

DECISION NO. 42/1992 (CUBA)

Communication addressed to the Government of Cuba on 8 April 1992.

Concerning: Sebastián Arcos Bergnes on the one hand and the Republic of Cuba 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 above-mentioned 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 within 90 days of the transmittal of the letter by the Working Group. The Working Group also notes with satisfaction the cooperation displayed by the Government of Cuba in the form of the oral explanations given by the Dean of the Law Faculty of Havana University, Dr. Julio Fernández Bultes, during its third session.

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

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Cuba. 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 Representative of the United Nations Secretary-General, Mr. Rafael Rivas Posada, pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Sebastián Arcos Bergnes, Vice-Chairman of the Cuban Committee for Human Rights, was arrested, in Havana on 15 January 1992, together with two other individuals, who were subsequently released, because he was named by three persons accused of and tried for entering the country illegally, with whom the source maintains, he had no

association whatever. The persons tried for illegal entry into Cuba said that Arcos was a person who could be contacted in case of difficulty. It is alleged that, although he has a defence counsel, "he has had only limited access to him". It is further alleged that Arcos was arrested because of his activity as Vice-Chairman of the Committee and because he exercised his right to freedom of expression and association;

(b) According to the allegation, there have been violations in this case of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (although the State of Cuba is not a party to the latter instrument, its provisions form an integral part of the Working Group's mandate under Commission on Human Rights resolution 1991/42, as decided in deliberation 02, adopted by the Group on 23 March 1992, with a view to determining the arbitrariness or otherwise of detention) and principles 11, 18 and 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

(c) The Government of the Republic of Cuba has said that Arcos is, indeed, being detained and is being tried in criminal case No. 24 of 1992 for alleged crimes against State security and that his case is at the investigation stage, with all the guarantees provided for in Cuba's internal legislation. The Government does not specify facts which could justify his deprivation of liberty;

(d) The Special Representative of the United Nations Secretary-General, in the above mentioned report on the situation of Cuba, does not mention this situation;

(e) In the absence of any further information on the facts, the Working Group takes it that the only reason he is deprived of his freedom is his activity as Vice-Chairman of the Cuban Committee for Human Rights and the fact that he was named by the persons who were being tried for illegal entry into the country, which is considered according to the information supplied by the Government, as a suspected offence against State security;

(f) The deprivation of liberty on account of the legitimate exercise of the rights of association and of freedom of opinion and expression is regarded by the Working Group, in conformity with the principles mentioned in paragraph 3 of this decision, which were considered and approved by the Commission on Human Rights, as reflected in resolution 1992/28, as arbitrary detention falling within category II.

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

The detention of Sebastián Arcos Bergnes is declared to be arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable to the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Sebastián Arcos to be arbitrary, the Working Group requests the Government of the Republic of Cuba to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.