

DECISION No. 7/1992 (PERU)

Communication addressed to the Government of Peru on 6 December 1991.

Concerning: Wilfredo Estanislao Saavedra Marreros on the one hand and the Republic of Peru on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question, although it was received more than 90 days after the transmittal of the letter by the

Working Group. In a note verbale dated 24 August 1992, the Government provided further information relevant to the decision in respect of this case.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegation made, the Working Group welcomes the cooperation of the Government of Peru. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur on the question of torture (E/CN.4/1990/17, para. 120) pursuant to resolution 1985/33 and subsequent resolutions of the Commission on Human Rights.

6. The Working Group considers that:

(a) According to the allegation, the human rights activist and Chairman of the Committee for the Defence of Human Rights (CODEH) of Catamarca was arbitrarily detained by the police on 19 September 1989; he was apparently tortured and compelled to confess to being an activist of the Tupac Amaru Revolutionary Movement, for which he was finally sentenced, under the anti-terrorist legislation, to 10 years' imprisonment by a military correctional court. An appeal was lodged against the sentence with the Supreme Court on the grounds that the court which had handed down the sentence was not competent. Moreover, the accused was not allowed access to a defence counsel until 30 days after his arrest;

(b) With regard to the alleged torture, it is stated that the accused filed a complaint in that respect, but his complaint was not given due attention, a fact which he reported to the Supreme Court, which has still not ruled on his complaint;

(c) The communication to the Working Group alleges violations of articles 9, 10, 11 and 19 of the Universal Declaration on Human Rights, articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, to which Peru is a party, and principles 2, 4, 11, 17, 18 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(d) In addition to having been submitted beyond the deadline, the initial reply from the Government of Peru failed to provide sufficient information to settle this case, as it merely stated that, on account of a heavy burden of work, the Supreme Court of Peru had not yet taken a decision on the detainee's application, which in the view of the Government constitutes a delay in the administration of justice, and not a denial of justice;

(e) In its second reply, the Government of Peru reports that on 16 June 1992 the Supreme Court declared the prisoner's appeal to be unfounded, as the sentence handed down by the Catamarca court was not void;

(f) In order to settle the complaint it is necessary to distinguish three phases, corresponding to different moments of the deprivation of freedom. These are the arrest itself, the torture, and the sentence as a result of which this person is currently deprived of his freedom;

(g) With regard to the arrest or detention referred to in article 9, paragraphs 2 and 3 of the International Covenant on Civil and Political Rights and principle 2 of the Body of Principles, it is certain that although the police may have acted without a prior warrant, the person in question was brought before the court without there being any suggestion that this was done beyond the legal deadline, and the court confirmed the detention by the police, in view of which there appears to be no justification for the allegation of arbitrary detention;

(h) The complaint regarding torture has already been examined by the Special Rapporteur appointed by the Commission on Human Rights to deal with torture, who has already produced the report mentioned in paragraph 5 of this decision. The Special Rapporteur stated that a special commission headed by the Dean of the Medical Association "had found that Dr. Saavedra's wrists bore marks of having been bound and there were contusions on his body". Accordingly, it is not appropriate for the Working Group on Arbitrary Detention to pronounce on a matter which has already been dealt with by another organ of the Commission;

(i) Dr. Saavedra is currently deprived of his liberty as a result of a sentence handed down by a court. Two questions arise in respect of this sentence: the competence of the court and the fact that it took into consideration a confession which Dr. Saavedra was compelled to sign under torture;

(j) As to the first point, it is clear that under Peruvian legislation the offence for which he was tried comes within the competence of the military courts, and in any case, the issue has already been examined by the Supreme Court, which decided on 16 June 1992 that the sentence was not void on grounds of lack of competence;

(k) With regard to the use of a statement obtained under torture, there is no evidence to justify a finding by the Working Group that this allegation has been proved;

(l) The communication itself does not indicate in what manner the provisions of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights regarding freedom of expression and opinion have been contravened.

7. In the light of the above, the Working Group decides:

The detention of Wilfredo Estanislao Saavedra Marreros is declared not to be arbitrary.