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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-third session (19–23 November 2018)

Opinion No. 71/2018 concerning Messrs. Mathias Tsarsi, Peter Ambe Akoso, Service Alladoum and Mahamat Seïd Abdelkadre (Chad)

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/36/38), on 17 July 2018, the Working Group transmitted to the Government of Chad a communication concerning Messrs. Tsarsi, Akoso, Alladoum and Abdelkadre. The Government has not replied to the communication. 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. Mathias Tsarsi is a Chadian citizen born in 1972 in N'Djamena, Chad. Mr. Tsarsi is Chief Executive of the airline AirInter1, which has its head office in N'Djamena.
5. Peter Ambe Akoso is a national of Cameroon. He was born in 1962 in Bafut, Cameroon. Mr. Akoso is an aeronautical engineer. Since the end of 2013, he has been working as an airworthiness expert for the Civil Aviation Authority in N'Djamena.
6. Service Alladoum is a national of Chad. He was born in 1970 in Guera, Chad. Mr. Alladoum is Deputy Director-General of the Civil Aviation Authority,¹ a civil aviation inspector and the former Head of Aviation Safety at the Civil Aviation Authority of Chad.
7. Mahamat Seïd Abdelkadre is a national of Chad. He was born in 1965 in N'Djamena, Chad. Mr. Abdelkadre is an airworthiness inspector at the Civil Aviation Authority and the former Head of Air Transport.

Background

8. According to the source, on 3 January 2017, AirInter1, which is owned by Mr. Tsarsi, applied to register an Airbus 340. After internal consultations at the Civil Aviation Authority, on 4 January 2017 the application was put on hold until the necessary requirements were met. Nine months later, the Director-General of the Civil Aviation Authority, who had given the order for the registration to be put on hold, apparently announced that the aircraft had been duly registered. However, no application appears to have been processed, there is no registration certificate or related documentation, no delisting certificate issued by the Civil Aviation Authority, no trace of any aircraft of this type in the Chadian register, no flight crew licensed for this type of aircraft, and no aircraft bearing the registration number in question. The source also claims that the registration number of this aircraft was used by the presidential fleet.
9. The source reports that, in late July 2017, the ambassador of the United States of America informed the Chadian Minister of Civil Aviation that AirInter1 planned to transfer an IL-18D cargo plane to a Swazi airline. The purpose of the transfer was apparently to cover up a sale made to an Iranian airline suspected of having provided financial, material and technological support to a unit of the Islamic Revolutionary Guard Corps, which is on the list of suspect companies operating in Iraq. In the light of this Iranian company's activities, the American embassy in Chad expressed concern about the role the cargo plane might play if transferred to the Swazi airline. The source states, however, that the aircraft belongs to a Russian partner and is only operated by AirInter1, which consequently is not in a position to sell it.
10. The source indicates that, on 1 August 2017, Mr. Tsarsi, as Chief Executive of AirInter1, received a letter from the Director-General of the Civil Aviation Authority informing him that certification for the company's IL18/TT WAK aircraft had been revoked. Twenty-four hours later, AirInter1's licence and air operator certificate were suspended by ministerial order. On 5 August 2017, a decision was taken to delist two cargo planes and to modify AirInter1's operator certificate in order to remove the two aircraft from circulation. On 7 August 2017, the Civil Aviation Authority suspended the activities of AirInter1. At no time was any investigation carried out by the Civil Aviation Authority.
11. The source also notes that the Chadian airlines association sent a letter to the Minister of Civil Aviation explaining the situation and requesting that the punitive measures be lifted.
12. The source goes on to explain that, in the course of August 2017, the Director-General of the Civil Aviation Authority insinuated in an interview with *La lettre du continent*, an African news site, that an Airbus A340-312 owned by a Chadian airline had entered restricted airspace in the Syrian Arab Republic and that a complaint against X had

¹ Mr. Alladoum was removed from his post while in detention.

been filed because the aircraft in question had been fraudulently registered thanks to the collusion of his agents.

13. On 11 September 2017, the Minister of Civil Aviation signed an order annulling the order of 2 August 2017 that had revoked AirInter1's air operator certificate. The order reinstated the company's licence and specified that it could resume its activities. However, on 26 September 2017, the Director-General of the Civil Aviation Authority revoked AirInter1's air operator certificate, disregarding the hierarchy between administrative instructions and civil aviation regulations, according to the source.

Arrest and detention

14. According to the source, following the complaint against X, and without prior investigation by the competent authorities, the four individuals were detained on 29 September 2017 and have been deprived of their liberty ever since.

15. The source states that criminal investigation officers arrested Mr. Tsarsi in his office without a warrant, summons or prior notification of the charges. The source further submits that Mr. Tsarsi was then taken to the offices of the criminal investigation police in N'Djamena where he was subjected to physical and psychological torture. The source states that the Head of the Criminal Investigation Police forced Mr. Tsarsi to remain seated on a bench for more than seven hours, without being allowed to move at all. He was also denied visits, even from his counsel. The police officers were officially instructed to refuse authorization for any form of contact. However, thanks to the intervention of a police officer who let him make a telephone call, Mr. Tsarsi was able to contact one of his lawyers and a member of his family. The officer who facilitated the call was subsequently reprimanded by his superior for his actions. The source also alleges that, on 30 September 2017, Mr. Tsarsi was subjected to questioning "verging on violence" during which the Public Prosecutor and the Head of the Criminal Investigation Police tried to coerce him into giving a false account of the facts without granting him access to legal counsel.

16. With regard to the other three individuals, the source states that, on 29 September 2017 at around 10 a.m., the Head of the Criminal Investigation Police, accompanied by the Deputy Director and the Head of the Criminal Affairs and Counter-Terrorism Division, arrested Mr. Alladoum, Mr. Abdelkadre and Mr. Akoso in Mr. Alladoum's office and brought them before the Public Prosecutor.

17. According to the source, the Head of the Criminal Investigation Police served Messrs. Akoso,² Abdelkadre and Alladoum with a summons. Mr. Alladoum wished to record this exchange, but was prohibited from doing so. Without being informed of the charges against them at the time of their arrest, they were taken to premises of the Criminal Investigation Police where they were stripped of their personal belongings.

18. Mr. Alladoum and Mr. Tsarsi were then detained at the Criminal Investigation Police's headquarters. Any contact or communication between the two was prohibited.

19. The source recounts that, on 29 September 2017 at around 10 p.m., two senior criminal investigation officers served Mr. Akoso and Mr. Abdelkadre with a document informing them that they would be taken into police custody for the purpose of investigation.

20. The source further recounts that, on 2 October 2017, Mr. Abdelkadre and Mr. Akoso were taken to the Criminal Investigation Police's headquarters where Mr. Tsarsi and Mr. Alladoum were already being held, and that that they were questioned on the same day.

21. According to the source, Mr. Akoso was questioned by the Public Prosecutor without being informed of the charges against him and without access to a lawyer. In the course of the questioning, Mr. Akoso deduced that the Prosecutor was interested in the role that he had played in the registration of the A340 aircraft. Mr. Akoso gave his account of

² Mr. Akoso reportedly challenged the summons because it referred to him as an inspector of the Civil Aviation Authority when he does not work for the Civil Aviation Authority and is not an inspector.

the facts, namely, that he had not finalized the registration request because it had been taken up by someone else in his absence.

22. The source alleges that the four individuals were subjected to harsh conditions while in detention. The source mentions, among other things, that they were not allowed to move without permission, were allowed only limited family visits, were not allowed visits from non-family members, were denied access to a lawyer and were questioned in the absence of their lawyers, and that aircraft documentation in their care was confiscated.

23. According to the source, the four individuals remained in police custody for 67 days. On 4 December 2017, they were transferred to Amsinéné prison, where they are still being held. On that day, because of the exceptional nature of the case,³ they were brought firstly before the District Prosecutor's Office, and then before the Public Prosecutor and the Supreme Court. When brought before the Supreme Court, the four individuals were notified of the charges against them and placed under a detention order despite the procedural irregularities highlighted by their lawyers. According to the source, the person who signed the detention order was not even competent to do so.

24. The source recounts that the detention of the four individuals constitutes a violation of article 221 of the Chadian Code of Criminal Procedure, which states that a person may not be held in custody for more than 48 hours, which period may be extended for a further 48 hours. Their arrest and placement in police custody are therefore a violation of the conditions of article 221.

25. The source concludes that the four individuals should have been released on 2 October 2017 at the latest, which was not the case. On this basis, the source submits that their arrest and subsequent detention lacks any legal basis and is therefore arbitrary and unlawful.

26. The source also explains that the charges against them gradually evolved, from "fraudulent registration" to "forgery and use of forged documents" and finally to "money laundering, mercenary activities, financing of terrorism, and unlawful action against civil aviation". The source claims that there is no evidence to support these charges. The four individuals contested the charges before the Supreme Court but their lawyers' complaint of "arbitrary arrest/kidnapping" was disregarded. Thus, several months after their arrest, the Court ordered that they be transferred to Amsinéné prison.

27. The source also maintains that the four individuals were not afforded the right to be heard.

28. The source states that, since 29 September 2017, the four individuals' defence team has filed several appeals with Chadian courts requesting information on the charges against them and the reasons for their imprisonment in order to prepare their defence. According to the source, no reply has been received and the defence team has still not been given access to the four individuals' case files.

29. The source further states that there has been no hearing on their cases. The source submits that the authorities of Chad have no desire to conduct a hearing and to rule on their cases, and that there is no other Chadian court that their defence team might petition on their behalf. The source also reports that, at the end of March 2018, one of the four individuals' lawyer met with the investigating judge in N'Djamena in an attempt to gain access to the case file. The investigating judge informed him that there was no such file. No hearing has been scheduled.

30. The source therefore concludes that the guarantees set forth in article 9 of the International Covenant on Civil and Political Rights were not observed and that Mr. Tsarsi's arrest and detention are arbitrary.

31. Lastly, the source recounts that the four individuals are in ill health and are being held in an unsanitary cell with fifty others. They are apparently being subjected to humiliating treatment and psychological torture: they are not allowed to move around in

³ A minister is also allegedly implicated, but she has not been detained.

their cell, their guards frequently order them to remove their shoes, they are questioned in the absence of their lawyers even if the defence team is in N'Djamena at the time, and they are denied their right to receive visitors and to see a doctor. The source also states that the guards use intimidation to try to extort from them information that they do not possess.

Response from the Government

32. On 17 July 2018, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure. The Working Group requested the Government to provide, by 19 March 2018, detailed information about the current situation of Messrs. Tsarsi, Alladoum, Akoso and Abdelkadre and any comments on the source's allegations.

33. The Working Group regrets that it did not receive a response from the Government, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

34. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

35. 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 (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

36. The source alleges that Mr. Tsarsi was arrested without a warrant or summons and taken to the N'Djamena headquarters of the Criminal Investigation Police for questioning the following day. The Working Group has in its jurisprudence established that the existence of a law authorizing arrest for given reasons does not constitute a legal basis for deprivation of liberty. In order for an arrest or detention to be lawful, the authorities must apply the law to the specific circumstances of the case by issuing an arrest warrant.⁴ The Working Group notes that this requirement was not met in Mr. Tsarsi's case. The Working Group has no reason to believe that the situation was any different for the other three individuals concerned when they were arrested on 29 September 2017.

37. In addition, none of the four individuals concerned were informed of the reasons for their arrest. The Working Group recalls that article 9 (2) of the Covenant requires that any person who is arrested is not only promptly informed of the reasons for his or her arrest but is also promptly informed of the charges against him or her. The two obligations deriving from this provision of the Covenant are expounded in general comment No. 35 (2014) of the Human Rights Committee on article 9 (Liberty and security of person).

38. When arrests are carried out without a warrant and the detained person is not promptly informed of the charges against him or her, the authorities in question have not invoked any legal basis justifying the arrest and detention. Consequently, the Working Group concludes that the arrest and detention of the four individuals in question lack any legal basis and are therefore arbitrary, falling under category I.

39. The Working Group also notes that the individuals in question were subjected to a prolonged period of pretrial detention, which lasted 67 days, before being brought before a judge, in violation of articles 9 (3) and 14 (3) (c) of the Covenant. These provisions guarantee the right of all persons to be tried within a reasonable time or to be released, and establish the general rule whereby pretrial detention must be exceptional.⁵ Furthermore, principle 11.1 of the Body of Principles for the Protection of All Persons under Any Form

⁴ See, for example, Opinion No. 1/2017 and Opinion No. 6/2017 of the Working Group.

⁵ Human Rights Committee, general comment No. 35, para. 33.

of Detention or Imprisonment provides that a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.

40. In addition to this violation, the four individuals were denied access to a lawyer. This constitutes a grave violation of the right to a fair trial, as established in article 14 (3) (b) of the Covenant, principle 17.1 of the Body of Principles and principle 9 of the Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court.

41. Moreover, the fact that the four individuals were denied contact with or visits from their family or lawyer constitutes a violation of principles 15 and 19 of the Body of Principles.

42. The source alleges that the Public Prosecutor and the Head of the Criminal Investigation Police subjected Mr. Tsarsi to questioning “verging on violence” in order to force him to give a false account of the facts. The Working Groups recalls that, pursuant to article 14 (3) of the Covenant, no person may be compelled to testify against himself or herself or to confess guilt. Similarly, principle 21.1 of the Body of Principles prohibits any attempt to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, incriminate himself otherwise or to testify against any other person. A response from the Government would have been particularly useful if it might have served to rebut the assumptions that might be drawn from the observations on guarantees for detainees issued by the Committee against Torture on 12 May 2009,⁶ which lend weight to the source’s credibility in the present case. The attempts to extort information during questioning constitute a violation of the right not to testify against oneself or to be compelled to testify.

43. The source reports that the four individuals were not afforded the right to be heard, as the authorities failed to schedule a hearing at which to rule on their cases even though they had been in detention for over a year. This situation constitutes a denial of the right to an effective remedy, as set forth in article 8 of the Universal Declaration of Human Rights and article 9 (4) of the Covenant, which provides that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful. The right to an effective remedy is also upheld in principle 32.1 of the Body of Principles.

44. These multiple violations of the right to a fair trial are sufficiently serious for the Working Group to conclude that the arrest and detention of the four individuals in question are arbitrary, falling within category III.

45. The Working Group is particularly concerned about the deplorable conditions in which the four detainees are being held, in particular the source’s claim that they are denied access to adequate medical care, which could cause them irreparable damage given their current state of health. The Working Group considers that this treatment amounts to a violation of their right to be treated with humanity and with respect for the inherent dignity of the human person, as established in article 10 (1) of the Covenant.

Disposition

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

The deprivation of liberty of Messrs. Tsarsi, Alladoum, Akoso and Abdelkadre, being in contravention of articles 3, 8 and 9 of the Universal Declaration of Human Rights and of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

47. The Working Group requests the Government of Chad to take the steps necessary to remedy the situation of these four individuals without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The

⁶ CAT/C/TCD/CO/1, para. 16.

Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Tsarsi, Akoso, Alladoum and Abdelkadre and to take appropriate measures against those responsible for the violation of their rights.

48. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the four individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

49. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Messrs. Tsarsi, Akoso, Alladoum and Abdelkadre and to take appropriate measures against those responsible for the violation of their rights.

50. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

51. 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 Messrs. Tsarsi, Akoso, Alladoum and Abdelkadre have been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Messrs. Tsarsi, Akoso, Alladoum and Abdelkadre;

(c) Whether an investigation has been conducted into the violation of Messrs. Tsarsi, Akoso, Alladoum and Abdelkadre's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Chad with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

52. 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.

53. The Working Group requests the source and the Government to provide the above information within six months of the date of 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.

54. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has 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.⁷

[Adopted on 20 November 2018]

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