

## DECISION NO. 12/1993 (CUBA)

Communication addressed to the Government of Cuba on 1 July 1992.

Concerning: Yndamiro Restano Díaz, 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, 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 in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as paragraph 3 of Decision No. 43/1992).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic 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 Rapporteur on human rights in Cuba (E/CN.4/1993/39).

6. The Working Group considers that:

(a) According to the allegation, Yndamiro Restano Díaz was detained on 20 December 1991 by officials of the State Security Department. He was later tried by the Havana People's Court on 20 May 1992 and convicted of the offence of rebellion. Restano is the president of the "Movimiento de Armonía" organization, which claims to be pacifist. The sentence was 10 years' deprivation of freedom;

(b) In its reply, the Government confirms the date of the detention and the trial, together with the sentence. Unfortunately, the Government does not mention any act constituting rebellion, nor does it challenge the facts indicated by the source, which were communicated to it;

(c) The Special Rapporteur on human rights in Cuba refers in paragraph 40 (d) of his above-mentioned report to the situation under consideration and, in regard to essentials, confirms the facts alleged in the communication;

(d) Accordingly, the Working Group feels certain that the acts attributed to Restano are that the "Movimiento de Armonía" group is trying to change the country's political, economic and cultural system by violent means, including sabotage and attacks against the police and political leaders;

(e) Nor has there been any denial of the assertion by the complainant that the aim of the Movement in question is to contribute to a transition from State socialism to democratic socialism and that, since it was founded in 1990, it has constantly and publicly rejected the use of violence in the process of political change;

(f) To act as head of a political opposition movement - in other words, according to the information, the "Movimiento de Armonía" group - is simply lawful exercise of the rights to freedom of expression and opinion and to political association, enunciated in articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, which, even though the Republic of Cuba is not a party to it, is applicable in accordance with the decision by the Working Group in its Deliberation No. 02;

(g) In accordance with the Group's method of work, detention on the grounds of legitimate exercise of the basic human rights in question is arbitrary and falls within category II, mentioned above.

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

The detention of Yndamiro Restano Díaz is declared to be arbitrary, being in contravention of articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19 and 20 of the International Covenant on Civil and Political Rights, and falls within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision declaring the detention of the person named 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 provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 29 April 1993