

Decision No. 58/1993 (Colombia)

Communication addressed to the Government of Colombia on
13 August 1993.

Concerning: Orlando Quintero Paez, on the one hand, and the
Republic of Colombia, 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 an allegation of arbitrary detention reported to have occurred in the country in question.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Colombia. The Working Group has transmitted the reply of the Government to the source and received their comments. The Working Group 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.

6. The Working Group considers that:

(a) According to the communication, Orlando Quintero Paez was arrested on 5 July 1989 in the town of Ibagué, following a clash between rebel forces of the Unión Camilista Ejército de Liberación Nacional - to which he belongs - and the public forces. According to the source the arrest took place after the clash - in which other insurgents died and six others were arrested - when Quintero, who had been wounded, reported to the police, seeking help, and not in flagrante delicto, as the authority maintains.

(b) Since his arrest, Quintero has been brought to trial. He made a statement on 7 July and on 12 July he was ordered to be held in preventive detention.

(c) In the course of the trial, Orlando Quintero was convicted on two occasions: on 16 February 1990 and on 14 January 1991. However, both convictions were annulled by the Supreme Court.

(d) The Government of Colombia, in its reply of 18 October 1993, states that Quintero "is not in preventive detention", but that "on 16 February 1990 he was sentenced to 118 months' imprisonment for the breach of certain provisions of Decree 180 of 1988".

(e) The Working Group had before it a document of the Instituto Nacional Penitenciario y Carcelario (INPEC) confirming that Quintero is in the prison of the judicial district of Santafé de Bogotá - the "Model" prison, as a person charged with the commission of an offence, his conviction having been annulled.

(f) The Group therefore concludes that the conviction of 16 February 1990 was indeed annulled and that Quintero therefore still remains a person brought to trial or charged but not convicted. The foregoing confirms that, following the conviction referred to by the Government, there was a later one - of 14 January 1991, as a result of which Quintero received a 10-year sentence - which could not have occurred if the first conviction had not been annulled.

(g) Both the Government and the source challenge the basing of the charges against Quintero, as far as substantive grounds are concerned, on Decree 180/88, issued under the powers granted by the State of Siege in force at the time, which provides penalties for the offence of rebellion, as was also maintained - according to the source - by the Government Procurator's Office during the pre-trial proceedings. Special Decree 2266/91 of the Special Legislative Commission transformed this enactment into permanent legislation. The offence of rebellion is punishable by imprisonment for three to six years.

(h) Under the terms of the Code of Criminal Procedure in force in 1991, the accused should obtain his release because the period of deprivation of freedom exceeds the minimum of the probable penalty, which was underestimated by the Public Order Tribunal which tried him.

(i) Upon the entry into force of the new Code of Criminal Procedure (Decree 2700/91) on 1 July 1992, a new ground for release from imprisonment was to become operative, namely that the pre-trial proceedings were not completed within 240 days.

(j) However, under the powers granted by the State of Internal Disturbance, the Government of Colombia suspended the application of this rule, so that, although the above-mentioned state of emergency was in force, no duration was fixed for the pre-trial proceedings.

(k) Article 11 of the Universal Declaration establishes the principle of presumption of innocence until guilt has been proved; article 9 of the International Covenant on Civil and Political Rights provides that "anyone ... shall be entitled to trial within a reasonable time or to release" and that detention in custody "shall not be the general rule", while article 14, paragraph 3 (c), provides that everyone shall be entitled to the "minimum guarantee" "to be tried without undue delay"; and principles 36, 37 and 38 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment establish safeguards against prolonged preventive detention.

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

The detention of Orlando Quintero Paez is declared to be arbitrary, being in contravention of article 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-named person to be arbitrary, the Working Group requests the Government of Colombia to take the necessary steps to remedy this 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 12 December 1993.