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Human Rights Council Working Group on Arbitrary Detention

Opinion adopted by the Working Group on Arbitrary Detention at its seventy-second (20–29 April 2015)

No. 11/2015 (Republic of Moldova)

Communication addressed to the Government on 20 February 2015

concerning Nikolai Tsipovic

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. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, 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. Nikolai Tsipovic was detained on 2 December 2014 after a search operation was conducted at his residence by the Prosecutor. His detention was based on suspicion of posing a threat to life or causing bodily harm, a crime qualified as being of “moderate gravity” according to article 155 of the Criminal Code of the Republic of Moldova. Mr. Tsipovic was initially detained for 72 hours on the basis of a warrant issued by the Prosecutor General of the Republic of Moldova.

4. Upon termination of that period, on 5 December 2014, an arrest warrant was issued by the Central Chisinau Court. Charges brought against Mr. Tsipovic on 5 December 2014 were based on article 349.1 of the Criminal Code of the Republic of Moldova and implied threat or violence against a public official, a crime qualified as “not grave”. In addition, on 26 January 2015, Mr. Tsipovic was charged with bribing voters, money laundering and trafficking, in accordance with articles 181/1.1, 243.3 and 248.5 of the Criminal Code of the Republic of Moldova, respectively.

5. Over the three days that he was detained, Mr. Tsipovic was held in detention facility No. 13, after which he was placed under house arrest at his residence.

6. The source submits that the continued detention of Mr. Tsipovic lacks due process, as article 176.2 of the Code of Criminal Procedure of the Republic of Moldova states that grounds for detention and arrest of a person can only be applied if there is suspicion of commission of crimes qualified as “grave”, “very grave” or “extremely grave”.

7. The source submits that Mr. Tsipovic’s arrest and detention is arbitrary and falls under categories II and III. .

Response from the Government

8. The Working Group regrets that the Government has not responded to the allegations transmitted to it on 20 February 2015.

Discussion

9. The source has not identified any violations in Mr. Tsipovic’s case which would fall within any of the categories referred to by the Working Group when considering cases submitted to it.

10. The source states that article 176.2 of the Code of Criminal Procedure of the Republic of Moldova allows for pre-trial detention only on suspicion of the commission of crimes qualified as “grave”, “very grave” or “extremely grave”.

11. Article 176.2 of the Criminal Procedure Code of the Republic of Moldova,¹ reads as follows:

(1) Preventive measures can be applied by the criminal investigation body, or if applicable, by the court only, in cases where there are sufficient reasons to presume that the suspect, indicted, defendant:

- may hide from the criminal investigation body or from the court;
- may impede the establishment of truth in the criminal proceedings:
 - to influence persons participating in the trial;
 - to hide, to damage or to falsify the evidence or other materials that are important for the case;
 - to avoid coming to the penal pursuit body in case of legal summoning; or
- may commit new crimes.

The court may also impose such measures in order to secure the enforcement of the sentence.

(2) Pre-trial and preventive measures alternative to arrest are applied only in cases of committing a crime for which the law provides imprisonment for a period of more than two years, and in cases of crimes for which the law provides imprisonment for a period of less than two years, are to be applied if the indicted, the defendant has committed at least one of the actions mentioned under paragraph (1) of the present article.

12. Some of the offences, for which, according to the source, Mr. Tsipovic was arrested, are punishable with up to 10 years of imprisonment. Therefore, formally, the law does not prohibit pre-trial detention in such circumstances.

13. The source has failed to reply to the Working Group request for additional information.

Disposition

14. In the light of the foregoing, the Working Group does not possess information which would indicate any violation under any of the categories referred to by Working Group when considering cases submitted to it.

15. The Working Group considers that it does not have sufficient elements to issue an Opinion. Therefore, and according to paragraph 10 (f) of its methods of work, the Working Group decides to file the case.

[Adopted on 27 April 2015]

¹ See www.legislationline.org/download/action/download/id/1689/file/ebc7646816aad2a3a1872057551.htm/preview.