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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session (31 August-4 September 2015)

Opinion No. 27/2015 concerning Antonio José Ledezma Díaz (Bolivarian Republic of Venezuela)

1. The Working Group on Arbitrary Detention was established pursuant to Commission on Human Rights resolution 1991/42. Its mandate was then extended and clarified under Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period under Council resolution 15/18 of 30 September 2010. The mandate was extended for a further three years under Council resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 11 May 2015 the Working Group transmitted to the Government of the Bolivarian Republic of Venezuela a communication concerning Antonio José Ledezma Díaz. The Government did not reply to the communication from the Working Group. The State is a party to the International Covenant on Civil and Political Rights.

3. 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

4. The source reports that Mr. Ledezma, a Venezuelan national, born in San Juan de los Morros, Guárico State, on 1 May 1955, is a lawyer and a public management specialist. He is the mayor of the Metropolitan District of Caracas and is resident in Caracas. On 19 February 2015, he was arrested at his office in the Torre EXA building, Avenida Libertador, Urbanización El Rosal, municipio Chacao, Centro Financiero, Caracas.

5. The source states that the arrest took place after the municipality's offices had been entered by heavily armed members of the Bolivarian National Intelligence Service (SEBIN), who made excessive and unnecessary use of force, even going so far as to push and hit the Metropolitan Mayor. The officers did not show a judicial warrant for either the arrest or the forcible entry and they did not inform Mr. Ledezma of the reasons for his detention. They did not present any written instructions or documentary proof that they were officials of the Venezuelan State. They could be identified as officials simply because they were wearing jackets with the SEBIN logo. The use of SEBIN to arrest Mr. Ledezma was unlawful, because SEBIN has no competence to act as judicial police.

6. After his arrest, Mr. Ledezma was taken to the SEBIN headquarters in Plaza Venezuela. Twenty-four hours after his arrest, Mayor Ledezma was informed that his detention had been ordered by the Sixth Court of the Criminal Court Circuit of Caracas. The facts on which the judge based his detention order were the dissemination of a public announcement (communiqué) calling on Venezuelans to seek a transitional government by constitutional means. The text was also signed by the leader of the political opposition Leopoldo López and the ousted deputy, María Corina Machado.

7. The source says that Miguel Graterol, the judge of the Sixth Court of the Criminal Court Circuit of Caracas, who ordered the arrest, is a provisional judge, in other words he is a temporary official who can be removed from office at any time. Katherine Harrington and José Luis Orta, the prosecutors who charged Mr. Ledezma, are also temporary staff. Neither of them obtained their post through a competition and they are not established civil servants. The source reports that there is general concern within the country that the judiciary is not independent and that judicial officials have little or no autonomy.

8. On the day that the Metropolitan Mayor was arrested, Nicolás Maduro, the President of the Republic, told the media that Mr. Ledezma "will be tried for crimes against the peace of the country and against the Constitution". For several months, through statements to the media, senior members of the executive and legislative branches and Luisa Ortega Díaz, the Attorney General, had been accusing Mr. Ledezma of taking part in alleged conspiracies against the Government. The source infers that Mr. Ledezma's right to the presumption of innocence has been violated and that he has been treated as a criminal from the outset.

9. On 20 February 2015, Mr. Ledezma was informed that his arrest was based on the alleged commission of the offences of conspiracy (set out in article 132 of the Criminal Code) and criminal conspiracy (set out in article 37 of the Organized Crime

and Financing of Terrorism Act). These offences carry maximum sentences of up to 26 years' imprisonment.

10. The source contends that these offences do not pertain to the present case. The offence of conspiracy pertains solely to persons who attempt to change the republican form of government that the nation has adopted. Moreover, in accordance with the well-established case law of the Supreme Court of Justice and the doctrine of the Public Prosecution Service, the offence of criminal conspiracy is, under Venezuelan legislation, fundamentally economic in nature and presupposes that the perpetrator is seeking to obtain economic or material gain.

11. Mr. Ledezma was detained in the Centro Nacional de Procesados Militares (CENAPROMIL), also known as the Ramo Verde military prison, located at Los Teques in Miranda State, which is guarded by members of the armed forces and the Directorate General of Military Intelligence (DGIM). It is a prison for service personnel, where, however, other civilian political leaders of the opposition, such as Leopoldo López, Daniel Ceballos and Enzo Scarano, are incarcerated. Like the other people mentioned, Mr. Ledezma was placed in solitary confinement.

12. According to the source, Mr. Ledezma's deprivation of liberty was due exclusively to political motives. The sole reasons for Mr. Ledezma's arrest and continued detention were his signing of a public communiqué that criticized the Government and his political activities as leader of the opposition. Ever since he took up his duties as Metropolitan Mayor of Caracas, and even during the lead-up to his election, Mr. Ledezma was harassed by the Government; he was stripped of essential functions pertaining to the metropolitan municipality and acts of vandalism were carried out by paramilitary groups attached to the Government against the Mayor's office, its staff and its equipment. The organizations Che Guevara, Frente Revolucionario Socialista Waraira Repano, Frente Bolivariano Jirahara and Corredor Noroeste took part in acts of aggression and attacks on the Metropolitan Mayor's office.

13. This harassment reportedly continued during Mr. Ledezma's term of office, when the National Assembly approved, thanks to the votes of the pro-government majority, two laws stripping the Metropolitan Municipality of most of its functions, powers and revenue budget.

14. Mr. Ledezma's counsel have appealed against the decision of the Sixth Court of the Criminal Court Circuit ordering Mr. Ledezma's deprivation of liberty and against the interlocutory judgement containing the grounds of the case. They have also applied to the Supreme Court, requesting removal of the case, in view of the fact that it is incumbent upon the Court at the outset to determine whether there are good grounds to send Mr. Ledezma to trial. Their appeals have, however, met with no judicial response whatsoever.

15. On 26 April 2015, Mr. Ledezma's health seriously deteriorated in the military prison owing to the reappearance of an inguinal hernia and he had to undergo a delicate surgical operation. He is currently under house arrest while recovering from the operation and waiting for the possible start of the trial.

16. The source draws attention to the uncertainty in the country surrounding the principle of the separation of powers and the lack of independence and autonomy of the judiciary and the Public Prosecution Service, which rely on instructions from the executive branch in cases that might be of a political tenor. In support of this statement, the source cites the concluding observations of the Human Rights Committee on the third periodic report of Venezuela (CCPR/CO/71/VEN, para. 13), the addendum to the report of the Working Group on the Universal Periodic Review relating to the Bolivarian Republic of Venezuela (A/HRC/19/12/Add.1) and various

reports of the Inter-American Commission on Human Rights, including its *Annual Report 2011*.¹

17. According to the source, the detention of Mr. Ledezma also undermines the political rights of the residents of Caracas who elected him Metropolitan Mayor. His arrest took place against a background of popular discontent about the serious socioeconomic situation and the Government's mismanagement, which have triggered several peaceful protests.

18. According to the law, before regional governors are put on trial, they have the right to a preliminary hearing on the merits of their case. The case law of the Supreme Court places the Metropolitan Mayor on the same footing as state governors. Mr. Ledezma has been deprived of his right to be heard before being placed in detention, his right to a natural judge and his right to due process.

19. In addition, Mr. Ledezma's rights to the presumption of innocence, due process and defence have been breached.

20. The Code of Criminal Procedure provides that evidence collected at the investigative stage is confidential. However, alleged evidence against Mr. Ledezma has been divulged in the media by senior members of the executive and legislative branches.

21. The source adds that proceedings against Mr. Ledezma are a form of discrimination on account of his political ideas and the political and municipal work that he has done. This shows up the arbitrariness of his detention.

22. After the President of the Republic, Mr. Ledezma is the official who received the highest number of votes in the country. His deep connection with the country is beyond question. There is therefore no danger of his absconding. However, in order to keep Mr. Ledezma in pretrial detention, the court is using the specious and contradictory argument that, since he has a permanent job, he has more economic opportunities for absconding.

23. The source concludes that Mr. Ledezma has been detained solely because he exercised his political rights and the freedoms of thought, opinion, expression, assembly and association to which he is entitled. His detention is arbitrary under categories I, II, III and V, as applied by the Working Group, and contrary to the provisions of articles 7, 9, 10, 13, 14 and 18 to 21 of the Universal Declaration of Human Rights and articles 9, 12, 14, 18 to 22 and 25 to 27 of the Covenant, to which the Bolivarian Republic of Venezuela is a party. It is also contrary to article 44, paragraph 2, of the Political Constitution of the Bolivarian Republic of Venezuela.

Response from the Government

24. The Government has neither replied to the communication transmitted to it nor requested an extension of the time limit for presenting a response. The Working Group regrets the Government's lack of cooperation and must therefore give its opinion on the basis of allegations that it considers *prima facie* to have merit.

25. Furthermore, since the information supplied by the source has not been contradicted by the Government, despite the fact that it had an opportunity to do so, the Working Group issues this opinion using all the data that have been gathered, in accordance with paragraph 15 of its methods of work.

¹ Available on www.oas.org/en/iahr/docs/annual/2011/TOC.asp Chapter IV, paras. 447 and 541.

Discussion

26. From the information received, the Working Group notes that the officers who arrested Mr. Ledezma did not identify themselves as State officials with the authority to perform duties related to the legal deprivation of liberty, inform him of the reasons for his detention or show a written arrest warrant issued by a competent authority, in violation of article 9, paragraph 2, of the Covenant.

27. Moreover, 24 hours after his arrest, Mr. Ledezma was informed that the warrant had been issued by the Sixth Court of the Criminal Court Circuit of Caracas with the aim of prosecuting him for disseminating a public announcement that called on Venezuelans to seek a transitional government by constitutional means, which would constitute a violation of his right to freedom of opinion and expression.

28. The Working Group received information — not denied by the Government of the Bolivarian Republic of Venezuela — to the effect that the offences of conspiracy (set out in article 132 of the Criminal Code) and criminal conspiracy (set out in article 37 of the Organized Crime and Financing of Terrorism Act) of which Mr. Ledezma is accused do not pertain to the present case. The offence of conspiracy applies solely to persons who attempt to change the republican form of government, while the legislation in force, the case law of the Supreme Court of Justice and the doctrine of the Public Prosecution Service establish that the offence of criminal conspiracy is fundamentally economic in nature, which means that the defendant must be shown to have benefited economically or materially. The Government did not provide information concerning the acts attributed to Mr. Ledezma or his alleged responsibility for them. The purpose of the criminal charges against him is therefore to restrict or punish the legitimate exercise of his right to freedom of conscience and expression, as mentioned in paragraph 27 above, in violation of articles 18 to 20 of the Covenant.

29. Owing to his affiliation to the political opposition, Mr. Ledezma was harassed, after taking up his duties as mayor, by being stripped of essential functions pertaining to the Metropolitan Municipality and groups close to the Government committed acts of vandalism against the mayor's office, its staff and its equipment, all of which impinges on the political rights set forth in article 24 of the Covenant.

30. In that context, the Working Group was informed that Miguel Graterol, the judge of the Sixth Court of the Criminal Court Circuit of Caracas who ordered the arrest, was a provisional judge; in other words, he was a temporary official who could be removed from office at any time, which is in breach of principles 11 to 14 of the Basic Principles on the Independence of the Judiciary.² The prosecutors who charged Mr. Ledezma (Katherine N. Harrington and José Luis Orta) were also temporary staff, in violation of guidelines 3 to 7 of the Guidelines on the Role of Prosecutors.³ Neither of them obtained their post through a competition and they are not established civil servants. All this undermines the independence of the judiciary and of the Public Prosecution Service and diminishes the autonomy of judicial officials.

31. The Working Group is alarmed at the lack of independence and autonomy in the judiciary and the Public Prosecution Service. It recalls that the Human Rights Committee, during its consideration of the fourth periodic report of the Bolivarian Republic of Venezuela,⁴ expressed concern at the situation of the judiciary in the State

² See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. S.86.IV.1), chap. I, sect. D.

³ See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. S.91.IV.2), chap. I, sect. C, resolution 26.

⁴ At its 114th session (29 June-24 July 2015).

party, in particular with regard to its autonomy, independence and impartiality. The Committee noted with concern that only 34 per cent of judges were tenured, which meant that the remainder had provisional status and could be appointed and removed on a discretionary basis. Moreover, the Committee found it regrettable that it had received no information on the percentage of prosecutors of the Public Prosecution Service who were tenured and, in that regard, was concerned about reports indicating that the percentage was very low. The Committee was further concerned about reports that judges who, in the course of their duties, ruled against the Government faced adverse consequences. Various delegations expressed similar concerns during the review of the human rights situation in the Bolivarian Republic of Venezuela as part of the universal periodic review (see A/HRC/19/12, paras. 30, 88, 96.13, 96.14, 96.16, 96.18, 96.19, 96.20 and 96.21). The Working Group reiterates the words of the Committee, which recommended that the Bolivarian Republic of Venezuela should take immediate steps to ensure and protect the full autonomy, independence and impartiality of judges and prosecutors, and guarantee that they were free to operate without pressure or interference of any kind. In particular, it recommended that prompt action should be taken to remedy the provisional status of most judges and prosecutors.

32. The authorities did not allow the defence to represent their client adequately and the presumption of innocence was violated through a series of incriminatory statements directed at the Mayor by public officials before a ruling had been issued. All of the above is incompatible with the obligations stemming from article 14, paragraphs 1, 2 and 3 (a), (b) and (d), of the Covenant.

33. Moreover, Mr. Ledezma was deprived of his liberty at CENAPROMIL, also known as the Ramo Verde military prison, located at Los Teques in Miranda State, which is guarded by members of the armed forces and DGIM. It is a prison for service personnel, where, however, other civilian political leaders of the opposition are incarcerated. In other Opinions, the Working Group has observed that the Constitution of the Bolivarian Republic of Venezuela establishes that organs of civilian security are civil in nature (art. 332), which means that there is no legal justification for the involvement of the armed forces in the detention of civilians. The Working Group considers that the constitutional provision in question is subject to the views expressed by the Inter-American Commission on Human Rights in its Report on Citizen Security and Human Rights, in which countries in the region were advised as follows:

“In the domestic legal system, draw a clear distinction between national defence as the function of the armed forces, and citizen security as a function of the police. Make it very clear that because of the nature of the situations they must deal with, the instruction and specialized training they receive, and the region’s unfortunate history of military intervention into internal security affairs, the police have sole responsibility for the functions associated with prevention, deterrence and lawful suppression of violence, under the oversight of the legitimate authorities of a democratic government.”⁵

34. In another report, with which the Working Group also agrees, the Commission indicated that:

“[...] States need to guarantee that penitentiaries are run and guarded by qualified, civilian staff, with civil servant status. That is to say, those functions must be entrusted to an independent security body independent of the military and police forces, and educated and trained in penitentiary issues. Those professionals must have been trained in programmes, schools, or penitentiary

⁵ Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights* (OEA/Ser.L/V/II, Doc.57), specific recommendation No. 10.

academies established specifically for that purpose and pertaining to the institutional structure of the authority responsible for administering the penitentiary system.”⁶

35. In the light of the foregoing, the Working Group considers that Mr. Ledezma’s detention is arbitrary, in that it was imposed because he exercised his rights to participate in public affairs, to vote and be elected, to have access to public office, to enjoy freedom of thought, opinion, expression and association, and to receive due process and a trial by an impartial and independent court, as recognized in articles 8 to 11, 18, 19 and 21 of the Universal Declaration of Human Rights and in articles 9, 14, 18 to 20, 24 and 25 of the Covenant, to which the Bolivarian Republic of Venezuela is a party.

Disposition

36. The Working Group considers that the detention of Antonio José Ledezma Díaz is arbitrary under categories I, II and III of its methods of work.

37. Having found Mr. Ledezma’s detention arbitrary, the Working Group recommends that the Government of the Bolivarian Republic of Venezuela should release him immediately and grant him fair, full and adequate reparation in accordance with article 9, paragraph 5, of the Covenant.

38. The Working Group, having identified a consistent pattern of arbitrary detentions in the Bolivarian Republic of Venezuela from previous Opinions (see Opinions Nos. 10/2009, 31/2010, 27/2011, 28/2011, 62/2011, 65/2011, 28/2012, 56/2012, 47/2013, 26/2014, 29/2014, 30/2014, 51/2014, 1/2015, 7/2015 and 26/2015), urges the Government to adopt all necessary measures to comply with the Opinions and to guarantee the right of all Venezuelans and persons living under its jurisdiction not to be arbitrarily deprived of their liberty. The Working Group also urges the Bolivarian Republic of Venezuela to give favourable consideration to the request for an official visit to its territory with the aim of engaging in a constructive dialogue on finding appropriate and effective measures to deal with the issue of arbitrary detention in the country.

39. In the light of the allegations received concerning a lack of independence in the judiciary and among judicial officials in the Bolivarian Republic of Venezuela, the case will be referred to the Special Rapporteur on the independence of judges and lawyers for her information and with a view to possible action.

[Adopted on 3 September 2015]

⁶ Inter-American Commission on Human Rights, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (OEA/Ser.L/V/II, Doc. 64), para. 193.