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Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

No. 35/2012 (Thailand)

Communication addressed to the Government on 15 June 2012

Concerning Somyot Prueksakasemsuk

The Government replied on 29 June 2012.

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its working methods, 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. Mr. Somyot Prueksakasemsuk, a 50-year old citizen of Thailand, is a labour activist and human rights defender. He is also a magazine editor and affiliated with the Democratic Alliance of Trade Unions. Mr. Prueksakasemsuk has also acted as the editor of Voice of the Oppressed (Voice of Taksin).

4. The case of Mr. Prueksakasemsuk's detention, ongoing since 30 April 2011, was the subject of a previous urgent appeal sent by the Working Group on Arbitrary Detention together with other Special Procedures mandate holders dated 20 December 2011.

5. On 30 April 2011, Mr. Somyot Prueksakasemsuk was arrested at Aranyaprathet district, Sa Kaeo Province, and charged with contravening the lèse majesté law, or Section 112 of the Criminal Code of Thailand, which states that "whoever defames, insults or threatens the King, the Queen, the Heir-apparent or the Regent, shall be punished with imprisonment of three to fifteen years."

6. Mr. Somyot Prueksakasemsuk's arrest came only five days after he held a press conference in Bangkok launching a campaign to collect 10,000 signatures to petition for a parliamentary review of Section 112 of the Criminal Code, which in the opinion of Mr. Somyot Prueksakasemsuk, contradicts democratic and human rights principles.

7. It is further reported that according to a document produced by the Public Prosecutor, Mr. Somyot Prueksakasemsuk permitted two articles that made negative references to the monarchy to be published in his magazine. The penalty for violation of Section 112 of the Thai Criminal Code is between three to fifteen years of imprisonment for each count. As a result of the two Articles, he is reportedly facing two counts of charges which could carry a maximum of 30 years of imprisonment if found guilty.

8. Mr. Somyot Prueksakasemsuk was first placed in Bangkok Special Prison and transferred to Sa Kaeo Provincial Court on 12 November 2011. On 1 November 2011, his fourth bail request was denied.

9. According to the source, the court hearing in the case against Mr. Prueksakasemsuk concluded on 3 May 2012. His right to bail has been denied. The Ratchadapisek Criminal Court is to deliver its verdict on 19 September 2012. If found guilty, Somyot Prueksakasemsuk faces a maximum of 30 years imprisonment.

10. The source submits that Mr. Prueksakasemsuk's continued detention is arbitrary as it is a direct result of his peaceful exercise of the right to freedom of opinion and expression. In particular, Mr. Prueksakasemsuk has led a campaign to abolish Section 112 of the Thai Criminal Code.

11. The source maintains that Mr. Prueksakasemsuk's deprivation of liberty is in alleged violation of Articles 19 and 25 of the International Covenant on Civil and Political Rights (ICCPR) and Article 19 and 21 of the Universal Declaration of Human Rights (UDHR).

Response from the Government

12. In its reply dated 29 June 2012, the Government refers to its two letters previously submitted in response to urgent appeals by the Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression, and the Special Rapporteur on human rights defenders dated 25 May 2012, 4 April 2012, and 24 June 2011, respectively. The Government attached the aforementioned letters in its reply to the Working Group's regular procedure communication dated 15 June 2012.

13. Mr. Somyot Prueksakasemsuk was arrested for printing messages or pictures in a magazine which were deemed to defame, insult or threaten the King in accordance with Section 112 of the Penal Code of Thailand, and not for organizing a press conference about the campaign to collect signatures to abolish Section 112.

14. The Government stated that a debate about the lèse majesté law or campaign activities to amend or repeal the law does not constitute a lèse majesté offence. The two matters should not be linked, which may create confusion.

15. The Government asserts that the views or unfair criticisms that are disrespectful of the monarchy, or which advocate hatred or hostile feelings towards the institution can generate spontaneous actions from the silent expression without limit and responsibility, as well as accountability, especially in regard to the monarchy, could cause the country to disintegrate into factions. Such is the imminent threat to national unity and stability and, indeed, national existence. The lèse majesté law is therefore legitimate and indispensable for national security.

16. The King himself is not averse to criticism, but the Thai people are more sensitive insofar as the monarchy is concerned. The lèse majesté law thus exists as the result of a societal consensus or an expression of popular will. The fact that most Thais want to protect the monarch, their "father", from any threat or harm has provided the basis of a provision which appears in the Constitution of Thailand.

17. The Government considers defamation against its monarch to be a more serious offence than defamation against an ordinary person since it is not just harmful to the person insulted but to the society as a whole. Actions constituting lèse majesté have repercussions not only on the most revered institution, but on public order and morals. It is therefore, in the Government's view, reasonable to impose more severe punishment on such an offence.

18. As it is not the wish of the majority of the population, the Government has also made clear that it will not initiate any action to amend or review the lèse majesté law. For Thais, the lèse majesté law has extensive utility as it aims to protect the King who is the symbol of the existence of the nation.

19. The Government concludes that the aforementioned reasons demonstrate that the lèse majesté law is consistent with Article 19 of the ICCPR. It satisfies the criteria for a restriction of freedom of expression on the basis of the principles of predictability, transparency, legitimacy, necessity and proportionality.

Discussion

20. At the outset, the Working Group concurs with the UN Special Rapporteur on the right to freedom of opinion and expression, who found that Thailand laws on lèse majesté, namely Section 112 of the penal code, suppress important debates on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression (Press release, Geneva, 10 October 2011, "Thailand/Freedom of expression: UN expert recommends amendment of lèse majesté laws").

21. The Working Group also recalls that the UN High Commissioner for Human Rights has expressed concern "about the ongoing trials and harsh sentencing of people convicted of lèse majesté in Thailand and the chilling effect that this is having on freedom of expression in the country. Such harsh criminal sanctions are neither necessary nor proportionate and violate the country's international human rights obligations" (Press briefing note on Bahrain and Thailand, Geneva, 9 December 2011).

22. In the present case, Mr. Prueksaksemsuk was arrested and detained after he had launched a campaign for a parliamentary review of Section 112 of the Criminal Code, which in his opinion, contradicts democratic and human rights principles, and following the permission he had given to publish in his magazine two articles containing negative references to the monarchy. The Government sustains that his detention was prompted only because of the latter conduct, which was deemed to defame, insult or threaten the King is prohibited under Section 112 of the Penal Code of Thailand.

23. With regard to violations of national legislation, the Working Group reiterates that, in conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international human rights law.

24. The Working Group recalls that the holding and expression of opinions, including those which are not in line with official government policy, are protected by Article 19 of the UDHR and Article 19(2) of the ICCPR. In its General Comment No. 34, the Human Rights Committee emphasized that "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant [Communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*, Views adopted on 31 October 2005]. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition" [Communication No. 1128/2002, *Marques de Morais v. Angola*, Views adopted on 29 March 2005]. The Committee specifically expressed concern regarding laws on such matters as lèse majesté (Human Rights Committee, General Comment No. 34, CCPR/C/GC/34, 12 September 2011, para. 38).

25. Irrespective of what incident actually prompted the detention of Mr. Prueksaksemsuk, i.e. launching a campaign for review of Section 112 of the Criminal Code or allowing publication of articles containing references critical of the monarchy, in the view of the Working Group both actions fall within the boundaries of opinions and speech protected by Articles 19 of the UDHR and ICCPR. It follows that Mr. Prueksakasemsuk has been detained for his peaceful exercise of his right to freedom of opinion and expression provided for in the aforementioned provisions of the UDHR and ICCPR. Accordingly, the deprivation of liberty of Mr. Prueksakasemsuk falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

26. In light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Prueksakasemsuk, being in contravention of Articles 19 of the UDHR and 19(2) of the ICCPR, is arbitrary, and falls into category II of the categories applicable to the cases submitted to the Working Group.

27. As a result of the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Prueksakasemsuk and bring it into conformity with the standards and principles set forth in the ICCPR.

28. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release of Mr. Prueksakasemsuk and accord him an enforceable right to compensation pursuant to Article 9(5) of the ICCPR.

Adopted on 30 August 2012