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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012

No. 61/2012 (United Arab Emirates)

Communication addressed to the Government on 12 September 2012

Concerning Hassine Bettaibi

The Government did not reply to the communication.

The State is not 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. Mr. Hassine Bettaibi (hereinafter Mr. Bettaibi), a dual national of France and Tunisia, born on 22 February 1957 in Tunis, usually residing in Epinay-sur-Seine, France, is a consultant in economic studies.

4. Mr. Bettaibi was arrested on 14 April 2011 at Algiers International Airport, Algeria, by the Second Brigade of Algiers Airport Border Police, while transiting to his connecting flight to Paris. He was presented with an arrest warrant from INTERPOL (Red Notice No. 100/01/2000 issued on 19 January 2009 upon the request of the United Arab Emirates).

5. On 17 April 2011, Mr. Bettaibi was placed in detention under remand in El-Harrach prison, Algiers, where he remained until 27 July 2011.

6. On 28 July 2011, he was extradited to the United Arab Emirates pursuant to article 44 of the Riyadh Arab Agreement on Judicial Cooperation endorsed by the Council of Arab Ministers of Justice (1983); article 26 of the bilateral Treaty on Judicial Cooperation, between the State of United Arab Emirates and the People's Democratic Republic of Algeria, as well as articles 702 et seq. of the Code of Criminal Procedure of Algeria. Mr. Bettaibi has since been held in detention in Al Ain central prison, Abu Dhabi.

7. It is reported that the United Arab Emirates issued the INTERPOL request on the basis of judgement No. 3516 rendered against Mr. Bettaibi in 2006. Mr. Bettaibi was charged with and convicted of issuance of a cheque pursuant to article 401/1 of the Penal Code of the United Arab Emirates, amended by law 2005-34, and article 643 of the Code of Commercial Practice, promulgated by Federal Law No. 18 of 1993. He had issued a bad cheque on 20 March 2006 in the sum of 736,000 dirhams (approximately US\$ 200,300). He was condemned to six months imprisonment.

8. The source alleges that Mr. Bettaibi's detention since 17 April 2011 is arbitrary. First, the source submits that the authorities of the United Arab Emirates failed to forward the file on the request for extradition within the prescribed time under the bilateral extradition treaty in force between the two States. Secondly, the period of detention that Mr. Bettaibi spent in Algeria while awaiting extradition amounts to more than half of the six-month sentence rendered against him in the United Arab Emirates in 2006. The source declares that he should have been released by 15 October 2011 at the latest. It is the source's submission that his ongoing detention is in alleged breach of article 9 of the Universal Declaration of Human Rights and article 14 of the Arab Charter on Human Rights.

9. Furthermore, the source contends that Mr. Bettaibi has never been allowed to examine evidence presented against him. Nor has he ever been notified of the judgement rendered against him in 2006. Moreover, Mr. Bettaibi should have disposed of his right to appeal within 15 days following the notification of the judgement. Finally, the source submits that there is a discrepancy between the signature on the cheque that justified the

charges brought against Mr. Bettaibi and his actual signature and handwriting. No graphological test was reportedly undertaken by the prosecution.

10. Since his extradition to the United Arab Emirates, Mr. Bettaibi has been brought before a judge on a monthly basis. At these hearings, Mr. Bettaibi is questioned by the judge about whether he is in position to pay the debt in order to leave prison. According to the source, Mr. Bettaibi would only be in position to do so provided he were conditionally released by the authorities and allowed to undertake the necessary arrangements to sell some of his property. His requests for conditional release have been denied.

Response from the Government

11. The Working Group regrets that the Government has not responded to the allegations transmitted by the Group within 60 days. The Government did not request an extension of this time limit according to paragraph 15 of the Group's methods of work. The Group considers that it is in position to render an opinion in conformity with paragraph 16 of its methods of work.

Discussion

12. The indisputable facts in this case are the following: (a) in 2006, Mr. Bettaibi was condemned in the United Arab Emirates to six months imprisonment for having issued a bad cheque in the sum of Dh 736,000; (b) he was arrested on 14 April 2011 in Algiers and placed in detention on remand on 17 April 2011; (c) on 28 July 2011, he was extradited to the United Arab Emirates; (d) according to his sentence, Mr. Bettaibi should have been released at the latest on 15 October 2011; however, he continues to be kept in detention.

13. Without considering other allegations brought by the source, the Working Group notes that Mr. Bettaibi should have been released on 15 October 2011 at the latest. His deprivation of liberty from 15 October 2011 to 21 November 2012 (date of adoption of this opinion) is, in consequence, arbitrary, because it is clearly impossible to invoke any legal basis justifying it.

Disposition.

14. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Hassine Bettaibi from 15 October 2011 to 21 November 2012 is arbitrary, falling into category I of the categories applicable to the consideration of the cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Bettaibi and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

16. The Working Group emphasizes that the adequate remedy is to release Mr. Hassine Bettaibi and accord him an enforceable right to compensation.

17. The Working Group invites the Government to consider the possibility of becoming a party to the International Covenant on Civil and Political Rights.

[Adopted on 21 November 2012]