

OPINION No. 21/2004 (COLOMBIA)

Communication addressed to the Government on 21 June 2004.

Concerning Mr. Israel Morales Hernández.

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

1. (Same text as paragraph 1 of opinion No. 20/2004.)
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. 20/2004.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, but has not received any comments on it. 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. Mr. Israel Morales Hernández, a Colombian citizen, is currently detained in the Pereira judicial district prison in the department of Risaralda. He was arrested on 6 October 1999 and charged with attempted homicide and the illegal bearing of firearms for personal defence. His case, No. 2000-0104-00, is before the single criminal court of the Guadalajara de Buga special circuit.
6. The public hearing of the trial took place on 22 June 2001. According to the law, the judge was required to deliver a judgement within the 15 days following the hearing, which he failed to do. Thirteen months later, in July 2002, Mr. Morales Hernández filed a writ of habeas corpus. On 9 August 2002, the writ of habeas corpus was rejected by the Pereira circuit criminal court, which found that the court concerned had been unable to deliver a judgement because of bottlenecks or a heavy workload.
7. On 19 November 2002, Mr. Morales Hernández applied for an injunction (*acción de tutela*), or *amparo*, as provided for by article 86 of Colombia's Constitution, to obtain protection of his fundamental right to due process. On 13 December 2002, the case was heard by the high court of the Guadalajara de Buga judicial district, which rejected the complainant's application. The Court argued that although the administration of justice had clearly been delayed, the delay was fully justified.
8. On 14 March 2003, Mr. Morales Hernández exercised his right of petition to appeal to the Ombudsman's Office; this appeal was also rejected.
9. According to the source, Mr. Morales Hernández has been deprived of his liberty for four years and eight months, without any decision having been taken on his legal status.
10. The source believes that the failure to comply with the procedural time limits has resulted in an illegal prolongation of the deprivation of liberty of Mr. Morales Hernández for more than four years, thus making his detention arbitrary.
11. The right to due process includes the right to judicial proceedings free of delays, the right to be tried within a reasonable period of time and the right to receive a reasoned judgement within a reasonable period of time. The Buga special circuit high court and the Pereira circuit criminal court cited bottlenecks in the judicial system, a heavy workload and the priority given to other decisions to excuse the failure to deliver a judgement. According to the source, that does not excuse the excessive delay in delivering a judgement, because through such delay, Mr. Morales Hernández has de facto been sentenced to a penalty of deprivation of liberty. In the opinion of the source, that is totally at odds with the principle of the presumption of innocence. The source concludes that the detention of Mr. Morales Hernández is arbitrary and calls upon the Working Group to declare it as such.
12. In its reply, the Government confines itself to saying that, according to the National Institute of Prisons and Penitentiaries (INPEC), the legal situation with regard to Mr. Morales Hernández was as follows. Offence: attempted homicide with the use of a weapon. Authority: Special court of Buga, Valle. Status: defendant. Date of arrest: 10 October 1999. Date of incarceration in Pereira prison: 4 April 2002. The Government points out that it requested information from the Office of the Attorney-General, which replied that, as the case was sub judice, it could not provide any information on it.

13. The source has not replied, although the Government's reply was transmitted to it on 22 October 2004.

14. In its reply, the Government acknowledges the information provided by the source in its original communication. Mr. Israel Morales Hernández was arrested on 10 October 1999, but the court dealing with his case has yet to deliver a judgement. That a person should be deprived of liberty for more than five years without trial is clearly an unacceptable delay that makes that person's detention unjust. The backlog of cases pending in the courts cannot be accepted as a justification.

15. Article 9 of the International Covenant on Civil and Political Rights, which Colombia has ratified, states the following: "3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

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

The deprivation of liberty of Mr. Israel Morales Hernández is arbitrary, being in contravention of article 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 the cases submitted to the Working Group.

17. Consequent upon the opinion rendered, the Working Group requests the Government 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 in the International Covenant on Civil and Political Rights.

Adopted on 23 November 2004