

No. 7/2013 (Romania)

Communication addressed to the Government on 24 October 2012

Concerning Ikechukwu Joseph Ojike

The Government has not replied to the communication. 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);
- (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. Ikechukwu Joseph Ojike (hereinafter Mr. Ojike), born on X April XXXX, is a citizen of Nigeria.

4. On 13 October 2008, Mr. Ojike applied for asylum in Romania. His asylum application was rejected by the Bucharest Court of Law on 20 September 2010.

5. On 10 December 2010, Mr. Ojike was arrested by the Romanian Immigration Office. He filed a subsequent asylum application on 11 December 2010, which was examined in accordance with the procedure set forth in article 32, paragraph 3, of European Union (EU) Council Directive 2005/85/EC. This application was rejected in the administrative phase and Mr. Ojike appealed the decision.

6. According to the copy of an official document sent by the Government of Romania to the Dutch authorities on 29 December 2010, Mr. Ojike withdrew his application and declared he wanted to return to Nigeria. However, the following day, on 30 December 2010, he submitted a new application in accordance with article 32, paragraph 3, of EU Council Directive 2005/85/EC. His new application was rejected on 3 January 2011. The same day, Mr. Ojike was taken from Romania with escort on his way to Abuja, Nigeria. The Romanian escort had to transit through Schiphol International Airport, Amsterdam, as there was no direct flight from Bucharest to Abuja. During the transit period, Mr. Ojike filed a new asylum application in the Netherlands.

7. Mr. Ojike argues that there was no final decision on the case concerning his asylum application. He reportedly never wrote, signed or received a copy of any declaration showing his intention to go back to Nigeria. Moreover, Mr. Ojike affirms that he had a permit to remain in the territory of Romania which was still valid at the time he was forcibly taken on a plane to Abuja via Amsterdam.

8. On 4 August 2011, Mr. Ojike was returned to Romania pursuant to EC Council Regulation No. 343/2003. He was placed in a detention centre, Centrul Pentru Cazare Straini Otopeni, in Romania where he remains. Mr. Ojike claims that he has had a new permit to stay in the territory of Romania since 21 September 2011.

9. The authorities have not released him allegedly arguing that he may abscond from the procedure of removal from Romanian territory. However, Mr. Ojike is willing to provide the necessary assurances guaranteeing his presence in the territory., The Romanian courts have reportedly not considered any less intrusive alternative to his ongoing deprivation of liberty.

10. Mr. Ojike is allegedly denied access to medical assistance and is forced to buy medicine. Mr. Ojike claims having discovered in the court's archives a forged document written in the Romanian language indicating that he wanted to return to Nigeria. When Mr. Ojike asked for the original of that document, the Head of the Immigration Office and the Chief of the Detention Centre denied any knowledge of it. He was reportedly tortured and ill-treated following this incident.

Response from the Government

11. The Government has not responded to the allegations communicated by the Working Group to the Government on 24 October 2012.

Discussion

12. According to the information available, Mr. Ojike's asylum applications were rejected by the Romanian authorities and the administrative decisions were upheld by the courts.

13. The source informed the Working Group that Mr. Ojike had been returned to Nigeria and released after arriving there.

Disposition

14. Considering that Mr. Ojike has been released, having examined the information available and without prejudging the nature of the detention, the Working Group has decided to file the case of Mr. Ojike in accordance with paragraph 17 (a) of its methods of work.

[Adopted on 1 May 2013]