

No. 21/2013 (Mexico)

Communication addressed to the Government on 17 June 2013

Concerning Juan García Cruz and Santiago Sánchez Silvestre

The Government has not replied to the communication. The State has been a party to the International Covenant on Civil and Political Rights since 23 March 1981.

1. The Working Group on Arbitrary Detention was established by the former Commission on Human Rights by its resolution 1991/42. The mandate of the Working Group was then clarified and extended by the Commission by its resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102 and extended it for a further three-year period by its resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above 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 the 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. Juan García Cruz, a 36-year-old Mexican national of Nahua ethnicity, originally from the State of Puebla, and Santiago Sánchez Silvestre, a 53-year-old Mexican national of Mixtec ethnicity, originally from Tlaxiaco in the State of Oaxaca, were arrested on 6 June 1997 at 3 a.m. while they were sleeping at their home in Calle Pirineo y Océano Tempestades, Colonia Santa Selene, Delegación Tiáhuac, Federal District, by Federal District criminal investigation police officers, among them Alejandro Lezcano Puente and José Luis Delgado Acosta. The police officers went to that address in response to statements obtained under torture from a detainee named Rogelio Cuevas Fuentes. Mr. Cuevas Fuentes had been taken into custody by federal agents because of his alleged

links to the Ejército Popular Revolucionario (EPR) (People's Revolutionary Army), an armed organization.

4. The agents reportedly burst into Messrs. García Cruz's and Sánchez Silvestre's home without producing an arrest warrant or a search warrant and proceeded to arrest them. According to the source, there was no legal basis for their arrest.

5. Following their arrest, Messrs. García Cruz and Sánchez Silvestre were taken to the Office of the Attorney-General of the Federal District on Arcos de Belén Street in Mexico City. They were then allegedly subjected to acts of torture involving asphyxiation through the placement of plastic bags over their heads, beatings and death threats in order to force them to acknowledge their links to the People's Revolutionary Army. They were also obliged to sign blank sheets of paper.

6. Messrs. García Cruz and Sánchez Silvestre filed complaints with the Office of the Attorney-General and with judicial authorities regarding the acts of torture they had endured. Their claims were corroborated by the medical report issued by the Office of the Attorney-General and signed by Dr. Martín García Uribe (available in the preliminary case file (SC-7547)). However, those complaints were not investigated.

7. From 6 June 1997, the day of their arrest, to 11 June 1997, Messrs. García Cruz and Sánchez Silvestre were held without any type of court order whatsoever.

8. The source indicates that on 11 June 1997 a detention order was issued against the two individuals in question. The Seventh District Criminal Court of the Federal District (a federal court) sentenced them to 3 years' imprisonment and a fine of 2,000 pesos for illegal possession of weapons reserved for the exclusive use of the Army and the Navy. The convicted men served their full sentences in the Eastern Remand Prison for Men.

9. However, on completion of their sentences, Messrs. García Cruz and Sánchez Silvestre were not released. On 12 June 2000, they were notified that an arrest warrant had been issued for them in the State of Mexico for their alleged participation in an attack on police officers of that state which had occurred in October 1996 near the road to Teotihuacán. One state police officer, José Asunción Lara Vite, was killed and another wounded in the attack, which was attributed to the People's Revolutionary Army.

10. On 4 April 2000, the home of their lawyer, Leonel Rivero Rodríguez, was broken into by unidentified individuals who removed documents and his computer. On 7 May 2000, Mr. Rivero Rodríguez and his wife, María de los Ángeles Espinoza Sánchez, were struck by a vehicle (make: Nissan) driven by Modesto Masías Tejada.

11. Messrs. García Cruz and Sánchez Silvestre were brought to trial before the Third Court of First Instance of the Judicial District of Nezahualcóyotl (a local court). In September 2001, they were sentenced to 40 years' imprisonment after being found guilty of homicide, participating in organized crime, aggravated theft, inflicting bodily harm and damaging property. The convicted men were taken to the Neza Bordo Xochiaca Centre for Prevention and Social Rehabilitation in the State of Mexico to serve their sentences.

12. The source asserts that it was only in 2002 that an investigation was carried out into the complaints of torture lodged by the persons concerned. However, the investigation was closed, with no findings being issued, when it was concluded that they had failed to file a criminal complaint.

13. According to the source, their arrest and detention are arbitrary since they do not have, and never have had, a valid legal basis. These men's criminal convictions were based solely on confessions that had been extracted under torture and never properly verified, despite the existence of evidence such as the medical report issued by the Office of the Attorney-General and signed by Dr. Martín García Uribe.

14. The source recalls that the Human Rights Committee has stated that in Mexico "great evidentiary value is attached to the first confessions made before a police officer or prosecutor and that the burden of proof that statements were not made as a result of torture or cruel, inhuman or degrading treatment is not placed on the prosecution" (concluding observations on the fifth periodic report of Mexico [CCPR/C/MEX/CO/5], para. 14).

15. The Committee recalls that article 14, paragraph 3 (g), of the Covenant guarantees the right not to be compelled to testify against oneself or to confess guilt. In its general comment No. 20,

paragraph 12, the Committee states that "[i]t is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment". Having defendants bear the burden of proof in establishing that their confessions were extracted under torture constitutes a violation of judicial safeguards.

16. Also relevant in this context is the Working Group's Opinion No. 17/2008 (Lebanon) concerning Mr. Assem Kakoun, in which the Working Group stated that deprivation of liberty is arbitrary when the deprivation results from a conviction based on evidence obtained through torture.

17. Furthermore, the judicial proceedings that led to the conviction of Messrs. García Cruz and Sánchez Silvestre were fraught with serious due process violations. The convictions were based solely on confessions obtained through torture and on purported evidence submitted by the public prosecutor. The police officers who testified as witnesses were unable to identify the spot where the defendants were arrested. Their testimony was unsound and was obtained without regard for due process. Moreover, it is the testimony of the captors themselves, namely the persons ultimately responsible for the torture inflicted on the defendants.

18. The source expresses its concern that, in breach of judicial guarantees, in Mexico weight is given to confessions on the basis of the "principle of immediacy", with the assumption being that that defendants' first statements are true, even if it is subsequently alleged that they were obtained through torture, because they were made without prior coaching. It has been asserted that, in accordance with the principle of procedural immediacy, the first statements of the accused should take precedence over subsequent statements because they were produced without sufficient time to be rehearsed or to be altered in order to advance the accused person's cause.¹

19. The source adds that the defendants were not allowed to confront prosecution witnesses. In the second trial, an officer who had survived the attack on the police and the wounded police officer were unable to identify the accused as their attackers. The driver of the van from which the shots were fired was also unable to identify them. The conviction was based solely on the case presented by the public prosecutor.

20. In addition, the source mentions the lack of interest shown by the public defenders in the first trial (in a federal court) in carrying out their duties. They failed to inform their clients that they had the right to remain silent and not to testify, and they took no steps to request a confrontation with the prosecution witnesses or to present defence witnesses or other evidence on behalf of their clients.

21. At no point were these errors corrected by the courts, thereby violating the principle of presumption of innocence and giving rise to serious due process violations.

22. Following their conviction, on 11 May 2007, an application for *amparo* was filed with the Second Collegiate Court of the Second Circuit in Toluca (Case No. 138/2007), which then upheld the verdict.

23. The source concludes that the detention of Messrs. García Cruz and Sánchez Silvestre was arbitrary. According to the source, their detention also ran counter to article 17 of the Constitution.

Response from the Government

24. The Government of Mexico has failed to respond to the communication addressed to it on 17 June 2013. The deadline for doing so has now passed.

25. In accordance with its methods of work, under such circumstances the Working Group may proceed to adopt an opinion as to whether or not the deprivation of liberty of Messrs. García Cruz and Sánchez Silvestre was arbitrary.

Investigations carried out by the Working Group

26. The Working Group ascertained that Messrs. García Cruz's and Sánchez Silvestre's case had been considered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

27. Following the issuance of the Commission's report and the subsequent referral of the case to the Court, on 18 April 2013 (shortly before the case was due to be heard by the Court), the Government ordered the release of these two men, as recommended by the Commission, in view of the serious irregularities that had occurred during their trials.

28. Consequently, at the time of the adoption of this opinion, Messrs. García Cruz and Sánchez Silvestre are no longer being held in custody.

Discussion

29. In accordance with paragraph 17 (a) of its methods of work, the Working Group is authorized to render an opinion as to whether or not an act of deprivation of liberty is arbitrary, notwithstanding the release of the person concerned. In view of the seriousness of the alleged events, the Working Group has decided to issue an opinion in this regard.

30. In the absence of information to the contrary, the Working Group considers that Messrs. García Cruz and Sánchez Silvestre were detained on 6 June 1997 at their home in the Federal District by Federal District criminal investigation police officers. Their deprivation of liberty was based on statements - which, according to the source, federal agents had obtained through torture - made by an imprisoned person, Rogelio Cuevas Fuentes, who was accused of being involved in the People's Revolutionary Army (EPR), an armed organization. The officers raided Messrs. García Cruz's and Sánchez Silvestre's home and arrested them without producing an arrest warrant or a search warrant. The detainees were taken to the Office of the Attorney-General of the Federal District in Mexico City, where they were subjected to acts of torture involving asphyxiation through the placement of plastic bags over their heads, beatings and death threats with a view to forcing them to acknowledge their links with the People's Revolutionary Army and obliging them to sign blank sheets of paper. Both detainees filed complaints with the Office of the Attorney-General and judicial authorities regarding the acts of torture that they had endured, which were corroborated by forensic doctors. However, although investigations are mandatory in such cases, no investigation was carried out.

31. It was only on 11 June 1997 that a detention order for Messrs. García Cruz and Sánchez Silvestre was issued. The Seventh District Criminal Court of the Federal District (a federal court) sentenced them to 3 years' imprisonment and a fine of 2,000 pesos for illegal possession of weapons reserved for the exclusive use of the Army and the Navy. Consequently, from 6 to 11 June 1997, they were held without a court order, and their detention during that period therefore lacked any legal basis.

32. Although they served their sentences in full, they were not released. On 12 June 2000, they were notified of the existence of an earlier arrest warrant, never previously referred to, that had been issued on the basis of their alleged participation in an attack on State of Mexico police officers in October 1996, in which one police officer was killed and another wounded.

33. Messrs. García Cruz and Sánchez Silvestre were brought to trial before a state court and, in September 2001, sentenced to 40 years' imprisonment for homicide, participating in organized crime, aggravated theft, inflicting bodily harm and damaging property.

34. It was not until 2002 that an investigation was initiated into the complaints of torture first lodged in 1997. The investigation was closed, without charges being brought against the perpetrators, on the grounds that a criminal complaint had not been filed in due time.

35. The Government did not challenge the source's allegations concerning the torture suffered by both the detainees and the sole witness for the prosecution. Furthermore, it failed to conduct comprehensive investigations with a view to punishing the perpetrators. In such circumstances, the prosecution's evidence was inadmissible and could not serve as a basis for charges, let alone a conviction, under articles 4 to 7, articles 10 to 14 and, in particular, article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

36. The Working Group considers that the threats directed at the defence lawyers of the wrongly indicted men constitute a violation of the right to legal representation in criminal proceedings.

37. The Working Group further considers that the Government has not disputed the claim that torture was used in the proceedings against the persons referred to in this opinion, that they confessed without having the opportunity to know what they were signing and that the defence lawyers were denied the opportunity to cross-examine the prosecution witnesses.

38. The Working Group considers that, for the period from 6 to 11 June 1997, the deprivation of liberty of Messrs. García Cruz and Sánchez Silvestre was arbitrary since it is "clearly impossible to invoke any legal basis justifying the deprivation of liberty". This constitutes grounds for determining that their detention was arbitrary within the meaning of category I as defined in the Group's methods of work.

39. It further considers that the facts set out in paragraphs 33 to 35 and 37 to 39 above constitute breaches of the standards of due process of such gravity as to establish that the deprivation of liberty of Messrs. García Cruz and Sánchez Silvestre constitutes arbitrary detention under category III of the Working Group's methods of work.

Disposition

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

The deprivation of liberty of Juan García Cruz and Santiago Sánchez Silvestre during the period from 6 to 11 June 1997 was arbitrary within the meaning of category I of the Working Group's methods of work. During the period from 11 June 1997 to 13 April 2013, the day of their release, their detention was arbitrary within the meaning of category III of the Group's methods of work.

41. The Working Group considers that the Government should provide appropriate redress to these persons for the material and moral harm caused by 15 years and 11 months of arbitrary deprivation of liberty.

42. The Government should also expedite and broaden its investigations with a view to imposing exemplary penalties on all those responsible, regardless of the political or hierarchical level of the officials who ordered or participated in the acts of torture - and their subsequent concealment - to which Messrs. García Cruz and Sánchez Silvestre were subjected.

43. The Government should also strengthen its education and information programmes on the prohibition of torture, ensuring that they are fully included in the training of civil and military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody, questioning or treatment of any individual subjected to any form of arrest, detention or imprisonment.

44. In the light of the allegations of torture regarding Messrs. García Cruz and Sánchez Silvestre, the Working Group wishes to bring these allegations to the attention of the Special Rapporteur on the question of torture.

[Adopted on 27 August 2013]

¹Cf. Supreme Court, Seventh Term, registration No. 245172, *Semanario Judicial de la Federación*, pp. 205-216, criminal law, p. 333.