

OPINION No. 18/1998 (CUBA)

Communication addressed to the Government of Cuba on 12 August 1997

Concerning: Lorenzo Páez Núñez

The State is not 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 extended and clarified its mandate in resolution 1997/50. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.
2. The Working Group expresses its appreciation to the Government for having promptly forwarded the information requested.
3. (Same text as paragraph 3 of Opinion No. 1/1998.)
4. Bearing in mind the complaints filed, the Working Group welcomes with satisfaction the cooperation by the Government. The Working Group has transmitted the Government's reply to the source of the information, but still has not received its comments.
5. The Working Group believes that it is in a position to give an opinion on the facts and circumstances of the case based on the allegations made and the Government's reply thereto.
6. According to the complaint, Lorenzo Páez Núñez is an independent journalist who was arrested on 10 July 1997 in the town of Artemisa. He was tried the following day by the Artemisa Municipal Court, which sentenced him that day to 18 months' deprivation of liberty for insulting and slandering the national police.
7. The Government informed the Working Group that, since Páez has received a final sentence, his case is not within the Working Group's terms of reference, since resolution 1997/50 instructs it to investigate cases of deprivation of liberty imposed arbitrarily, provided that the national courts have not adopted a final decision in accordance with national legislation, the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned.
8. The Government also states that, in any event, Páez was arrested on the basis of a complaint filed on 27 June by the citizen Florencio Jesús Tabares for the offence of slander via Radio Voz de la Fundación, which broadcasts from the United States. The court concluded that the statements Páez made on that radio station (accusing Tabares of armed assault) were false and constituted contempt and slander. Following a trial in which all procedural guarantees provided for in national legislation were ensured, Páez was sentenced on 11 July to one year and six months of deprivation of liberty for each of the offences of slander and contempt and, as an additional single

penalty, to one year of deprivation of liberty. This sentence was upheld by the Third Criminal Chamber of the Havana People's Provincial Court on 22 July 1997.

9. The facts are thus incontrovertible: (a) on 27 June 1997, a complaint of slander and contempt was filed against Lorenzo Páez Núñez; (b) Páez was arrested on 10 July; (c) he was tried the following day and, according to the Government, sentenced for the offences of slander and contempt to "one year and six months of deprivation of liberty for each of the offences of slander and contempt and, as additional single penalty, to one year of deprivation of liberty", a sentence which has now been served.

10. According to Cuban law, the indictment must be notified to the accused who is at liberty, as in the case of Páez, and the oral proceedings may not take place for five days following the appointment of defence counsel, whether chosen or court-appointed. This is the deadline by which defence counsel has to submit his provisional conclusions, i.e. the defence as such (article 283 of Act No. 5 of 1977 on Criminal Proceedings, as amended by Decree Law No. 151 of 1994).

11. From 27 June (filing of the complaint) until the day of the trial and sentencing (11 June), i.e. 14 consecutive days, the following took place: (a) the preparatory phase of the oral proceedings, which may last for up to 60 days (art. 107); (b) the submission of the prosecutor's provisional conclusions (art. 278); (c) summons by the court ordering the appearing of the accused, to whom it must have assigned defence counsel within five days if he did not already have one (art. 282); (d) the submission of the defence counsel's provisional conclusions; (e) the setting of the date for the oral proceedings, which must be held within 20 days of the indictment and the submission of provisional conclusions by the parties (art. 287); (f) oral proceedings (art. 305); (g) trial and sentencing (art. 45).

12. Neither the source nor the Government has provided the Working Group with specific information on these matters. It is also not known whether there was an authorization for the trial against Páez by means of the shortened procedure provided for in Book Six, Title XI, of the Criminal Proceedings Act or by means of the special procedure for the trial of the offences of libel and insult (the trial in this case is for slander) provided for in Book Six, Title V, for the offences of libel and insult. On the basis of the evidence produced, it is thus impossible for the Working Group to give an opinion on the provisions of Cuban legislation relating to due process and, as appropriate, to determine whether or not they are in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by Cuba.

13. In view of the foregoing, the Working Group decides to keep the case pending until new information is supplied to enable it to adopt a final opinion.

Adopted on 17 September 1998.