

DECISION No. 32/1996 (COLOMBIA)

Communication addressed to the Government of Colombia on 20 February 1996.

Concerning: Gildardo Arias Valencia (or Carlos Enrique Guzmán), on the one hand, and the Republic of Colombia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised 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 till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (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. 35/1995.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Colombia. 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 communication, Gildardo Arias Valencia - also known as Carlos Enrique Guzmán since a previous detention in 1975 on the charge of belonging to the Ejército Popular de Liberación (EPL) - was detained on 7 June 1994 in the town of Ibagué, in Tolima, by officers of the Sixth Army Brigade and the Administrative Department for Security (DAS), under an arrest warrant dated 14 July 1993 and issued by the Office of the Regional Prosecutor attached to the Twentieth Brigade. He was charged with rebellion and false impersonation, and is being tried in case No. JR 2988 before the Regional Court, composed of faceless or unidentified judges.

(b) The communication sets forth a number of complaints about the procedure applied to Arias Valencia, the following being taken as of particular importance for an appreciation of the arbitrary character of the detention:

(i) Under article 415 of the Code of Penal Procedure, if pre-trial proceedings have not been completed and formal charges prepared within 240 days of the deprivation of liberty, the detainee is entitled to release on bail. This deadline expired on 2 February 1995, but the detainee's release was not ordered.

- (ii) Defence counsel protested against this omission and requested bail; the application should have been dealt with by the Regional Prosecutor within three days, but had not been processed by the statutory deadline.
- (iii) Negligence on the part of the Prosecutor was claimed in a habeas corpus petition lodged on 7 February with the 27th Circuit judge, who dismissed the action on the ground that the period of three days for the Prosecutor to decide on the application for release begins from the time the case file reaches his office, and not from the time of submission of the application.
- (iv) On 8 February the Prosecutor agreed to the detainee's release on high bail, which was paid on 10 February. Despite the release having been ordered and the bail paid, the court failed to issue the release warrant, making it necessary for the defence to lodge a second application for habeas corpus on account of the unlawful prolongation of the detention. The officiating judge granted the application for habeas corpus and ordered the immediate enforcement of the release warrant.
- (v) However, the prison authorities failed to comply with the court order. On the following day, 11 February, the Prosecutor hurriedly concluded the pre-trial steps, laid charges and revoked the release order. A complaint was lodged concerning a further irregularity: when the charges were laid, written submissions by the defence were not annexed to the file.
- (vi) On 13 February the prison authorities informed the prisoner of the warrant for his release, and of the Prosecutor's order revoking it.

(c) The Government of Colombia neither challenged the facts alleged nor extended its cooperation to the Working Group within the 90-day deadline. Accordingly, the Working Group will take its decision solely on the merits of the information provided by the source and the accompanying documents.

(d) In the view of the Working Group, the allegations contained in the communication, which have not been challenged, constitute serious violations of the provisions relating to due process of law which are of such gravity as to confer on the deprivation of liberty an arbitrary character, being in contravention both of the internal provisions of Colombian law and of the provisions of the International Covenant on Civil and Political Rights. Regarding the former, the requirement of article 415 of the Code of Penal Procedure that a detainee shall be released on bail if the pre-trial steps have not been completed within 240 days of his detention was not complied with. Moreover, Colombian legislation incorporates the principle of the separation of powers, and it is unlawful for the administrative or prison authorities to contest or fail to comply with court orders. There was also a violation of the rule in article 9.3 of the International Covenant on Civil and Political Rights embodying the right of anyone facing criminal charges to release, which may be subject to guarantees to appear for trial. The judge

set what he considered to be an appropriate, albeit rather large, amount of bail and it was unlawful for the Prosecutor not to give effect to the release order issued by him.

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

The detention of Gildardo Arias Valencia is declared to be arbitrary being in contravention of articles 9, 10 and 11 of the Universal Declaration of Human Rights and of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Colombia is a party, 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 Gildardo Arias Valencia to be arbitrary, the Working Group requests the Government of Colombia 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 the International Covenant on Civil and Political Rights. This is without prejudice to the execution of any sentence passed at the trial, once it becomes enforceable.

Adopted on 17 September 1996.