

DECISION No. 50/1993 (PERU)

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

Concerning: José Gabriel Pastor Vives, Jaime Salinas Sedo, Manuel Fernando Obando Salas, Víctor Ernesto Obando Salas, Luis Armando Soriano Morgan, Marco Antonio Zarate Rotta, Enrique Aguilar del Alcazar, Arturo Moreno Alcántara, Jorge Ramón Noblecilla Merino, César Gustavo Martínez Uribe-Restrepo, César Alberto Cáceres Naro, Hugo Isaías Ormero Huapaya and Salvador Carmona Bernasconi, 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 the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred in the country in question.

2. The Working Group notes with concern that to date no information has been forwarded by the Government in respect of the cases in question. With the expiry of 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 cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as paragraph 3 of Decision 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 cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The Working Group considers:

(a) That according to the allegation, the persons mentioned above, all of them serving or retired military personnel, were arrested on 13 November 1992 in various parts of the country, accused of taking part in a meeting held on the previous day, at which they discussed ways to restore institutional and democratic order. At the meeting, no agreement whatsoever was reached and any future action was ruled out. The authorities accuse the detainees of having fomented, among other things, the assassination of the President of the Republic. It is added that, on 10 January 1992, the Attorney-General, in the Court Martial Chamber of the Supreme Council of Military Justice, read out the prosecution's request for 15 years' rigorous imprisonment for each of the detainees except Colonel César Martínez Uribe-Restrepo, for whom the penalty requested was three years, plus civil compensation from all of the accused persons totalling a sum equivalent to 18 million dollars. It is added that the officers, Zarate, Aguilar, Cáceres and Carmona were physically and mentally ill-treated in order to get them to lay the blame on themselves and on the others. It is contended that

they were held incommunicado for 10 or 15 days and longer, without being told of the reason for their arrest, and that false evidence has been used against them;

(b) That the Government of Peru has not cooperated with the Working Group in supplying the information requested of it;

(c) That the facts alleged by the Government, according to the account by the actual complainants, have not been challenged - except in one case - in the complaint. The accompanying documents show that a meeting was arranged for 12 December and did take place, but no agreement was reached to carry out a plan to replace the present Government. The detainees merely deny that their purposes included the killing of the President of the Republic;

(d) That planning armed conspiracy cannot be regarded as legitimate exercise of the right to freedom of association, expression or opinion or participation in political life, and that it constitutes an offence in all legislations and political systems. Accordingly, the detention cannot be considered arbitrary under category II of the principles applicable by the Working Group in the consideration of cases submitted to it, which principles are set out in paragraph 3 of this decision;

(e) That contraventions of the rules of due process, such as holding persons incommunicado for periods of up to more than 15 days, not specifying the reasons for their detention, or inability to communicate with counsel during that period constitute violations of the rules of due process of law and that such contraventions make the deprivation of freedom, during the first 15 days, arbitrary;

(f) That the allegations of torture must be transmitted to the Special Rapporteur of the Commission on Human Rights on the question of torture.

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

(a) The detention of José Gabriel Pastor Vives, Jaime Salinas Sedo, Manuel Fernando Obando Salas, Víctor Ernesto Obando Salas, Luis Armando Soriano Morgan, Marco Antonio Zarate Rotta, Enrique Aguilar del Alcazar, Arturo Moreno Alcántara, Jorge Ramón Noblecilla Merino, César Gustavo Martínez Uribe-Restrepo, César Alberto Cáceres Naro, Hugo Isaías Ormero Huapaya and Salvador Carmona Bernasconi, during the first 15 days is arbitrary and falls within category III of the principles applicable in the consideration of the cases submitted to the Working Group. As to detention since that date, the Working Group does not have sufficient information from the Government or from the source to decide whether or not the detention is arbitrary;

(b) The Working Group also decides to transmit the information on the presumed ill-treatment to the Special Rapporteur on the question of torture.

Adopted on 30 September 1993