

OPINION No. 17/2003 (CUBA)

Communication addressed to the Government on 6 February 2003.

Concerning: Leonardo Miguel Bruzón Ávila, Juan Carlos González Leyva and Oscar Elías Biscet González.

The State is not a party to the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of opinion No. 15/2002.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of opinion No. 15/2002.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group submitted the reply provided by the Government to the source and received its comments thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to information received by the Working Group, Leonardo Miguel Bruzón Ávila, an independent bookseller and president of the 24 February Movement, was arrested on 22 February 2002 by police officers while organizing a peaceful demonstration to commemorate 24 February 1895, the date of the beginning of the war of independence, and 24 February 1996, the date on which two light aircraft belonging to the Brothers to the Rescue organization were shot down. Since that time he has been held in Quivicán prison, province of Havana. It is reported that he has not been tried, and that no charges have been brought against him.
6. Juan Carlos González Leyva, 37 years old, resident of Ciego de Ávila, married to Maritza Calderín Columbie, the president of the Cuban Foundation for Human Rights and member of the Corriente Agramontista organization of independent lawyers, and who is sightless, was arrested on 4 March 2002 when participating in a peaceful demonstration in the vicinity of the Antonio Luaces Iraola provincial hospital in Ciego de Ávila, in protest at the arrest and admittance to the hospital of Jesús Álvarez Castillo, a journalist. While he was being arrested he was reportedly struck on the head. It is claimed that he was not given the requisite medical attention or the care required by his blindness. On occasions he was stopped from using his dark glasses, his stick and a Braille bible. González Leyva also reportedly complained of intestinal problems attributable to the introduction of foreign substances into his food. The source also states that his wife, father and brothers suffered a series of acts of intimidation and reprisal, including short periods of arrest.
7. Oscar Elías Biscet González, founder of the Friends of Human Rights organization, was arrested, together with 16 other persons, on 16 December 2002, when on his way to participate in a meeting of his organization in the Lawton district of Havana. While being arrested he was beaten by the police. The source indicates that on 6 November 2002 this person reportedly

participated in a press conference in Havana on conditions for prisoners and on prisons in Cuba. Mr. Biscet González had formerly been held in Holguín prison, where he spent three years, and had been released on 31 October 2002.

8. The source considers that these persons have been arrested only for having exercised the right to freedom of association and expression and for having expressed, peacefully, political opinions at variance with those of the authorities.

9. The Government, in its replies on these cases, maintains that Mr. Leonardo Miguel Bruzón Ávila was arrested for committing acts constituting offences under criminal legislation in force before the commission of the acts. Mr. Bruzón Ávila enjoyed all the benefits of due process.

10. Mr. Juan Carlos González Leyva was responsible for acts constituting offences under the national legislation in force, acts which could never have been termed “a peaceful protest opposite the Antonio Luaces Iraola hospital” as stated in the communication containing the allegations. On 4 March 2002 serious disturbances of the public order, acts of resistance and of contempt for the public authorities in the discharge of their functions took place, leading to the arrest of various citizens, including Mr. Juan Carlos González Leyva.

11. On the morning of 4 March 2002 Mr. Jesús Álvarez Castillo was taken to the hospital, in accordance with standard police procedures, after he had made a complaint to the effect that he had been injured at the time of his arrest. It should be noted that Mr. Álvarez Castillo violently resisted arrest. It was ascertained that the report was completely unfounded, in that the doctors ascertained that Mr. Álvarez Castillo had no injuries of any kind. For his part, Mr. González Leyva and the other citizens mentioned in the communication, alerted to the presence of Mr. Álvarez Castillo in the hospital guardroom, went to the guardroom with the aim of engaging in disorderly conduct and fabricating a false image of arbitrary action by the police authorities when arresting Mr. Álvarez Castillo.

12. In the company of the citizens mentioned in the complaint, Mr. González Leyva threatened and harassed medical and paramedical hospital staff in the building, as well as patients and family members present, occasioning serious disturbances within the hospital centre facility. For almost two hours the group of citizens, including Mr. González Leyva, obstructed the delivery of important medical services in the hospital, including emergency services, thereby imperilling the lives of many patients, including a number of children.

13. As a consequence of these actions, a patient receiving treatment for arterial hypertension took fright and left the hospital centre, and as a result suffered a heart attack, from which the patient is still recovering. A number of children awaiting emergency tests had to wait until the situation had been brought under control by the police. At the request of hospital management, police officers intervened to restore order and medical services, and in particular to put an end to a situation that was growing worse as a result of the increasing irritation and concern of patients and their family members, owing to the fact that it was impossible for them to receive the medical services they needed.

14. Mr. González Leyva inflicted an injury on himself, requiring five stitches on the forehead. He struck his head hard against the frame of a metal door, evidently intending to blame the resulting injury on the police authorities. The prosecutor's office conducted a rigorous investigation of the facts, which offered irrefutable corroboration of the true situation as indicated above. During the investigation unequivocal voluntary testimony was obtained from eyewitnesses, who confirmed the above events.

15. This is not the first occasion on which Mr. González Leyva has injured himself with the intent of blaming the ill-treatment on the authorities concerned. In each case, following investigation, the falseness of his accusations has been established. Those responsible for the events described are in pre-trial detention, for the offences of public disorder, resistance and contempt. The Government asserts that on each occasion without exception due process was respected. Mr. González Leyva, in view of his physical disability, has not been moved to prison, and is still at the facilities of the judicial investigation service in the province of Holguín, which has better facilities for providing proper treatment.

16. According to the Government, with respect to the case of Mr. Oscar Biscet González, on the evening of 6 December 2002, a group of individuals went to the Raúl Arencibia apartment building to take part in a disturbance of the public order and safety of the citizen organized by Oscar Elías Biscet. None of these people were participating in a "peaceful meeting" of any kind, neither were they attending any kind of class in human rights. Far from a teaching or academic activity, that day the citizens were openly challenging the public order, causing a serious incident which provoked an angry response by more than 100 people who felt attacked by Mr. Biscet. The events caused a violent interruption in the teaching activities taking place in an educational institution in the locality, besides obstructing traffic for more than an hour.

17. The Government asserts that Mr. Biscet was the principal instigator and culprit, openly engaging in incitement to commit an offence. From the outset Mr. Biscet acted aggressively, with the clear intention of escalating the disorder that he had caused until the situation was out of control. Those responsible for the public disorder refused to show their identification documents. Mr. Biscet and various other people mentioned resisted arrest and assaulted law enforcement agents. The citizens mentioned were arrested for violating the criminal legislation in force in the country.

18. The Government asserts that the inquiries conducted regarding arrest, transfer and detention at the police station indicated that the police officers did not beat or inflict physical harm on any of the persons referred to in the complaint. At all time the requirements of due process were respected and the criminal procedure provisions in force were strictly observed. Mr. Biscet González remained in prison on confirmation of his responsibility as a principal instigator of the offences described, was punished by the competent courts to 20 years' imprisonment for instigation to commit offences, and for other criminal offences directly intended to undermine the sovereignty and constitutional order of the nation.

19. The Government concludes by stating that Mr. Biscet González is not a "peaceful advocate" of human rights. The Government asserts that it has abundant evidence of subversive activities carried out over many years by this person against the constitutional order adopted by the Cuban people, activities directed and funded by a foreign Government and by terrorist organizations of Cuban origin based in the territory of another country.

20. The source has reacted to this reply by the Government, stating that Leonardo Miguel Bruzón had been arrested on his way to celebrate mass and commemorate a patriotic holiday with a peaceful group of dissidents. Mr. Bruzón is still awaiting trial on charges, made known unofficially, of “enemy propaganda”, “contempt”, “public disorder” and “incitement to commit an offence”.

21. With regard to the case of Juan Carlos González Leyva, the source asserts that he has so far been held for more than 15 months without trial, which suggests that the authorities have had difficulty in bringing charges against him. He was arrested for having gone with other dissidents to a local hospital to protest the beating of a journalist. The group of demonstrators, according to the source, was engaged in a peaceful protest, praying and chanting slogans such as “long live human rights” and “long live Christ the King”, and had not blocked the patients’ entrance, but, on the contrary, had sought treatment for a patient. One hour later the group was surrounded by State security forces, who took them away under arrest. Their resistance was peaceful. Mr. González Leyva has always rejected violence. Further, the source states that the Government’s suggestion that the totally blind Mr. González Leyva inflicted serious injuries on himself on more than one occasion is an effort to discredit him, is false, and does not accord with his personal commitment to peaceful activism. As for his conditions of detention, the source reaffirms that he is in a court building, but sharing a cell with a common prisoner, and that both he and his spouse have complained about the poor conditions, which make no accommodation to his blindness.

22. With regard to Dr. Biscet González, the source states that his career as a doctor and activist shows in his public actions that he is a man of peace, who has established in Havana the Lawton Human Rights Foundation as a humanitarian organization for the promotion and defence of fundamental rights through non-violence; that he considers the right to life as the foundation for other human rights, as a follower of Ghandi and Martin Luther King; that the foundation motto is “Truth and Freedom”; and that its members, who oppose abortion, euthanasia and all acts of violence, are committed to implementing their ideas peacefully through civil disobedience. The source adds that Dr. Biscet has never made any public statement in support of military action against his own country, or promoted military invasion of Cuba; that the Government’s attempts to link Dr. Biscet’s contacts with Cuban exiles to terrorism have no foundation; that on 6 December Dr. Biscet planned to meet a dozen or so activists to discuss human rights when the State security forces prevented them from entering his house. In protest, the activists lay down on the ground, shouting “long live human rights”, at which point they were arrested.

23. The Working Group, having analysed the foregoing, considers that Mr. Leonardo Miguel Bruzón Avila is under arrest for having attempted to organize a demonstration to express his political opinions on the commemoration of a date; the peaceful nature of the demonstration has not been contested.

24. As for Juan Carlos González Leyva, he too has been arrested for exercising his right to freedom of expression, in a manner in which there was no suggestion of violence. The charges brought against him are ambiguous and have not clearly identified offences which could justify his detention. The Working Group considers that his was a political protest, in which resisting arrest could have caused the disturbances at the hospital.

25. Regarding the detention of Oscar Elias Biscet, the Working Group considers that this occurred when a peaceful meeting on political dissent was about to be held by his foundation, this constituting a freedom recognized in the Universal Declaration of Human Rights, and which must be guaranteed.

26. In the three cases, and under different circumstances, the Working Group considers that the events which occurred fell within the confines of the peaceful exercise of recognized rights, such as freedom of opinion, expression and assembly, these three persons having been arrested for having exercised these freedoms in opposition to the Government.

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

The deprivation of liberty of Leonardo Miguel Bruzón Avila, Juan Carlos González Leyva and Oscar Elías Biscet Gonzáles is arbitrary, being in contravention of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

28. The Working Group, having rendered this opinion, requests the Government of Cuba to take the necessary steps to remedy the situation and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and to take appropriate steps with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 5 September 2003