

DECISION No. 43/1992 (TURKEY)

Communication addressed to the Government of Turkey on 6 December 1991.

Concerning: Murat Demir and Bedii Yaracci, on the one hand, and the Republic of Turkey, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, 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 case in question.
3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:
 - I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or
 - II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or
 - III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Turkey. The Group has forwarded the Government's reply to the party making the allegations but to date has not received any comments from it. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. The Working Group considers that:
 - (a) It has been alleged that the lawyers Murat Demir and Bedii Yaracci were detained by police agents at Ankara in Turkey, on 13 and 12 June 1991 respectively, being accused of acts covered by the "Anti-Terrorist" Act

No. 3713. They have allegedly been accused of belonging to a political organization known as the "Devrimci-Sol", an illegal opposition organization. It is asserted that they have been refused the right to receive visits from their family members or lawyers.

(b) According to the allegation, there has been a violation of the rights set forth in articles 9, 10 and 20 of the Universal Declaration of Human Rights, 9, 19 and 21 of the International Covenant on Civil and Political Rights, and principles 2, 4, 11, 17, 18 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

(c) The Government in question has stated that the above-mentioned persons have been detained since 13 June 1991 for having worked for the Dev-Sol terrorist organization, a decision reached by the Ankara Security Court on 28 June 1991. The Government does not say whether the decision handed down by the Court is a final sentence or a provisional detention measure; nor does it indicate the facts which make it necessary to regard the Dev-Sol group as a terrorist organization.

(d) The Turkish Act on terrorist activities contains provisions which do not require actual deeds of violence aimed at terrorizing the population, but include criminal offences consisting of expressions of opinion.

(e) Furthermore, the Government in question has failed to provide any information which could make it possible to maintain that the detainees have participated in genuine terrorist acts for which they could be tried. On the contrary, the above facts show that, apparently, they have not even been brought to trial.

(f) Article 19 of the Universal Declaration of Human Rights provides that no one may be interfered with because of his opinions and recognizes that everyone has the right to freedom of expression and opinion. Moreover, article 20 recognizes the right of everyone to freedom of peaceful assembly. Similar provisions are set forth in the International Covenant on Civil and Political Rights, which is an international instrument accepted by States and has thus to be taken into account in qualifying deprivations of freedom as arbitrary, in accordance with the mandate of the Working Group.

(g) It is clear from the above that the detained lawyers are in such a situation because they exercised the right to express their opinions freely and the right to be associated for political purposes in the political organization "Devrimci-Sol". The Working Group regards such a situation as arbitrary detention, in accordance with "Category II" of its principles applicable in the consideration of the cases submitted to it and which were recognized by the Commission on Human Rights in document E/CN.4/1992/20, which forms an integral part of this decision.

(h) The situation is aggravated by the fact that the lawyers concerned have been denied access in their place of detention to their lawyers and family members.

6. In the light of the above the Working Group decides that:

The detention of Murat Demir and Bedii Yaracii is declared to be arbitrary being in contravention of articles 9, 10 and 20 of the Universal Declaration of Human Rights, and articles 9, 19 and 21 of the International Covenant on Civil and Political Rights and falling within Category II of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the persons named to be arbitrary, the Working Group requests the Government of Turkey to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 4 December 1992