

DECISION No. 24/1992 (CUBA)

Communication addressed to the Government of Cuba on 14 October 1991.

Concerning: Luis Enrique Linancero Martínez, Ivelise Camejo Moleiro, Miguel Angel Fernández Crespo, José Luis Martínez Vidal, Francisco Rosado Torres, Guillermo Campos Muñiz, Ares Nasco Marrero, Guillermo Zenón Santos Davilla, Juan Carlos Sierra Pérez, Moisés Ariel Vialart del Valle, María Margarita García Valdés on the one hand and the Republic of Cuba on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it (E/CN.4/1992/20, chapter II), and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group. The Working Group also expresses its appreciation for the information provided at its third session by the Permanent Mission of Cuba to the United Nations Office at Geneva and the statement made by the Dean of the Law Faculty of the University of Havana.

3. (See paragraph 3 of Decision No. 1/1992.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Cuba. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Representative of the Secretary-General pursuant to Commission on Human Rights resolution 1991/68 (E/CN.4/1992/27).

6. The Working Group considers that:

(a) According to the allegation, Luis Enrique Linancero, Ivelise Camejo, Miguel Angel Fernández, José Luis Martínez, Francisco Rosado, Guillermo Campos, Ares Nasco, Guillermo Santos, Juan Carlos Sierra, Moisés Ariel Vialart and María Margarita García were arrested in January 1990,

brought before the People's Provincial Tribunal of the City of Havana, convicted by the court of offences against State security and given sentences ranging from three years' limited freedom to eight to 15 years' imprisonment. The communication adds that all those concerned are members of the Youth Association for Human Rights (AJPDH);

(b) According to the allegation, articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights, articles 9, 14, 19 and 22 of the International Covenant on Civil and Political Rights and principle 11 of the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment have been violated in this case;

(c) The Government states that the persons concerned were imprisoned for their participation in the Youth Association for Human Rights, "an organization which planned various acts of sabotage and terrorist activities, and explosives and other equipment used for such activities were confiscated from them on their arrest". They were tried in 1990 and sentenced to the following terms of imprisonment: Linancero, Camejo, Fernández (the latter was also given a four-year prison term for an ordinary offence), Martínez and Sierra, 15 years; Rosado, 10 years; Campos and Nasco, eight years;

(d) The Government also states that Santos, Vialart and Margarita García received non-custodial sentences, and were therefore released;

(e) The report of the Special Representative of the Secretary-General mentions this case and indicates that, according to the reports received, the persons concerned may not have enjoyed full judicial guarantees of due process and may not have had access to defence lawyers; the report points out that "although there is little information about the trial, it seems that the accused denied being involved in violent activities". According to the allegation received by the Special Representative, the Youth Association for Human Rights is believed by the authorities "to be the armed wing of the Cuban Party for Human Rights (PPDHC)";

(f) The report adds that Ledesma has been sentenced to three years' house arrest;

(g) In the absence of any further information, the Working Group takes it that the persons in question are serving the sentences mentioned by the Government, and that Santos, Vialart and Margarita García have been released;

(i) Since the Government has not provided specific information concerning the charges made against the persons in question, stating only that they were planning attacks and were found in possession of explosives, and since the source also fails to provide firm evidence that they were convicted solely for exercising the rights of political association and freedom of expression and opinion, it is impossible to state with any certainty whether or not their detention is arbitrary;

(j) Nor is it possible to take any decision concerning the allegations of failure to provide judicial guarantees, which are denied by the Government

in its report, which notes that in all the proceedings referred to in the communication from the Working Group of 14 October 1991 the accused had access to defence lawyers and enjoyed the appropriate judicial guarantees;

(k) The methods of work adopted by the Group provide that if it does not have enough information to take a decision, the case remains pending for further investigation and that, if the Working Group considers that it does not have enough information to warrant keeping the case pending, the case is filed without further action;

7. In the light of the above, the Working Group decides:

(a) To file the cases of Moisés Ariel Vialart del Valle, Guillermo Zenón Santos Davilla and María Margarita García Valdés, since these persons are at liberty;

(b) To file the cases of Luis Enrique Linancero, Ivelise Camejo, Miguel Angel Fernández, José Luis Martínez, Francisco Rosado, Guillermo Campos, Ares Nasco and Juan Carlos Sierra, without further action. (See also annex II, Decision No. 24/1992.)

Annex II

DECISION ON CASES OF REPORTEDLY RELEASED DETAINEES
AND LIST OF SUCH PERSONS

In the course of its consideration of some of the cases of alleged arbitrary detention which it transmitted to Governments, the Working Group was informed, either by the Government concerned or by the source of the allegation, and in some cases by both, that the person(s) concerned is (are) no longer in detention.

Paragraph 14 (a) of its methods of work states that the Working Group, in the light of the information examined during its investigation, shall take one of the following decisions:

"(a) If the person has been released, for whatever reason, since the Working Group took up the case, the case is filed; nevertheless, the Working Group reserves the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned".

The following list contains the cases of persons who are reportedly no longer in detention and regarding whom the Working Group, after having examined the available information, is of the opinion that no special circumstances warrant the Group to consider the nature of their detention. The Working Group, without prejudging the nature of the detention, therefore decides to file their cases, in the terms of paragraph 14 (a) of its methods of work.

(The names of the persons listed below are preceded by the number of the decision regarding them, by order of its adoption by the Working Group, and the country concerned. The signs (X), (Y) and (Z) following each name indicate whether the information of that person's release was provided by the Government (X), the source (Y), or both (Z).)

Decision No. 24/1992 (CUBA): Moisés Ariel Vialart del Valle (X),
Guillermo Zenón Santos Davilla (X), María Margarita Gardía Valdés (X). (See
also annex I, Decision No. 24/1992.)