he held a press conference in Bangkok to launch a campaign to collect 10,000 signatures to petition for a parliamentary review of section 112 of the Criminal Code, which in the opinion of Mr. Prueksakasemsuk, contradicts democratic and human rights principles.

7. It is further reported that according to a document produced by the Public Prosecutor, Mr. Prueksakasemsuk permitted two articles that made negative references to the monarchy to be published in his magazine. The penalty for violation of section 112 of the Thai Criminal Code is between three to fifteen years of imprisonment for each count. As a result of the two articles, he reportedly faces two counts of charges which could carry a maximum of 30 years of imprisonment if he is found guilty.

8. Mr. Prueksakasemsuk was first placed in Bangkok Special Prison, then transferred to Sa Kaeo Provincial Court on 12 November 2011. On 1 November 2011, his fourth bail request was denied.

9. According to the source, the court hearing in the case against Mr. Prueksakasemsuk concluded on 3 May 2012. His right to bail was denied. The Ratchadapisek Criminal Court is to deliver its verdict on 19 September 2012. If found guilty, Somyot Prueksakasemsuk faces a maximum of 30 years imprisonment.

10. The source submits that Mr. Prueksakasemsuk's continued detention is arbitrary as it is a direct result of his peaceful exercise of the right to freedom of opinion and expression. In particular, Mr. Prueksakasemsuk led a campaign to abolish section 112 of the Thai Criminal Code.

11. The source alleges that Mr. Prueksakasemsuk's deprivation of liberty is in violation of articles 19 and 25 of the International Covenant on Civil and Political Rights and articles 19 and 21 of the Universal Declaration of Human Rights.

Response from the Government

12. In its reply dated 29 June 2012, the Government refers to two letters it had previously submitted in response to urgent appeals by the Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression and the Special Rapporteur on human rights defenders dated 25 May 2012, 4 April 2012, and 24 June 2011, respectively. The Government attached the aforementioned letters in its reply to the Working Group's regular procedure communication dated 15 June 2012.

13. Mr. Prueksakasemsuk was arrested in accordance with Section 112 of the Penal Code of Thailand for printing messages or pictures in a magazine which were deemed to defame, insult or threaten the King. He was not arrested for organizing a press conference about the campaign to collect signatures to abolish section 112.

14. The Government stated that a debate about the *lèse majesté* law or campaign activities to amend or repeal the law does not constitute a *lèse majesté* offence. The two matters should not be linked as that may create confusion.

15. The Government asserts that the views or unfair criticisms that are disrespectful of the monarchy or which advocate hatred or hostile feelings towards the institution can generate spontaneous actions from the silent expression without limit, responsibility or accountability, especially in regard to the monarchy, and could cause the country to disintegrate into factions. Such is the imminent threat to national unity and stability and, indeed, national existence. The *lèse majesté* law is therefore legitimate and indispensable for national security.

16. The King himself is not averse to criticism, but the Thai people are more sensitive insofar as the monarchy is concerned. The *lèse majesté* law thus exists as the result of a societal consensus or an expression of popular will. The fact that most Thais want to protect the monarch, their "father", from any threat or harm has provided the basis of a provision which appears in the Constitution of Thailand.

17. The Government considers defamation against its monarch to be a more serious offence than defamation against an ordinary person since it is not just harmful to the person insulted but to the society as a whole. Actions constituting *lèse majesté* have repercussions not only on the most revered institution, but on public order and morals. Therefore, in the Government's view, it is reasonable to impose a more severe punishment on such an offence.

18. As it is not the wish of the majority of the population, the Government has also made clear that it will not initiate any action to amend or review the *lèse majesté* law. For the people of Thailand, the *lèse majesté* law has extensive utility as it aims to protect the King who is the symbol of the existence of the nation.

19. The Government concludes that the aforementioned reasons demonstrate that the *lèse majesté* law is consistent with article 19 of the International Covenant on Civil and Political Rights. It satisfies the criteria for a restriction of freedom of expression on the basis of the principles of predictability, transparency, legitimacy, necessity and proportionality.

Discussion

20. The Working Group concurs with the Special Rapporteur on the right to freedom of opinion and expression, who found that Thailand's laws on *lèse majesté*, namely section 112 of the penal code, suppress important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression (see press release, "Thailand/Freedom of expression: UN expert recommends amendment of *lèse majesté* laws," Geneva, 10 October 2011).

21. The Working Group also recalls that the United Nations High Commissioner for Human Rights had expressed concern “about the ongoing trials and harsh sentencing of people convicted of lèse majesté in Thailand and the chilling effect that this is having on freedom of expression in the country. Such harsh criminal sanctions are neither necessary nor proportionate and violate the country’s international human rights obligations” (see press briefing note on Bahrain and Thailand, Geneva, 9 December 2011).

22. In the present case, Mr. Prueksaksemsuk was arrested and detained after he had launched a campaign for a parliamentary review of section 112 of the Criminal Code, which in his opinion, contradicts democratic and human rights principles, and after he had permitted two articles containing negative references to the monarchy to be published in his magazine. The Government maintains that his detention was prompted only because of the latter action which was deemed to defame, insult or threaten the King, and which is prohibited under section 112 of the Penal Code of Thailand.

23. With regard to violations of national legislation, the Working Group reiterates that, in conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that such detention is also consistent with the relevant provisions of international human rights law.

24. The Working Group recalls that holding and expressing opinions, including those that are not in line with official government policy, are protected by article 19 of the Universal Declaration of Human Rights and article 19, paragraph 2 of the International Covenant on Civil and Political Rights. In its general comment No. 34 (2011) on freedoms of opinion and expression, the Human Rights Committee emphasized that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition” (para. 38). The Committee specifically expressed concern regarding laws on such matters as lèse majesté.

25. Irrespective of the incident that actually prompted Mr. Prueksaksemsuk’s detention, whether it was his launching a campaign for the review of section 112 of the Criminal Code or allowing the publication of articles containing references critical of the monarchy, in the Working Group’s view, both actions fall within the boundaries of opinions and expressions protected by article 19 of the Universal Declaration of Human Rights as well as article 19 of the International Covenant on Civil and Political Rights. It follows that Mr. Prueksakasemsuk has been detained for his peaceful exercise of his right to freedom of opinion and expression provided for in the aforementioned articles of the Declaration and the Covenant. Accordingly, the deprivation of Mr. Prueksakasemsuk’s liberty falls within category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

Disposition

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

The deprivation of liberty of Somyot Prueksakasemsuk, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19, paragraph 2, of the International Covenant on Civil and Political Rights, is arbitrary and falls

within category II of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

27. Consequent upon the opinion rendered, the Working Group requests the Government to take all necessary steps to remedy Mr. Prueksakasemsuk's situation and bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

28. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to release Somyot Prueksakasemsuk 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 30 August 2012]
