

No. 31/2010 (Bolivarian Republic of Venezuela)

Communication addressed to the Government on 9 August 2010

Concerning: Mr. Santiago Giraldo Florez; Mr. Luis Carlos Cossio; Ms. Cruz Elba Giraldo Florez; Ms. Isabel Giraldo Celedón (the only Venezuelan national); Mr. Secundino Andrés Cadavid; Mr. Dimas Armando Oreyanos Lizcano and Mr. Omar Alexander Rey Pérez

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council approved the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 15/18 of 30 September 2010. In accordance with its methods of work, the Working Group transmitted the above communication to the Government.

2. The Working Group regrets that the Government has not provided the information requested, despite a written invitation to do so dated 9 August 2010.

3. The Working Group considers that deprivation of liberty is arbitrary in cases falling into one of the following three categories:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (Category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III).

4. The case under consideration was submitted to the Working Group as follows.

5. Santiago Giraldo Florez and Luis Carlos Cossio, both Colombian nationals, were arrested on Tuesday, 23 March 2010 by the Venezuelan authorities while taking photographs near the city of Maracay. Following their arrest, they were brought before a military court in Maracay, which decided to launch criminal proceedings against them for the alleged offence of espionage, as defined under article 471 of the Code of Military Justice; article 472 stipulates a penalty of 22 to 28 years' imprisonment.

6. On 27 March 2010, four days after their arrest, the Maracay Military Court ordered searches of the detainees' homes and places of work in the city of Barinitas. The authorities found old identification papers showing that Cossio and Cruz Elba Giraldo Florez were, respectively, a doctor and pharmacist with the Health Services of the Fourth Brigade of the Colombian Army.

7. The commander of the Fourth Brigade of the Colombian Army later stated that the two individuals had worked in the Fourth Brigade, Cossio as a military doctor in the clinic and Cruz Elba Giraldo Florez as a pharmacist. They belonged to the military health services and their work was well documented. At no time were they in any way involved in operations or in handling classified or secret information. It was possible that they had since retired or left the military and that in the course of the regular discharge procedure they had not turned in all their documentation.

8. As a result of the searches, the Maracay Military Court ordered the arrest of the following four relatives of Santiago Giraldo Florez and Luis Carlos Cossio:

- (a) Cruz Elba Giraldo Florez (a Colombian national);
- (b) Nelson Giraldo Florez (a Colombian national);
- (c) Isabel Giraldo Celedón (a Venezuelan national);
- (d) Secundino Andrés Cadavid (a Colombian national).

9. The Maracay Military Court also ordered the arrest of Dimas Armando Oreyanos Lizcano and Omar Alexander Rey Pérez, two Colombian nationals who appear to have been at the premises when they were searched. The detainees were transferred to the city of Maracay.

10. The Government of the Bolivarian Republic of Venezuela reportedly failed to notify a Colombian consular office in Venezuela of the arrest of the eight individuals, thereby failing to fulfil its obligation under article 36, paragraph 1 (b), of the Vienna Convention on Consular Relations of 24 April 1963 (to which Venezuela is a party), as well as the legal guarantees of the accused.

11. The arrests were reported in the press on 29 March 2010, in other words six days after the first arrests. The Ministry of Foreign Affairs of Colombia, through the Consulate-General of Colombia in Caracas, requested authorization from the Bolivarian Intelligence Services (SEBIN) to pay a consular visit to Santiago Giraldo Florez and Luis Carlos Cossio, pursuant to articles 5 and 36, paragraph 1 (a), of the Vienna Convention on Consular Relations. The Intelligence Services denied Colombia's request, claiming that the request had been made outside business hours, thus disregarding the provisions of the Convention.

12. On 30 March 2010, at a hearing before the Maracay Military Court, the detainees were refused release and transferred to the Intelligence Service's detention centre at El Helicoide in Caracas. This was despite the request made on the same day by the Consulate of Colombia in Valencia (the jurisdiction that administers Maracay) to Judge Alfredo Solórzano, the presiding judge of the Military Circuit Court, for a postponement of the hearing on the grounds that consular staff would be unable to attend the proceedings because of the distance between the two cities. Judge Solórzano denied the Consulate's request, adding that the military defence service had been assigned to the detainees. Consular staff were unable to attend the hearing, in violation of the right enshrined in article 36, paragraph 1 (a), of the Vienna Convention on Consular Relations. This undermined the exercise by both the detained Colombian nationals and the State of Colombia of an internationally established privilege that is binding on Colombia and the Bolivarian Republic of Venezuela alike.

13. On 31 March 2010, the lead police inspector for the case, Levis Pérez, notified the Consulate-General of Colombia in Caracas of the arrival of the other accused at the detention centre at El Helicoide, adding that a consular visit could take place on 5 April 2010. On the morning of 5 April, representatives of the Consulate-General went to the detention centre and were seen by the inspector during the afternoon. The representatives were eventually allowed to see the men and women separately; however Deputy Inspector Jiménez was always present and took notes of the conversations, despite the consul's explicit request for privacy in order to expedite the meetings. It is claimed that the representatives of the Consulate-General were not guaranteed adequate privacy during the visits to the detainees, in contravention of the procedural guarantees of consular assistance and in violation of the terms governing communication with the nationals of the sending State, as set out in article 36 of the Vienna Convention on Consular Relations.

14. The source adds that the Giraldo family is a Colombian family that had arrived in Venezuela from Colombia 19 years earlier and had owned an ice-cream factory and ice-cream store for 17 years. Luis Carlos Cossio was Cruz Elba Giraldo Florez's life partner and also lived and worked with the family. All the individuals mentioned have valid Venezuelan residence permits. Secundino Andrés Cadavid is an employee at the ice-cream store while Dimas Armando Oreyanos Lizcano and Omar Alexander Rey Pérez are friends of the Giraldo family.

15. The source contends that the severe obstruction of the right to consular assistance demonstrates the arbitrariness of the detention of these individuals. The source expresses concern about their right to life, physical and personal safety, liberty, judicial guarantees and judicial protection.

16. According to the source, this case involves a Colombian family living close to the Venezuelan border whose arrest took place under the ongoing climate of tension between the two countries. Charges of espionage were laid against the detainees between 23 and 29 March 2010 and they were tried before a military court. Consular representatives of Colombia were not granted free access to their citizens. The detainees were not permitted to choose their counsel but rather were appointed a Venezuelan military defender.

17. The Working Group was informed that the individuals were released on 11 May 2010.

18. Consequently, the Working Group decides to file the case in accordance with paragraph 17 (a) of its methods of work.

[Adopted on 25 November 2010]