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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21-25 August 2017

Opinion No. 53/2017 concerning Nizar Bou Nasr Eddine (Lebanon)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 29 December 2016 the Working Group transmitted to the Government of Lebanon a communication concerning Nizar Bou Nasr Eddine. The Government replied to the communication on 2 March 2017. 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 him or her) (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 Covenant (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 on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



Submissions

Communication from the source

4. Nizar Bou Nasr Eddine was born on 1 January 1964. He is a Lebanese national. For years, he has been a colonel in the Lebanese Internal Security Forces and, for a brief period in 2014, he was assigned to the Forces' Engineering Division.
5. Some time ago, a number of corruption scandals, including cases having to do with the use of sick leave by members of the Internal Security Forces, were apparently discovered. The source contends that none of them involved Mr. Bou Nasr Eddine.
6. According to the source, this alleged corruption in the Internal Security Forces was roundly denounced by a political leader belonging to the same minority group as Mr. Bou Nasr Eddine, the Druze community.
7. Shortly thereafter, Mr. Bou Nasr Eddine was summoned for questioning and, although there was no evidence of his involvement in any form of embezzlement, he was arrested by the Internal Security Forces on 12 April 2016 and charged with that offence.
8. The authorities checked his bank account and did not find any surplus funds or funds that could not be justified. Nothing that could have substantiated the charges against him was found in the accounts of his family members either. In the meantime, in breach of confidentiality requirements, information about the investigation was leaked to the media by the authorities. In the wake of this leak, the media apparently sought to portray Mr. Bou Nasr Eddine as being guilty, although no trial had taken place and only some aspects of the investigation had been revealed. The source emphasizes that the leaked document was a revised account of the investigation that was intended to incriminate Mr. Bou Nasr Eddine.
9. The source points out that, meanwhile, although other persons professing the same religious beliefs as the Minister of the Interior have confessed to taking bribes — confessions corroborated by an examination of their bank accounts — they have not been arrested.
10. The source contends that Mr. Bou Nasr Eddine was arrested as a result of an administrative decision of the Minister of the Interior, who, in accordance with internal military regulations, is authorized to order the arrest of an officer for a period of 40 days. In other words, the Minister of the Interior may arrest a person without bringing any charge and without giving the person the opportunity to challenge the decision or otherwise defend him- or herself.
11. According to the source, Mr. Bou Nasr Eddine was not represented by a lawyer during the first 40 days of his detention. He was then charged, under disciplinary regulations, with serious misconduct harmful to the reputation of the Forces and their personnel.
12. After the first 40 days of his detention, Mr. Bou Nasr Eddine was charged with abuse of power and corruption and was kept in custody by order of the military investigating judge. The source stresses that his lawyer was able to access only part of the case file, as the military court had not authorized its full release. According to the submissions from the source, every attempt to challenge Mr. Bou Nasr Eddine's detention before the military courts, the Ministry of the Interior and the Internal Security Forces proved fruitless. The military investigating judge actually did grant an appeal against his detention, but the military prosecutor refused to release him. The source states that, under the discretionary authority granted by law to military prosecutors, they are not required to justify a refusal to release a detainee.
13. On 24 July 2016, Mr. Bou Nasr Eddine was released on bail by the court. A week after his release, he was formally charged; his trial began in December 2016.
14. The source argues that the deprivation of liberty of Mr. Bou Nasr Eddine was arbitrary and falls within categories I, III and V of arbitrary detention as defined in the Working Group's methods of work.

15. The source submits that the deprivation of liberty of Mr. Bou Nasr Eddine meets the requirements of category I because he was held in custody without any legal justification for the first 40 days of his detention, in breach of article 9 of the International Covenant on Civil and Political Rights.

16. With regard to category III, the source submits that Mr. Bou Nasr Eddine was unable to exercise his right to a fair trial while he was deprived of his liberty, as guaranteed by international standards, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant, to which Lebanon is a party. The source maintains that Mr. Bou Nasr Eddine was not presumed innocent and that his rights as an accused person were not respected. In addition, he was unable to cross-examine the witness for the prosecution. The source also contends that Mr. Bou Nasr Eddine did not have access to a lawyer for the first 40 days of his detention. The lawyer he finally obtained was able to gain access to only a part of the case file, as the military court had not authorized its full release. The source furthermore states that the leak of information to the media, which occurred very early on in the investigation, was a flagrant violation of article 14 of the Covenant. The source goes on to say that there can be no evidence against him, since the alleged acts of corruption did not occur while Mr. Bou Nasr Eddine was assigned to the Engineering Division. This fact has been attested to by the prosecution's sole witness, who instead apparently implicated the former head of the Internal Security Forces' Engineering Division. Moreover, Mr. Bou Nasr Eddine was formally charged three months after his arrest, and the trial started eight months after his arrest. The source argues that this violates articles 14 (1), (2) and 14 (3) (a), (b) and (c) of the Covenant. Although Mr. Bou Nasr Eddine has been released on bail, the source is still concerned that he runs a high risk of being given a prison sentence.

17. Lastly, the source contends that Mr. Bou Nasr Eddine's deprivation of liberty falls within category V of the Working Group's definition of arbitrary detention. Media reports linked Mr. Bou Nasr Eddine to a local Druze leader and, in the past, there had reportedly been tensions between the Minister of the Interior and that leader. Although Mr. Bou Nasr Eddine has stated that he has no ties to any politician, it is true that he and the Druze leader profess the same religious beliefs. The source further alleges that, although the investigation turned up the existence of funds in the bank accounts of other officers for which they could not provide any justification, they have not been arrested. These officers are of the same faith as the Minister of the Interior. The source argues that there is substantial reason to believe that there are religious grounds for this persecution, in violation of the principle of non-discrimination in international law.

Response from the Government

18. The Government responded on 2 March 2017, although, in the letter accompanying the communication, the Working Group had requested a reply by 27 February 2017 at the latest. As this response was late, the Working Group cannot give it formal consideration.

Further information from the source

19. The source was notified of the Government's response and submitted additional observations on 1 August 2017.

Discussion

20. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). The Government has 60 days to submit such a refutation, although it may be granted a 30-day extension if it has persuasive reasons for requesting one. In this case, the Government chose not to request an extension, despite the late arrival of its response. In accordance with the practice of the Working Group, consideration will therefore not be given to this response, although the Working Group will take all the information available to it into account (methods of work of the Working Group on Arbitrary Detention, para. 16).

21. The information provided by the source is consistent and reliable. It is confirmed in part by the belated response of the Government. The case can be summarized as follows: Mr. Bou Nasr Eddine is both a mechanical engineer and an Internal Security Forces officer. He is accused of having participated in corrupt practices whereby service providers and the suppliers of spare parts for the Internal Security Forces' vehicle fleet were forced to pay bribes and/or to over-invoice. He was arrested on 12 April 2016 and released on 24 July 2016. He has been subject to both judicial and disciplinary proceedings.

22. Mr. Bou Nasr Eddine was arrested without a warrant, as the warrant for his arrest was not issued until 40 days later. Furthermore, he was not brought before a judge until July 2016. These delays are clearly in contravention of the international obligation assumed by Lebanon under article 9 (2) of the Covenant, which clearly states that anyone who is arrested is to be informed, at the time of arrest, of the reasons for his or her arrest and promptly informed of any charges against him or her. Given the violation of this international provision, which safeguards individual liberties, his arrest and detention have no legal basis.

23. It should also be noted that, in its belated response, the Government states that the disciplinary proceedings provided the basis for the initial detention. However, no disciplinary action had been taken at that point, so detention for such an extended period of time was unjustified, even in the context of disciplinary proceedings.

24. It is thus concluded that Mr. Bou Nasr Eddine's situation falls within category I of the definition of arbitrary detention as set forth in the Working Group's methods of work and described in paragraph 3 above.

25. The source submits that Mr. Bou Nasr Eddine's situation also falls within category III of the definition of arbitrary detention. In that regard, the source maintains, first, that information about the investigation was leaked to the media, which published purported evidence of certain financial transactions. Those leaks, according to the source, had but one goal: to ensure that there was public pressure for the indictment of Mr. Bou Nasr Eddine, in violation of the principle of the presumption of innocence. Furthermore, the source argues that Mr. Bou Nasr Eddine's lawyer was not able to begin assisting him until after the first 40 days of his detention and that he had access to only part of the case file, since the full records of the proceedings before the military judge could not be released. The source also states that, in the proceedings before the military judge, it was not possible for the defence to cross-examine witnesses, even though one of the prosecution witnesses had confessed to the crime that Mr. Bou Nasr Eddine was accused of. Finally, the source adds that the trial did not begin until eight months after Mr. Bou Nasr Eddine's arrest and detention.

26. The Working Group notes that this case involves two commingling proceedings. It should also be noted that the two proceedings are taking place in military courts. The jurisdictional framework for the disciplinary proceedings, which have taken place in the institution for which Mr. Bou Nasr Eddine works, is clear. He is an officer in the Internal Security Forces, which are part of the Lebanese Armed Forces: it is thus logical for the disciplinary proceedings to be conducted before a military body.

27. It is not clear that it is appropriate for the legal proceedings to be conducted before a military judge, however, and it is regrettable that, in breach of article 9 (3) of the Covenant, Mr. Bou Nasr Eddine was not brought promptly before a judge.

28. In both cases, moreover, the accused has rights that cannot be violated without vitiating the proceedings to such a point that the arrest and detention become arbitrary. It seems, however, that such violations occurred.

29. First, Mr. Bou Nasr Eddine was detained without being allowed to exercise his right to legal assistance or representation, in breach of article 14 (3) (d) of the Covenant. Second, the nature of the proceedings before the military judge, as described by the source (see para. 12), constitutes a violation of the rights of accused persons and, in breach of article 14 (3) (e) of the Covenant, makes the conduct of a fair trial impossible. These violations are sufficiently serious for the Working Group to conclude that Mr. Bou Nasr Eddine's detention falls with category III. There is therefore no need to look further into the matter of the alleged violation of the presumption of innocence, especially as the source did not

provide sufficient evidence to permit a balanced assessment of that right vis-à-vis the need to protect the right of journalists to inform the public.

30. Finally, the source contends that the detention of Mr. Bou Nasr Eddine, who is a member of a religious minority, the Druze, falls within category V. It was only after a Druze leader, who had already been at odds with the Minister of the Interior, publicly denounced corruption in the Internal Security Forces that Mr. Bou Nasr Eddine was accused and arrested. What is more, according to the source, persons from the same region as the Minister or professing the same faith have confessed to the crime of corruption but have not been investigated. In the view of the Working Group, this allegation has not been substantiated, since sufficient factual evidence to permit a better assessment of Mr. Bou Nasr Eddine's personal circumstances within the context of the overall situation in Lebanon has not been provided.

31. In conclusion, the Working Group wishes to stress that its mandate is not that of a criminal court and that it does not in all cases concern itself with the merits of criminal proceedings. In this case, the Working Group has no need to address the serious allegations of corruption made against Mr. Bou Nasr Eddine. It is nonetheless important to note, once again, that there can be no justification for rights violations resulting in arbitrary arrest and detention (see opinion No. 4/2015). On the contrary, the seriousness of a crime should encourage the public authorities to show greater professionalism with a view to ensuring that the accused is brought to justice fairly and on a basis of equality.

Disposition

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

The deprivation of liberty of Nizar Bou Nasr Eddine has been arbitrary, inasmuch as it is in contravention of articles 9 (2) and 9 (3) and 14 (3) (d) and 14 (3) (e) of the International Covenant on Civil and Political Rights and falls within categories I and III as defined in the methods of work.

33. The Working Group requests the Government of Lebanon to take the steps necessary to remedy the situation of Mr. Bou Nasr Eddine without delay and bring it into conformity with the relevant international standards, including those set out in the International Covenant on Civil and Political Rights.

34. The Working Group considers that, taking into account all the circumstances of the case, including the fact that Mr. Bou Nasr Eddine is currently on conditional release, the appropriate remedy would be to accord him the right to redress, in particular in the form of compensation, in accordance with international law.

Follow-up procedure

35. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether compensation or other reparations have been made to Mr. Bou Nasr Eddine;
- (b) Whether an investigation has been conducted into the violation of Mr. Bou Nasr Eddine's rights and, if so, what the outcome of the investigation was;
- (c) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Lebanon with its international obligations in line with the present opinion;
- (d) Whether any other action has been taken to implement the present opinion.

36. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

37. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

38. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken.¹

[Adopted on 24 August 2017]

¹ Human Rights Council resolution 33/30, paras. 3 and 7.