



General Assembly

Distr.: General
26 May 2014
English
Original: Spanish

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 15–23 November 2012

No. 56/2012 (Bolivarian Republic of Venezuela)

Communication addressed to the Government on 21 March 2012

Concerning: César Daniel Camejo Blanco

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 the 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);

GE.14-03582 (E) 040614 170614



* 1 4 0 3 5 8 2 *

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



(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. Mr. César Daniel Camejo Blanco, of Venezuelan nationality, architect by trade, married, father of four children, was arrested on 23 January 2011 at Maiquetía “Simón Bolívar” International Airport as he was about to travel to Costa Rica, while subject to an order not to leave the country, which he was unaware of. The order had been issued by the Fiftieth Court of First Instance Responsible for the Criminal Court Circuit of the Caracas Metropolitan Area, according to the source, and in automatic fashion and without verification of its constitutionality. Mr. Camejo Blanco was not notified of the order not to leave the country. The order, according to the source, involved a ban on the person’s leaving the country but not deprivation of liberty.

4. Mr. Camejo Blanco was taken to Bolivarian National Intelligence Services (SEBIN) headquarters. On 24 January 2011 he was transferred to the above-mentioned court, where he stated that it was customary for him to travel to Costa Rica for a day and a half or two days for consulting work, that he had a ticket to return to Caracas by 5 p.m. on 24 January and that he did not know that he had been ordered not to leave the country.

5. On 25 January 2011, the court, after hearing the parties’ statements, issued an arrest warrant for Mr. Camejo Blanco on charges of embezzlement (under article 378 of the Act on Banks and Other Financial Institutions) and criminal association (punishable under article 6, read in conjunction with article 16, paragraph 4, of the Organized Crime Act).

6. The arrest of Mr. Camejo Blanco was apparently connected to a complaint filed with the Attorney-General’s Office by the Supervisor of Banks and Other Financial Institutions on Friday 21 January 2011, for alleged irregularities detected in Casa Propia Entidad de Ahorros, C.A., a financial institution whose chief executive is Mr. Camejo Blanco. At 7.35 p.m. that day, the Public Prosecution Service, without having undertaken an investigation — that is, according to the source, on no valid legal grounds — requested the order not to leave the country.

7. On 10 February 2011, Mr. Camejo Blanco’s counsel filed an appeal of the order of 25 January 2011. The source states that the prosecution did not show what had been done to establish a causal relationship between what the documents allegedly contained and Mr. Camejo Blanco. The defence was not given access to the case file. Regarding the judge’s argument, the source states that listing the actions taken by the Office of the Bank Supervisor was insufficient, since they were subject to administrative appeal. In any case, they should have been verified by the Public Prosecution Service before an arrest warrant was issued. There was no connecting argument linking all of the events and leading to the conclusion that the warrant was necessary. The court has never stated what conduct displayed or engaged in by Mr. Camejo Blanco corresponds to the criminal offence cited or can be seen as criminal behaviour. The court tried to criminalize what was not criminal behaviour, thereby violating the legality principle.

8. On 24 February 2011, the Criminal Cassation Division of the Supreme Court of Justice, of its own motion, assumed cognizance of the case, expressly prohibiting, in accordance with articles 106 and 108 of the Organic Act on the Supreme Court, undertaking any sort of action in that case. According to the source, the removal of

proceedings takes place only in a serious case or in cases of outrageous violations of the legal order that are demonstrably detrimental to the image of the judiciary, decency, democratic institutions and public order, or when the ordinary and special appeals meant to remedy the impaired legal situation have not been dealt with or were not properly dealt with.

9. On March 10 2011 an application for *amparo* seeking the release of Mr. Camejo Blanco was filed on the grounds of a series of violations of the Constitution allegedly committed by the aforementioned court. On 26 April 2011 the Constitutional Division of the Supreme Court declared the action of *amparo* inadmissible and ordered the immediate removal of the case from the Criminal Cassation Division.

10. According to the source, Mr. Camejo Blanco was arrested without a warrant and without having been caught in flagrante delicto.

11. In this case, the legality principle has been breached, since Mr. Camejo Blanco was charged with offences defined in a repealed act: the Act on Banks and Other Financial Institutions was repealed by the Act on Banking Sector Institutions, published in the *Official Gazette* (special issue) No. 6015 of 28 December 2010. According to article 49, paragraph 6, of the Constitution of the Bolivarian Republic of Venezuela, citizens are free to do what they are not expressly prohibited by law from doing. No one may be punished for acts or omissions that are not deemed serious offences, ordinary offences or minor offences under existing law.

12. The source recalls that the legality principle implies:

(a) A guarantee as to the nature of a crime, requiring that the offence be previously established by law (*nullum crimen sine lege*);

(b) A guarantee as to the nature of a punishment, according to which the law alone may provide for the penalty for an offence (*nulla poena sine lege*);

(c) A guarantee as to jurisdiction, according to which both the verification of the offence and the subsequent imposition of the penalty must be done through a legally regulated procedure and give rise to a sentence; and

(d) A guarantee as to enforcement, according to which enforcement of the sentence must be regulated by law.

13. Criminal law cannot be applied retroactively: the law must exist prior to the commission of the acts (*lex praevia*); the law must be written (*lex scripta*), which excludes analogy as a source of criminal law; the characteristics of the punishable act must be clearly defined in the law (*lex stricta* or *lex certa*), avoiding vague or indeterminate definitions. This is the basis of legal certainty and political guarantees.

14. Mr. Camejo Blanco was arrested without being informed of the reason for his arrest. When he was brought before the court, he was not apprised of the action taken by the Public Prosecution Service. In addition, he was charged with offences that were abrogated. The judge ordered his detention without regard for her duty of respect for thoroughness and reasoned argument. The reason that the preliminary investigation was not presented seems simply to be that it did not exist. All of this, concludes the source, is a serious violation of the right to due process.

15. In addition, the prosecutors brought charges and proceeded with the case in open defiance of the decision of the Criminal Cassation Division of the Supreme Court, which had taken cognizance of the case and ordered a suspension of all proceedings.

16. The source states that the decision of the Constitutional Division to assume cognizance of the case before the Criminal Cassation Division left Mr. Camejo Blanco in a position of defencelessness and in legal limbo.

17. The source adds that the arbitrary and illegal apprehension of this person, the long period he has spent in pretrial detention and the fact that he is being treated as though he has already been convicted and is being presumed guilty before public oral proceedings have begun are clear breaches of the principle of presumption of innocence.

18. According to the source, unnecessary obstacles have been put in this person's way, and genuine access to the examination of his claims by the courts has been denied him.

19. The source concludes that there is no legal basis justifying the continued deprivation of liberty of Mr. Camejo Blanco. His right to a fair trial has also been violated. His detention is consequently arbitrary and contrary to the provisions of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights, article 7, paragraph 3, of the American Convention on Human Rights and article 44 of the Constitution of the Bolivarian Republic of Venezuela.

Reply by the Government

20. Despite having asked for and received an extension of the deadline to reply in this case, the Government did not collaborate with the Working Group on the adoption of this Opinion until 24 August 2012, by which time the requested and granted extension had already expired. On this occasion, the Working Group has decided to take account of the Government's reply in rendering its Opinion.

21. The Government states that the proceedings against Mr. Camejo Blanco originated in a complaint from the Office of the Supervisor of Banks and Other Financial Institutions pertaining to a case of corruption on the part of the Casa Propia Entidad de Ahorro y Préstamo dating back to August 2009, which had led to a loss of more than 325 million bolívares (approximately US\$ 75,581,000). On 25 September of the same year another transaction led to a loss of US\$ 93,024,000. These transactions were illegal, so on 21 January and 11 February 2011 the competent court issued the warrant for the detention of Mr. Camejo Blanco and two other persons, and the order not to leave the country.

22. Mr. Camejo Blanco was arrested on 23 January 2011 at Caracas International Airport as he was trying to leave the country. On 24 and 25 January the hearings in which the detainee was brought before the judicial authorities were held; the Fiftieth Court of First Instance Responsible for the Circuit of the Caracas Metropolitan Area accepted the legal definition of the alleged acts as constituting the crimes of unlawful extension of credit, awarding or embezzlement of resources, association with or membership of an organized crime group and commission of banking or financial crimes by a criminal organization, all offences under the Act on Banks and Other Financial Institutions. As a consequence, it ordered the continuation of proceedings in accordance with ordinary criminal procedure.

23. In addition, the court issued several orders against the applicant, one of which was the order for the "deprivation of liberty of the accused, César Daniel Camejo Blanco, with the place of detention to be Bolivarian National Intelligence Services (SEBIN) headquarters", in accordance with the Code of Criminal Procedure, in force at the time of events.

24. The Government, referring expressly to the relevant provisions of the Code of Criminal Procedure, contends that the pretrial detention ordered by the competent judge is lawful and cannot therefore be characterized as arbitrary. It added that the appeal filed by the detainee was denied by the Tenth Chamber of the Caracas Court of Appeal, which confirms that the deprivation of liberty is not arbitrary.

Observations by the source

25. The source contends that the Government's version is inaccurate, as at the moment that Mr. Camejo Blanco was deprived of liberty the arrest warrant, which was issued only at the hearings of 24 and 25 January 2011 — that is, one or two days after he had been deprived of liberty — had not yet been issued, which is a violation of the applicant's constitutional rights.

26. The source contends that nothing but an alternative order prohibiting his leaving the country, which he had not been notified of, had been issued. He adds that if he had been aware of that order he obviously would not have tried to leave the Bolivarian Republic of Venezuela legally through an airport. He adds, moreover, that those orders were unjustified, so he asks that the deprivation of liberty be declared arbitrary.

Discussion

27. According to the source, when he was arrested on 23 January 2011 at Caracas International Airport, Mr. Camejo Blanco did not know that he was subject to an order not to leave the country, as he had not been notified of that order. The Government acknowledges that the order was not issued until 21 January 2011, two days earlier, and that the person concerned was not notified. Nor did Mr. Camejo Blanco know that there was a warrant for his arrest, as it was issued after his arrest. Mr. Camejo Blanco was arrested without there being a warrant for his arrest. When he was arrested he was not informed of the reasons for his arrest.

28. According to the information provided by the Government, those orders, which in no way involved detention or arrest in flagrante delicto, were conveyed to Mr. Camejo Blanco only during the hearings of 24 and 25 January 2011. Nor was this person, when he was brought before the court, made aware of the proceedings and arguments of the Public Prosecution Service. Mr. Camejo Blanco's counsel was not given access to the case file. The prosecutors did not give an account of the action taken. The court never specified what act of Mr. Camejo's constituted an offence.

29. These facts, not contested by the Government, and taken as a whole, constitute a violation of the rights recognized in article 11, paragraph 1, of the Universal Declaration of Human Rights and article 2, paragraph 3, and article 9, paragraphs 2, 3 and 4, of the International Covenant on Civil and Political Rights.

30. Regarding the substance of the complaint, the acts that Camejo Blanco is accused of were defined in an Act that, according to the source, was no longer in force, since it had been repealed. In effect, the offences that prompted the indictment were covered by the old Act on Banks and Other Financial Institutions, the Act that was repealed on 28 December 2010 and replaced by the Act on Banking Sector Institutions (see *Official Gazette*, special edition, No. 6015 of 28 December 2010). In its reply dated 24 August 2012, the Government does not contradict this assertion by the source. This circumstance constitutes a clear violation of the human right to legality, enshrined in article 11, paragraph 2, of the Universal Declaration of Human Rights and article 15 of the International Covenant on Civil and Political Rights. The citizens of the Bolivarian Republic of Venezuela are free to do what the law does not prohibit them from doing, in accordance with the provisions of article 49, paragraph 6, of the Venezuelan Constitution.

31. Mr. Camejo Blanco and his counsel sought remedies for his protection in response to these assaults on his human rights — that is, the preventive measure prohibiting his leaving the country and the deprivation of his liberty. First, he lodged an appeal of the order depriving him of his liberty issued after his arrest, an appeal that was denied by the higher court. And then an application for constitutional *amparo* was filed for the release of Camejo Blanco on the basis of breaches of constitutional principles, an application that the

Constitutional Division of the Supreme Court declared inadmissible on 26 April 2011. With this decision, the Constitutional Division empowered the Criminal Division of that court to resume proceedings in the case against Camejo Blanco, which it had taken over in another contested decision.

32. The Criminal Cassation Division of the Supreme Court, of its own motion, assumed cognizance of the case on 24 February 2011. The Criminal Cassation Division explicitly prohibited that legal actions of any sort be taken in the case. Nonetheless, the procurators disregarded the decision of the Criminal Cassation Division and proceeded with the case, pressing charges. These facts are not contested by the Government.

33. The Working Group thus considers that Mr. Camejo Blanco was deprived of appropriate legal remedies for his defence, remedies provided for in article 8 of the Universal Declaration of Human Rights and in article 9, paragraph 4, of the International Covenant on Civil and Political Rights. His right to liberty and security of person, due process, an effective defence and an effective guarantee of judicial protection has been violated.

34. The Working Group likewise notes that this person has also been denied the right, enshrined in article 9, paragraph 3, of the International Covenant on Civil and Political Rights, to be tried while free, as he has been kept in custody for more than 22 months while awaiting trial.

Disposition

35. In light of the foregoing, the Working Group renders the Opinion that the detention of Mr. César Daniel Camejo Blanco is arbitrary under category III of its methods of work, as the State violated the human rights enshrined in the instruments mentioned.

36. Consequently, the Working Group recommends that the Bolivarian Republic of Venezuela order the immediate release of this person.

37. The Working Group also recommends that the detainee be compensated for the aforementioned violations of his human rights.

[Adopted on 19 November 2012]
