

Decision No. 20/1994 (Mexico)

Communication addressed to the Government of Mexico on 22 April 1994.

Concerning: José Francisco Gallardo Rodríguez, on the one hand, and Mexico, 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 in the country in question.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than 90 days of the transmittal of the letter by the Working Group, it 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 para. 3 of Decision No. 10/1994.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Mexico. In the absence of any cooperation of that 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 complaint, José Francisco Gallardo Rodríguez, Brigadier-General in the Mexican Army, was arrested on 9 November 1993 and accused of having misappropriated and caused damage to Army property in 1989; he was absolved of these charges by an internal order but was nevertheless kept in detention; he was also accused of defamation and other offences against military honour. The facts, according to the complaint, have their origin in a letter that General Gallardo sent to the Secretary for National Defence and other authorities and the publication of an article in which he called for the appointment of an Ombudsman in the army. In the army General Gallardo rose rapidly in rank as a result of his professional and academic training, and he brought various actions against the State, all of which he won. He is being detained in the military prison of Camp No. 1 (Federal District).

(b) The Government of Mexico has failed to provide any information to the Group, which could therefore adopt a decision immediately. However it will refrain from doing so owing to the absence of any items of evidence submitted by the defence. Specifically, it is unclear which court is trying the case, why he is allegedly being kept in detention despite the fact that

the charges of misappropriation and damage of Army property have been dropped, whether the proceedings instituted in respect of these offences also covered the charge of defamation and offences against military honour, how far these proceedings progressed, whether they were instituted in a civil or military court, whether the defendant was able freely to choose his counsel, etc.

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

The case remains pending for further information.

Adopted on 28 September 1994.