

DECISION No. 41/1995 (COLOMBIA)

Communication addressed to the Government of Colombia on  
7 February 1995.

Concerning: Oscar Eliecer Paña Navarro, Jhony Albert Meriño and  
Eduardo Campo Carvajal, on the one hand, and 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 allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1995.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Colombia. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. In the context of the information available to it, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases.

5. The Working Group considers that:

(a) According to the communication, Oscar Eliecer Peña Navarro, Jhony Albert Meriño and Eduardo Campo Carvajal were arrested at their home on 21 April 1993 by members of the SIJIN (National Police), being accused of the murder of journalist Carlos Alfonso Lajud Catalán two days earlier, and as of that date were deprived of liberty by order of the Barranquilla Regional Prosecutor. The grounds on which it is contended that the detention should be considered arbitrary are as follows: (1) the persons concerned were taken into custody without an arrest warrant having been issued beforehand by a court; (2) the search during which they were taken into custody was also conducted without a valid judicial warrant; (3) the persons concerned were held incommunicado for a period of 21 days; (4) the evidence produced to incriminate them is insufficient, since the young persons were not at the scene of the crime on the day it was committed, one witness did not identify them as participants and the search of the dwelling where they were arrested did not uncover physical evidence of the offence.

(b) In its documented reply, the Government reports that the detainees were apprehended under a warrant originating from the Barranquilla Regional Prosecutor's Office, issued in conformity with the law on 21 April 1993, from which an appeal was entered by the detainees; it goes on to state that the search warrant was also provided by the same judicial officer, and under Colombian law does not require prior notice when that may interfere with the conduct of the procedure in question; that the security measure involving

an arrest warrant was taken in view of the circumstantial evidence of responsibility; and that these decisions were challenged in the course of an appeal by the accused and were upheld by the National Court.

(c) It has been attested that both the search of the house in which the above-mentioned persons were found and the detention itself were carried out under warrant from the Barranquilla Regional Prosecutor, whereby the Prosecutor - in the first instance - and the National Tribunal - in the second - found evidence of guilt.

(d) The mere holding of persons incommunicado for 21 days - a fact not challenged in the Government's reply - is not of such gravity in itself as to confer on the detention an arbitrary character, given the seriousness of the offence being investigated, within the terms of principles 15, 16 (4) and 18 (3) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, since it is a measure ordinarily employed in legal systems to protect judicial inquiries.

(e) The only grounds on which cases of detention may be considered to be arbitrary are those described in the three categories to which reference has been made. An evaluation of evidence of guilt is not part of the mandate of the Working Group, as it has had occasion to state in numerous decisions, and cannot be included in any of the three above-mentioned categories of arbitrary detention.

(f) The alleged grounds do not, therefore, fall within any of the categories cited.

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

The detention of Oscar Eliecer Peña Navarro, Jhony Albert Meriño and Eduardo Campo Carvajal is declared not to be arbitrary.

Adopted on 30 November 1995.