



General Assembly

Distr.: General
1 July 2014
English
Original: French

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session, 22 April–1 May 2014

No. 17/2014 (Algeria)

Communication addressed to the Government on 21 February 2014

Concerning: Djameleddine Laskri

The Government has not replied to the Working Group's communication.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by 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 and again for another three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work, 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. According to the source, Djameleddine Laskri is an architect who was born on 4 June 1960 in Annaba. He is married with three children and usually resides in Cité Saïd Hamdine, in Algiers.

4. Mr. Laskri, a supporter of the Front Islamique du Salut (Islamic Salvation Front) (FIS), was a close friend of Hocine Abderrahim, the president of the Syndicat Indépendant des Travailleurs (Independent Trade Union of Workers) (SIT). Mr. Abderrahim is the main defendant in a case involving three bombings carried out at Houari Boumediene airport and at the Air France and Swissair offices in Algiers on 26 August 1992.

5. According to the source, it is in this context that Mr. Laskri, suspected of maintaining relations with Hocine Abderrahim, was arrested at his home on 7 September 1992 by armed security personnel in plain clothes who did not identify themselves as such or present a warrant. They took him to an unknown location, and his family did not receive any information about his fate for several weeks.

6. Mr. Laskri was held incommunicado for 50 days before being formally placed in police custody on 27 October 1992, the date when a post-dated police interrogation report was drawn up by the criminal investigation police of Algiers *wilaya*. It was not until 4 November 1992, however, that he was secretly brought before the prosecution of the Special Court of Algiers and heard by the investigating judge of the Fourth Investigating Chamber of the Court of Algiers, in the absence of his lawyer.

7. As soon as his family members found out that he had reappeared, they visited him in Serkadji prison some 10 days after his incarceration. They noted obvious signs of torture on the exposed parts of his body – signs that were also observed by his lawyer during his first visit, a few days later.

8. Mr. Laskri affirms that during his incommunicado detention he was subjected to the worst forms of torture — including the so-called rag technique — on many occasions, was left hanging for several days in a row, was deprived of food and sleep and was electrocuted on all the sensitive parts of his body. To this day he bears the physical scars of this torture.

9. When he was brought before the Algiers prosecutor, Mr. Laskri, who denied all charges against him, informed the prosecutor about the torture to which he had been subjected during his two months of secret detention. He also informed the investigating judge of the Fourth Chamber about the torture, even without a lawyer. The prosecutor and judge could not reasonably doubt his claims, as the victim still bore obvious signs of torture on his face and all over his body. More than a week after the hearing, these signs, which were still clearly visible, were observed by his lawyer and his family.

10. Neither the prosecutor nor the investigating judge deemed it necessary to order a medical examination or, a fortiori, an investigation to establish the facts concerning the

particularly inhumane treatment suffered by the victim, even though Algeria was a party to the Convention against Torture.

11. According to the source, the preliminary investigation was extremely brief: the investigating judge investigated only the case for the prosecution and systematically refused to hear witnesses proposed by the defence. He also refused to carry out certain investigative actions that are mandatory in criminal cases, such as hearing from scientific experts about the explosives used or reconstructing the crime scene. The investigating judge also refused to investigate the other two simultaneous attacks on the Air France and Swissair offices, and as a result these attacks were not mentioned during the trial.

12. Despite repeated requests from the lawyers, the investigating judge did not investigate the reasons why the Algiers airport passenger concourse had not been evacuated following the bomb threats that, according to police reports, airport officials had received by telephone many minutes before the explosion.

13. It was in these circumstances that the “airport” case was referred to the Review Chamber, acting as an indictments chamber pursuant to Legislative Decree No. 92-03 of 30 September 1992 on combating subversion and terrorism, to decide on the classification of the offences and the referral of the case to the Special Court of Algiers.

14. On 21 April 1993, the Review Chamber of the Special Court of Algiers decided to uphold several charges against Mr. Laskri and 23 other persons. It was therefore on the basis of these charges that the Review Chamber decided to refer those persons to the Special Court of Algiers for trial.

15. The “airport attack” trial began on 5 May 1993 at the Special Court of Algiers, which had been established by the decree of 30 September 1992. The authorities made special security arrangements so as to deny public access to the courtroom, with the exception of a few journalists said to have close ties to the authorities and to have been hand-picked by the Intelligence and Security Department (DRS).

16. According to the source, from the very outset of the trial, the defence for the accused protested against the court’s refusal to accept any defence submitted in writing at the beginning of the proceedings, concerning the serious irregularities in the trial that should have resulted in the absolute nullity of the proceedings brought against the accused.

17. The defence also objected to the threats made by the president of the Special Court against the lawyers. The president threatened to apply the provisions contained in the antiterrorism decree authorizing him to expel the lawyers from the courtroom and suspend them for up to 12 months.

18. Lastly, the defence objected to the treatment meted out to the accused. The latter, covered in blood when they arrived in court, reported that they had been tortured inside the courthouse just moments before they had been brought to the courtroom.

19. In these circumstances, and given the violation of all fundamental norms and guarantees of a fair trial and the impossibility that the court itself might show even a modicum of respect for the law, the defence for the accused decided to boycott the trial.

20. The trial was postponed several times because of the boycott and did not conclude until 26 May 1993, when the Special Court of Algiers issued its judgement. Mr. Laskri was found guilty of “incitement of citizens to take up arms against the State, membership in an armed group, and possession of banned weapons and of leaflets likely to harm national interests – acts that are criminalized and punishable under articles 77, 87 and 96 of the Criminal Code and article 7 of Legislative Decree No. 92/3”. He was, however, exonerated by the jury on the charge of bombing the Algiers airport.

21. For the above-mentioned crimes, the Special Court of Algiers sentenced him and 11 other defendants to the death penalty.
22. The Special Court of Algiers did not consider any defence submitted by the lawyers. It thus refused to order an investigation not only into the allegations of secret detention but also into the proven acts of torture, the signs of which had been observed by the judges themselves when the accused had appeared in the courtroom.
23. The judges of the Special Court based their decision to impose the death penalty solely on police reports that contained confessions extracted under torture and that had been drawn up during incommunicado detention lasting nearly two months.
24. Following his conviction, Mr. Laskri filed a cassation appeal against the judgement of 26 May 1993. In a departure from its usual practice, the Supreme Court was quick to hear the case within a very short time frame (two months), rejecting the appeal filed by Mr. Laskri and the other persons sentenced to death without even allowing them to be represented by lawyers of their own choosing.
25. Indeed, the president of the national bar association, Mr. Abbèche, assigned lawyers to the accused against their wishes, in violation of the principle that defendants have the right to freely choose their own counsel.
26. According to the source, the appointed lawyers were ordered to submit appeal briefs as quickly as possible. In August 1993, just a few days after the appeals were rejected in cassation by the Supreme Court, seven of those sentenced to death were executed in an empty lot near Tazoult prison, at 3 a.m. The execution took place in the presence of the prosecutor of the Special Court of Algiers, the president of the Court and four defence lawyers who had been summoned the evening before and forced to attend.
27. Hocine Abderrahim, president of the Syndicat Indépendant des Travailleurs (SIT), and Rachid Hachaichi, a pilot for Air Algérie and president of the Algerian pilots' branch of SIT, were among those executed.
28. The other five executions, including that of Mr. Laskri, were postponed indefinitely. In response to the strong emotions elicited by the killings, which were regarded as acts of political reprisal, and the reactions of certain human rights NGOs, a de facto moratorium on the death penalty was initiated a few weeks later.
29. According to the source, Mr. Laskri has remained in detention since 7 September 1992 — that is, for more than 21 years — following a grossly unfair trial. Moreover, since 2006 he should have benefited from an amnesty law (Order No. 06-01 of 27 February 2006 implementing the Charter for Peace and National Reconciliation), which is legally applicable to him, but which the Algerian authorities have refused to implement in his case, without giving any legal justification. He is currently detained in the Sidi Bel Abbès central prison, 450 kilometres west of Algiers.
30. According to the source, there is no longer any legal basis within the national legal order for Mr. Laskri's detention, as Order No. 06-01 is applicable to his case. Mr. Laskri should have been pardoned in accordance with Order No. 06-01, which applies to all those who have received a final sentence. He should have been immediately released.
31. To that end, his lawyer, Mr. Abdelhamid Aissani, submitted several petitions to the prosecutor of the Court of Algiers in charge of reconciliation, to the Minister of Justice and to the President of the Republic, who may, pursuant to article 47 of the Order, "take any other measures necessary to implement the Charter". Those requests met with no response, however.
32. According to the source, Mr. Laskri and the other persons prosecuted in the same case were in fact convicted because of their support for FIS, which was a legal political

party before its dissolution by the authorities and which, moreover, had won legislative elections, that had been unanimously recognized as fair and transparent. Indeed, the police interrogation report dated 27 October 1992 shows that the police questioned Mr. Laskri about his FIS membership and his participation in the marches, meetings and demonstrations organized by that political party.

33. The source believes that Mr. Laskri's current detention following his death sentence was the result of him exercising his civil and political rights, in particular his rights to freedom of opinion and freedom of association, in violation of articles 19 and 22 of the International Covenant on Civil and Political Rights, ratified by Algeria.

34. According to the source, fair trial norms, including those addressed by articles 9 and 14 of the Covenant, were systematically violated throughout the proceedings involving Mr. Laskri.

35. Mr. Laskri was arrested without any legal basis and held incommunicado for 50 days. He was not presented with any arrest warrant or given any reason justifying his arrest. In addition, Mr. Laskri was questioned by the criminal investigation service on 27 October 1992, the date he was formally taken into custody, and then brought before the investigating judge eight days later, on 4 November.

36. Article 9, paragraph 4, of the Covenant guarantees to all persons deprived of their liberty the right to take proceedings before a court, in order that that court may decide on the lawfulness of their detention and order their release if the detention is not lawful.

37. In the case at hand, Mr. Laskri's lawyer, Mr. Abdelhamid Aissani, sent a request on 3 March 2008 to the prosecutor of the Court of Algiers in charge of reconciliation asking the latter to find the detention illegal. Pursuant to article 3 of Order No. 06-01 of 27 February 2006, the Algiers prosecutor should have referred the case to the indictments chamber of the Court, which holds "jurisdiction over any incidental matters that may arise during the implementation of the provisions" of the Order.

38. The indictments chamber of the Court is the only legally established court competent to decide whether the Order applies to Mr. Laskri's case and thus whether his detention is legal in the light of that legal provision. According to the source, the public prosecutor's office has consistently refused to apply the provision in question, thereby denying Mr. Laskri the opportunity to seek the remedy provided for in the Order, in violation of article 9, paragraph 4, of the Covenant.

39. Furthermore, article 14, paragraph 1, of the Covenant sets out the general guarantee of equality before the courts, which must be impartial, independent and competent.

40. Mr. Laskri was sentenced by the Special Court of Algiers, a special court established in the context of the state of emergency declared by the army and as part of the fight against terrorism. Pursuant to Decree No. 92-03, the president, co-magistrates and prosecutor of the Special Court are appointed by a non-publishable presidential decree. The names of the judges of the Special Court must not be made known during the trial and are not included in the Court's judgements. In addition, publication of the judges' identity is punishable by a term of 2 to 5 years' imprisonment (art. 17 of the Decree).

41. According to the source, even before the trial, the Review Chamber of the Special Court violated the principle of the presumption of innocence and prejudged the case by stating in its referral order that Mr. Laskri and nine other accused persons had "denied their involvement in the attack, despite the serious charges against them, because of the unanimous condemnation produced by the attack in public opinion".

42. Lastly, article 14, paragraph 3 (g), of the Covenant guarantees the right not to be compelled to testify against oneself or to confess guilt. In this regard, confessions obtained

under torture must be systematically disallowed. It is, moreover, the State party's responsibility to establish that the accused make their statements voluntarily. In the case at hand, Mr. Laskri, like all the other accused persons in the same case, was severely tortured for several weeks while being held incommunicado. He was nevertheless sentenced to death on the sole basis of criminal investigation police reports containing confessions obtained under torture during secret detention lasting nearly two months.

43. According to the source, it is therefore obvious that Mr. Laskri's current detention is the result of an unfair trial in which his fundamental rights were violated.

44. The source considers that the State party's failure to comply with the relevant provisions of the Covenant is of such gravity in the present case that Mr. Laskri's detention is indisputably arbitrary.

Reply from the Government

45. The Government has not replied to the communication sent by the Working Group on 21 February 2014, nor has it requested an extension of the time limit for its reply.

46. The Working Group must therefore adopt an opinion based on the information and claims submitted by the source.

Discussion

47. The following information and claims submitted by the source have not been contradicted by the Government:

(a) Mr. Laskri was arrested on 7 September 1992 and accused, along with 23 other persons, of carrying out three bomb attacks at Houari Boumediene airport and at the Air France and Swissair offices in Algiers on 26 August 1992;

(b) Mr. Laskri was arrested without being shown any arrest warrant issued by a legally competent authority;

(c) During Mr. Laskri's detention, he was subjected to torture and cruel, inhuman and degrading treatment. To this day he bears the physical scars of this torture;

(d) None of the judges or courts involved in the trial investigated Mr. Laskri's complaints of torture and ill-treatment. The judges refused to order a medical examination and an investigation into the torture to which he had been subjected;

(e) It was only after 50 days of incommunicado detention that Mr. Laskri's detention was recognized and his period in police custody officially began;

(f) After eight days in police custody, Mr. Laskri was brought before the investigating judge of the Court of Algiers (Fourth Investigating Chamber), who heard him in the absence of a lawyer;

(g) While in police custody, Mr. Laskri did not have access to a defence lawyer;

(h) During the various hearings that were part of the proceedings, Mr. Laskri was not assisted by a defence lawyer of his own choosing. When he appeared before the Supreme Court, he was assisted, against his will, by a lawyer appointed by the president of the national bar association, in violation of the principle that defendants have the right to freely choose their own counsel;

(i) The preliminary investigation was extremely brief and presented only the case for the prosecution, while the witnesses proposed by the accused were systematically rejected;

(j) The hearings in the “airport attack” trial took place behind closed doors, even though by law they should have been public. Access was granted only to a few journalists said to have close ties to the authorities;

(k) Mr. Laskri was convicted of violations of articles 77, 87 and 96 of the Criminal Code and article 7 of Legislative Decree No. 92-03. He was, however, exonerated by the jury on the charge of bombing Algiers international airport. The Special Court of Algiers sentenced him and 11 other individuals to death. Two of those individuals were executed a few hours after they were notified of the sentence;

(l) At no time was Mr. Laskri given the opportunity to seek an effective remedy to guarantee his right to a fair trial.

48. In the Working Group’s view, it is clear from the facts described above that Mr. Laskri’s detention is arbitrary. He has been detained since September 1992, following a grossly unfair trial. Throughout the legal proceedings, fair trial norms were systematically ignored, particularly those addressed by articles 9 and 14 of the International Covenant on Civil and Political Rights. The lack of respect for these international standards is of such gravity in the present case that the detention is arbitrary and falls within category III of the categories applicable to the cases submitted to the Working Group.

49. It should be noted that Mr. Laskri was eligible to benefit from the amnesty law, Order No. 06-01 of 27 February 2006, and therefore should have been released pursuant to that Order, which did not provide for any exceptions. Nevertheless, he was kept in prison. Consequently, the detention is also arbitrary under category I of the Working Group’s methods of work.

50. Based on the communication submitted by the source, Mr. Laskri was apparently not punished for exercising his fundamental human rights to freedom of opinion, expression or association. The source merely adds that Mr. Laskri was a supporter of FIS. Accordingly, the Working Group does not have sufficient evidence to consider that category II of its methods of work should apply.

Disposition

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

The detention of Djameleddine Laskri is arbitrary and falls within categories I and III of the criteria applicable to the consideration of cases submitted to the Working Group; it is in breach of articles 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 (paras. 1–4), 10 and 14 (para. 1 and paras. 3 (a)–(e) and (g)) of the International Covenant on Civil and Political Rights, an international instrument ratified by Algeria.

52. Consequently, the Working Group recommends that the Government:

- (a) Arrange for the immediate and unconditional release of Mr. Laskri;
- (b) Order that adequate and reasonable reparation be provided to Mr. Laskri for the damages and harm caused by his arbitrary detention lasting more than 21 years;
- (c) As part of that reparation include compensation for the physical and psychological damage caused by the torture and ill-treatment to which Mr. Laskri was subjected during his detention.

53. The Working Group decides to send a copy of this Opinion to the Special Rapporteur on the question of torture.

[Adopted on 30 April 2014]