

**OPINION No. 16 /2001 (COLOMBIA)**

Communication addressed to the Government on 10 October 2000

Concerning Francisco Caraballo

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

1. The Working Group on Arbitrary Detention was established by Commission on Human Rights resolution 1991/42. The mandate of the Working Group was clarified and extended by resolution 1997/50 and 2000/36, and reconfirmed by resolution 2001/40. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group conveys its appreciation to the Government for having provided the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
  - (ii) When the deprivation of liberty is the result of a judgement or sentence for 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 and also, in respect of States parties, 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 non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. According to the information submitted by the source, Francisco Caraballo, Commander of the Patriotic Liberation Army (EPL), First Secretary of the Marxist-Leninist Communist Party of Colombia and member of the Simón Bolívar Guerrilla Coordinating Group, was arrested on 22 June 1994 during a raid and search operation on an estate in the municipality of Cajicá, Cundinamarca, conducted by the Fourth Prosecutor's Office of the Special Unit with the assistance of the Administrative Department for National Security (DAS) and the Counter-Intelligence Battalion of the Colombian Army.
5. Once the inquiry had been initiated, a formal charge was laid against Mr. Caraballo for the offences of rebellion and terrorism on 29 June 1995. At the same time, the following charges were brought against him in his capacity as head of the rebel organization: a charge on 9 April 1996 for the kidnapping of Mr. Argelino Durán Quintero, with aggravating

circumstances; a charge for the kidnapping for ransom of Mrs. Beatriz Helena Turbay Pico, with aggravating circumstances; and a charge for aggravated kidnapping in a case in which the aggrieved party was an army officer Luis Demetrio Yépez. Dismissal of criminal proceedings against Mr. Caraballo was ordered in the case of the kidnapping of Juan José Chau Mosquera and in the trial for terrorism of the leaders of the Workers' Trade Union (USO).

6. Consolidation of the various proceedings was ordered in accordance with the special jurisdiction procedure. The latest decision to bring charges was made enforceable on 16 May 1999. In accordance with the applicable regulation article 415, paragraph 5, of the Code of Criminal Procedure, amended by article 27 of Act No. 504 of 2000, this initiates a period of 12 months within which a public hearing must be held; failure to observe this deadline gives grounds for provisional release.

7. According to the source, case law and legal doctrine regard rebellion as a multiple, alternative and continuing offence, which subsumes all breaches committed by the rebels. In accordance with the regulation applicable to Mr. Caraballo's case - article 139 of the Penal Code of 1936, which was in force in 1967 when the EPL was founded - the offence of rebellion incurs a prison term of six months to four years, the suspension of civic rights and prohibition of public office for the same period and a fine of 500 to 5,000 pesos.

8. At the time of the submission of the communication to the Working Group, Francisco Caraballo had been held for 6 years and 2 months, and 16 months have passed without a public hearing since the last enforceable decision. Mr. Caraballo has already served the term of imprisonment imposed when he was sentenced for rebellion.

9. According to the information received, Mr. Caraballo's petition for conditional release was refused by the acting court, which considered that the punishment was envisaged to cover all the offences attributed to him; on these grounds its understanding was that Mr. Caraballo had not served the period of imprisonment he merited. With regard to the 12-month period within which the public hearing should take place, the court merely referred to the validity of this exceptional measure for proceedings in which a decision to bring charges has been made enforceable and the deadline for submitting pleas prior to sentencing had expired. Mr. Caraballo would have the right to conditional release on the grounds of expiry of the deadline, since 12 months had elapsed since the date on which the decision to bring charges had been made enforceable, without a public hearing having taken place.

10. In its reply, the Government stated that Mr. Francisco Caraballo, Commander of the EPL, was at the disposal of the Second Criminal Court of the Bogotá Specialized Circuit, for proceedings further to the charges brought by the Special Prosecutor attached to the Bogotá Sub-Unit on Terrorism.

11. Although the Government has not given a detailed reply regarding the legislation applicable in this case, it may be deduced from the information provided by the source that Mr. Francisco Caraballo has been detained under a legal order for the offences of rebellion and kidnapping, for which Mr. Caraballo has not denied responsibility, although he has stated that a number of kidnappings by his commandos were not authorized by him.

12. The source does not question the arbitrary nature of the detention ordered by the Prosecutor's Office, but does question the fact that Mr. Caraballo should have been released provisionally, pursuant to the amendment to the Code of Criminal Procedure which establishes that a delay in ensuring a hearing beyond the scheduled deadline provides grounds for granting provisional release.

13. Similarly, for there to be a possibility of provisional release being granted, the source maintains that the proceedings, which have been consolidated, should have been conducted for the offence of rebellion, which carries a maximum sentence of four years, although the court considers that the sentence should be for all the offences with which the accused has been charged.

14. In view of these different legal interpretations, the Working Group wrote to the Government and to the source on 11 June 2001 to request the following additional clarifications and details concerning the Colombian legal system:

(a) Francisco Caraballo is accused of having committed the offences of rebellion; kidnapping of two persons, with aggravating circumstances, and simple aggravated kidnapping of one person; and terrorism. The various proceedings against him have been consolidated.

- (i) If he is found guilty, would the penalty, under the Colombian legal system, be the total of all the penalties corresponding to the various offences whose commission has been proved or only the harshest or longest penalty for the most serious offence?
- (ii) It is stated that, according to article 139 of the 1936 Penal Code, which was in force in 1967 when the Patriotic Liberation Army (EPL) was founded, the offence of rebellion subsumes all the criminal offences which may be committed by the rebels. This offence attracts a penalty of six months' to four years' imprisonment, the suspension of civic rights and prohibition on holding public office for the same period, and a fine of 500 to 5,000 pesos. The Working Group wishes to know whether this means that Francisco Caraballo cannot be sentenced to a penalty of more than four years' imprisonment.

(b) It is reported that, according to article 415, paragraph 5, of the Code of Criminal Procedure, as amended by article 27 of Act No. 504 of 2000, failure to comply with the deadline by which a public hearing must be held is a ground for provisional release. The Working Group's question is whether this is true and whether, in such a case, the court is required, or simply authorized, to order the provisional release of the person concerned.

15. The Working Group stated that it wished to be informed:

(a) Whether, under article 26 of the 1980 Penal Code, persons found guilty of committing a combination of punishable acts are subject to cumulative penalties corresponding to all the various offences or only to the harshest penalty, established for the most serious offence;

(b) Whether the Penal Code or another Colombian legal provision states that the offence of rebellion subsumes all the offences which may be committed by the rebels;

(c) Whether the Colombian Code of Criminal Procedure actually provides that the accused is entitled to provisional release if more than six months have elapsed from the time of the enforcement of the decision to bring charges and the required public hearing has not been held.

16. Since neither the Government nor the source has provided additional information on these questions, although the Working Group has requested them to do so, the Working Group considers that it does not have sufficiently detailed information to render an opinion in the case under consideration.

17. In view of the foregoing and subject to the possibility of receiving relevant information and details at a later date, the Working Group believes that it cannot render an opinion on whether Mr. Francisco Caraballo's detention is arbitrary or not and decides, in accordance with paragraph 17 (d) of its methods of work, to file the case provisionally.

Adopted on 13 September 2001