

OPINION No. 22/1998 (PERU)

Communication addressed to the Government on 7 February 1995

Concerning Antero Gargurevich Oliva

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention, in conformity with its methods of work 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 a complaint of arbitrary detention said to have taken place in the country concerned.
2. The Working Group notes with concern that the Government of Peru has not provided any information on the case in question. The Working Group has no option but to announce its decision in respect of the allegation of arbitrary detention submitted to it.
3. In reaching its decision, the Working Group considers whether the case in question falls within one or more of the following categories:
  - (i) When deprivation of liberty is arbitrary because it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an amnesty act applicable to the person in question) (category I);
  - (ii) When deprivation of liberty is the result of judicial proceedings or a sentence consequent upon the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights or in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (iii) When the complete or partial infringement of international standards relating to a fair trial is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the complaint made, the Working Group would have welcomed the cooperation of the Government. In the absence of any such cooperation, the Working Group believes it is in a position to take a decision on the facts and circumstances of the case, particularly since the facts and allegations contained in the communication have not been refuted by the Government.
5. In its opinion No. 24/1995, the Working Group decided to leave the case pending until after the planned visit to Peru, which would provide it with the necessary background information to enable it to render an opinion in accordance with its methods of work. The visit to Peru was finally carried out and did indeed enable it to obtain the background information it needed to render an opinion, as is clear from the relevant report (E/CN.4/1999/63/Add.2). During its visit, the delegation of the Working Group was able to have a meeting with Mr. Gargurevich in Castro Castro prison.

6. The Working Group considers that:

(a) Antero Gargurevich Oliva, a sociologist, was arrested in Callao on 6 March 1994 by members of the National Anti-Terrorism Department (DINCOTE) on suspicion of belonging to groups that supported Sendero Luminoso. His name was found in papers in the possession of a person being tried for terrorism. Mr. Gargurevich was himself found to be in possession of papers relating to that subversive group which, according to the complaint, he had been given by his pupils. In his trial, Mr. Gargurevich was sentenced to 12 years' imprisonment, a sentence he began serving on 29 September 1993;

(b) The Government has not cooperated with the Working Group by providing it with the information requested;

(c) In its report on the visit, the Working Group presents an extensive analysis of the functioning of the "faceless" civil and military courts which, up to October 1997, handed down their judgements following secret hearings and with minimum defence guarantees. Such trials, in the Working Group's opinion, constitute such a serious violation of the rules of due process as to confer on the deprivation of liberty an arbitrary character, in conformity with category III of its methods of work. Mr. Gargurevich was tried in conformity with the rules in force up to October 1997.

7. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Antero Gargurevich Oliva is arbitrary since it is contrary to articles 8, 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

8. Having rendered this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 3 December 1998