



General Assembly

Distr.: General
9 August 2013
English
Original: French

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. 68/2012 (Morocco)

Communication addressed to the Government on 11 February 2011

Concerning: **Khaled (Kalid) Kaddar**

The Government replied to the communication on 28 April 2011.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by the Commission 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), 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. The case below was presented to the Working Group on Arbitrary Detention in the following terms:

4. Mr. Khaled (Kalid) Kaddar (hereinafter Mr. Kaddar), aged 30, is a Moroccan citizen. According to the information received, he had just found a job after being out of work for a long time without receiving any support from the State. Mr. Kaddar often used Internet “chat” forums, accessed at an Internet café, to speak out against the Government and the system in Morocco.

5. On 26 July 2008, he was reportedly arrested by four plain-clothes police officers in a street near his home in Oujda. According to the information received, he was not shown an arrest warrant. He was put in a car and blindfolded by the officers. He was then held incommunicado for several weeks during which time his family could not find out anything about what had happened to him or where he was being held.

6. It was approximately one and a half months after his arrest that Mr. Kaddar was able to telephone his family for the first time and tell them that he had been arrested and was being held in the Salé prison. During their first visit, he reportedly told them that, before being transferred to the Salé prison, he had been held for 45 days by the National Surveillance Directorate in the Témara detention centre, where he had been tortured. Moreover, he had apparently been subject to video surveillance, even in the toilets, and in humiliating circumstances. Mr. Kaddar was not put on trial until January 2010, when he was convicted of terrorism offences and sentenced to 8 years in prison.

7. Article 9, paragraph 1, of the International Covenant on Civil and Political Rights provides that “no one shall be subjected to arbitrary arrest or detention” and specifies that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Furthermore, article 9, paragraph 3, of the Covenant states that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” The source claims that the grounds for Mr. Kaddar’s conviction were flawed. According to the information received, no material evidence of his guilt was ever produced.

8. According to the information received, Mr. Kaddar’s detention is a direct consequence of him exercising his right to peacefully express his opinions in a chat forum, a right that is protected both by the Moroccan Constitution and article 19, paragraph 1, of the Covenant, to which Morocco is party.

9. Moreover, article 14, paragraph 1, of the Covenant states that: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. The source maintains that Mr. Kaddar did not have a proper defence. According to the

information received, he was not told, during the period of almost two years that he was in custody, the reasons for his arrest and detention or the formal charges against him. His family has still not been able to see the sentence passed by the court in January 2010 despite having filed requests to do so with various ministries.

10. The source maintains that Mr. Kaddar's detention is arbitrary because it is a direct consequence of him exercising his right to freely and peacefully express his opinions. His detention has no legal basis and his right to a fair trial has not been respected.

Response from the Government

11. In a letter dated 11 February 2011, the Working Group contacted the Government to ask for information about the above allegations.

12. According to the Government, Mr. Kaddar, known as "Usamah", was a member of a terrorist organization called Fatah al-Andalus. Members of the organization subscribe to the extremist ideology of the Salafi Jihad and work with the organization Al-Qaida in the Islamic Maghreb to plan and perpetrate attacks in Morocco, targeting in particular tourism facilities, the general headquarters of the United Nations Mission for the Referendum in Western Sahara (MINURSO) and the towns of Al-Ayoum and Agadir. Mr. Kaddar was taken into police custody and questioned from 29 August to 9 September 2008, the date on which he was brought before the public prosecutor. His detention was extended twice, on one occasion after authorization had been obtained from the crown prosecutor of the appeals court of Rabat.

13. The public prosecutor's office decided to investigate Mr. Kaddar's possible involvement in the commission of the following offences: organizing a gang to prepare and execute acts of terrorism as part of a plan to disrupt public order; persuading and inciting others to commit acts of terrorism; holding unauthorized public meetings; and participating in the activities of an illegal association. The investigating judge decided that he should stand trial for those offences.

14. On 7 January 2010, the trial court of Rabat found Mr. Kaddar guilty of all charges and sentenced him to serve 8 years in prison and pay a fine of 500,000 Moroccan dirhams (US\$ 59,139). On 28 June 2010, the court of appeal handed down its decision on the case, in which it confirmed the initial finding of the trial court but reduced the prison sentence to 7 years. That decision is currently the subject of a judicial review.

15. When he was being questioned, Mr. Kaddar told the police that he had consulted the websites of various Islamist groups to find out about the mujahideen fighting in Afghanistan, Palestine and Iraq. He had been in contact via the Internet with Abd al-Aziz Hiram, who was known as "the terrorists' friend". Abd al-Aziz Hiram had sent him e-mails in which he enthusiastically supported the jihad. He had also sent him pictures of the mujahideen operations in Afghanistan and Iraq. Abd al-Aziz Hiram was trying to recruit supporters of Salafist extremism for Al-Qaida in the Islamic Maghreb.

16. Mr. Kaddar had indicated his willingness to go to the camps run by the Islamist organization and told his interlocutor that he had "met" a certain Abd al-Rahim Al-Awfi on the Internet. Abd al-Rahim Al-Awfi had discussed various subjects with him and sent him images intended to encourage those who saw them to join the jihad in certain conflict zones. Mr. Kaddar acknowledged the charges against him, and his detention was lawfully extended by the competent authorities.

17. Mr. Kaddar was regularly informed, both during the investigation and the trial stages of the proceedings, of the criminal charges for which he was being prosecuted. In relation to the allegation that Mr. Kaddar was prosecuted for exercising his right to freedom of expression, the Government states that the grounds for Mr. Kaddar's arrest, detention and

trial were his membership of a terrorist organization that is involved in hostile activities, and not his exercise of the right to freedom of expression. His trial fully complied with the rules on a fair trial, was conducted in accordance with international standards and upheld the presumption of innocence principle.

18. Mr. Kaddar was arrested by the police and held in custody from 29 August to 9 September 2008. The warrant ordering his detention was renewed twice, on one occasion after authorization had been obtained from the crown prosecutor of the appeals court of Rabat, as required under article 66 of the Code of Criminal Procedure. His arrest and his detention in a police cell were lawful. In keeping with article 80 of the Code of Criminal Procedure, his family were informed of his arrest and his statements were recorded in a police report.

19. As to the allegations of torture, the law establishes that all persons taken into police custody and their attorneys have the right to demand that the detainee undergo a medical examination. Mr. Kaddar never stated that he had been subjected to any kind of violence. Neither Mr. Kaddar nor his lawyer filed a request for a medical examination with either the public prosecutor or the investigating judge. And neither the public prosecutor nor the investigating judge noticed anything that would permit them to order such an examination *ex officio*.

20. A proper defence is guaranteed by the Code of Criminal Procedure from the moment that detention in police custody is extended. Mr. Kaddar had access to his lawyer from the outset of the proceedings. His defence lawyer exercised all his prerogatives.

21. Under articles 66 and 80 of the Code of Criminal Procedure, detainees have the right to consult an attorney from the moment detention in police custody is extended. The law does not require the police to take steps to guarantee the exercise of that right. During the investigation, Mr. Kaddar was represented by his attorney, Mr. Zaghmuni, of the Rabat Bar Association. During his trial, Mr. Kaddar was assisted by Mr. Mohammed Raqush, also a member of the Rabat Bar Association. The Government refutes the allegation that Mr. Kaddar was denied the right to prepare his defence and to communicate with an attorney of his choosing.

22. Contrary to the claims made by the source, Mr. Kaddar was informed of the charges filed against him. He was informed of them during the investigation and during the trial, in accordance with articles 134 and 319 of the Code of Criminal Procedure, which stipulate that the charges detainees face must be explained to them by the investigating judge during the investigation and by the presiding trial judge during the examination of the defendant.

23. Mr. Kaddar was arrested for committing offences that have nothing to do with freedom of expression. He was arrested for belonging to a terrorist cell that was involved in plotting hostile operations against the country. Those operations are in no way related to the right to freedom of expression or freedom of opinion.

24. As to the allegations that the rules of a fair trial were not respected in this case, the Government stresses that the Moroccan courts ensure that those rules, as well as those set forth in international treaties, including those related to the presumption of innocence, are scrupulously applied in all trials. Consequently, Mr. Kaddar was able to exercise all his rights from the moment of his arrest to the moment the court passed sentence in his case. His trial was conducted in accordance with all international and Moroccan legal norms regarding a fair trial, including those listed in articles 9, 10 and 14 of the International Covenant on Civil and Political Rights.

Comments from the source

25. In its comments on the Government's response, the source maintains that the Government did not provide information on Mr. Kaddar's situation or movements, either after his arrest or during his trial. The Government says nothing about the period from 26 July to 29 August 2008 during which Mr. Kaddar was held incommunicado. He was apparently transferred several times without his family being informed in which prison he was being held. In 2012, a lawyer appointed by the family managed to locate Mr. Kaddar. He was then in the Salé prison. His physical and mental state were pitiful; he had lost a lot of weight and was living in appallingly unhygienic conditions. He had to sleep on a blanket on the ground. He had reportedly been ill-treated in prison.

Disposition

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

(a) The Working Group notes that there are large discrepancies between the allegations made by the source and the detailed responses provided by the Government;

(b) The violations cited by the source are: the unlawful arrest of Mr. Kaddar, the use of incommunicado detention prior to the formal arrest made on 29 August 2008 and Mr. Kaddar's detention for longer than the time permitted by law, as well as the fact that Mr. Kaddar was not informed of the charges against him, that his sentence was based on a confession, and that his conviction was a consequence of him exercising his right to freedom of expression;

(c) The Government has provided specific and detailed information in response to all these allegations indicating that it fully adhered to international law on the subject. The source has not challenged that information or denied that Mr. Kaddar was represented by lawyers during both the investigation and trial stages of the proceedings. The source has not established or claimed that Mr. Kaddar's lawyers were unable to exercise their rights.

27. Under such circumstances the Working Group finds that it does not have sufficient information to determine whether the detention of Mr. Khaled Kaddar is arbitrary or not.

28. In accordance with article 17 (c) of its methods of work, the Working Group has therefore decided to set the case aside pending receipt of further information.

[Adopted on 23 November 2012]