

Opinion No. 23/2009 (Mexico)

**Communication addressed to the Government on 10 June 2009,
reiterated on 25 August 2009**

Concerning Mr. Álvaro Robles Sibaja

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

1. (Same text as paragraph 1 of Opinion No. 19/2009.)
2. The Working Group thanks the Government for providing it with the information requested.
3. (Same text as paragraph 3 of Opinion No. 19/2009.)
4. In the present case, the dispute concerns how to calculate the time to be served by Mr. Robles Sibaja in compliance with the sentences imposed on him in two different and unconnected cases:
 - (a) Criminal case No. 20/1990, in which he was deprived of liberty on 23 November 1989, and in which he was eventually sentenced to 15 years' deprivation of liberty, counted from the date of his arrest;
 - (b) Criminal case No. 40/1990, in which he was sentenced to deprivation of liberty for 13 years and 6 months, also counted from the date of his arrest.
5. The source states that the sentences should be calculated on the basis of being served simultaneously, not consecutively, as the source claims has been done. If the sentences were served simultaneously, the source concludes, only the longer sentence would actually be served. According to the source, this theory is supported by the amendment to article 25 of the amended Criminal Code, which establishes that "sentences shall be served simultaneously".
6. Thus, the only possible violation of human rights that could accurately be claimed to give the detention an arbitrary character would be that set out in the last sentence of article 11, paragraph 2, of the Universal Declaration of Human Rights, which provides that no one shall have "a heavier penalty imposed" on him or her "than the one that was applicable at the time the penal offence was committed", a provision reiterated in the International Covenant on Civil and Political Rights (art. 15, para. 1, second sentence).
7. The Working Group notes that the source's quotation from article 25 of the Federal Criminal Code of Mexico is only partial and does not make its meaning clear. The full

quotation from the text in force on 18 September 2009 reads as follows, in the title called "Imprisonment":

"Article 25. Imprisonment shall consist in the deprivation of physical liberty. It shall last for a term of 3 days to 60 years, and a sentence that exceeds the maximum limit may be imposed only where a new offence is committed in prison. It shall be served in correctional colonies, institutions or places designated for that purpose by the law or the authority responsible for the enforcement of sentences, depending on the relevant court decision.

Preventive deprivation of liberty shall be computed for the purpose of the serving of the sentence imposed and of those that may have been imposed in other cases, even if they relate to acts committed prior to imprisonment. In this case, the sentences shall be served simultaneously."

8. The rule makes it clear that the only period that is to be counted on the basis of simultaneity is that which corresponds to "preventive deprivation of liberty", that is, the deprivation of liberty that took place during the trial as a security measure, not the penalties imposed as a result of the various final sentences handed down.

9. The Working Group considers that Mr. Robles' prison sentence was handed down by a competent authority and has a legal basis, which means that it does not fall within category I of the categories accepted by the Working Group for determining whether or not deprivation of liberty is lawful; it did not result from the exercise of any internationally recognized right, which means that category II does not apply; and there was no infringement of the norms of due process of law, as referred to under category III.

10. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Álvaro Robles Sibaja is not arbitrary.

Adopted on 22 November 2009