

DECISION NO. 42/1993 (PERU)

Communication addressed to the Government of Peru on 29 March 1993.

Concerning: Miguel Fernando Ruiz-Conejo Márquez, 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, 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 concern that to date no information has been forwarded by the Government of the Republic of Peru in respect of the case in question. With the expiry of more than ninety (90) days since the transmittal of its letter, the Working Group is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

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

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Peru. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers that:

(a) According to the allegations, Miguel Fernando Ruiz-Conejo Márquez, an agronomist, was arrested by officials of the Anti-Terrorist Department (DINCOTE) on 12 September 1992 at the home of a friend in Lima. He was held by DINCOTE for two weeks, after which there was no news of him for 10 days. Only on 5 October was it learnt that the Navy Court refrained from continuing the proceedings and transferred them to the Court of the Army IIIrd Judicial Zone at Arequipa. On 6 October the family was notified that the accused's statement would be taken on 4 October, in other words, two days previously, in the city of Puno. In this way, the accused's statement was made without the presence of counsel, which is required by law. On 7 October, Ruiz-Conejo was sentenced to rigorous imprisonment for life as a member of Shining Path; at the trial, he had no legal assistance and no opportunity to present evidence in his own favour. On 8 October, still in 1992, and in Arequipa, the lawyer had the opportunity to see the file. However, on 9 October, the higher court, the Military Court, heard the appeal by Ruiz-Conejo against the sentence by the military examining magistrate in Puno. In view of these facts, the defence counsel filed an application to vacate judgement with the Supreme Council of Military Justice. The application was filed on 10 October. On 12 October the Council notified the defence counsel that he would be heard on the following day and would be able "to speak for 15 minutes, to report orally on the Isla de San Lorenzo". The Council heard the plea and altered the conviction of life imprisonment to 30 years' imprisonment;

(b) The Government has not answered the report requested by a letter dated 29 March, for which reason the Working Group is in a position, in accordance with its methods of work, to decide whether or not the deprivation of freedom is of an arbitrary character;

(c) The complaint also questions the grounds for the convictions by both the military examining magistrate in Puno, by the Court Martial and by the Supreme Council of Military Justice in Lima, contending that the charge of belonging to the Shining Path terrorist group is inoperative, and recognizing only a long-standing friendship with a member of that group, Carlos Incháustegui, an architect;

(d) The Working Group will not consider the merits of the accusation, since the question of whether or not the charges are operative is a matter that falls outside its mandate;

(e) From the description in subparagraph (a) above, which has not been challenged by the Government, it seems quite obvious that, in the circumstances, violations have occurred of the following principles applicable in the consideration of the cases submitted to the Working Group, which are set out in annex I to document E/CN.4/1992/20 and which were approved in Commission on Human Rights resolutions 1992/28 and 1993/36:

- (i) Denial of the right to be assisted by counsel (principles 11 (1) and 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment);
- (ii) Inability to notify the family promptly of the transfer from the place of detention (principle 16);
- (iii) Refusal of the right to communicate with counsel and to consult him without delay or censorship (principle 18);
- (iv) Trial by a tribunal that is not competent, since he is a civilian, accused not of treason - for which civilians can be tried under the terms of Decree-Law No. 25,659 - but a different offence, namely belonging to a terrorist group (art. 14, para. 1, of the International Covenant on Civil and Political Rights);
- (v) Denial of the right to adequate time and facilities to communicate with counsel and to prepare the defence (art. 14, para. 3 (b), of the Covenant);
- (vi) Denial of the right to be defended by counsel of his own choosing (art. 14, para. 3 (d), of the Covenant);
- (vii) Denial of the right to examine witnesses against him and present witnesses on his own behalf (art. 14, para. 3 (e), of the Covenant).

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

The detention of Miguel Fernando Ruiz-Conejo Márquez is declared to be arbitrary, being in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, to which the Republic of Peru is a party, and it falls in category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon its decision declaring the detention of the above-mentioned person to be arbitrary, the Working Group requests the Government of Peru 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 September 1993