

DECISION No. 7/1995 (TURKEY)

Communication addressed to the Government of Turkey on 23 August 1994.

Concerning Günay Aslan, Dr. Halük Gerger and Sedat Aslantas, 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 cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of Decision No. 35/1994.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Turkey. The Working Group transmitted the reply provided by the Government to the sources and received their comments. 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. The communications submitted by the sources, a summary of which has been transmitted to the Government, concern the following persons:

(a) Mr. Günay Aslan, aged around 33 years, a writer, journalist and stringer for German ARD television station, was reportedly arrested on 5 October 1993 in Bodrum by the local police, allegedly as he was about to escape abroad. He was believed to be detained in Koycegiz prison, after being held at Bodrum police station and then moved to Mugla prison. According to the source, Mr. Aslan was charged under article 8/1 of the Anti-Terror Law (Decree No. 3713) with "disseminating separatist propaganda" in connection with his book Thirty-three Gunshots, which is about an alleged massacre of Kurds in Turkey more than 20 years ago. He was reportedly sentenced by Istanbul State Security Court to two years in prison, a sentence which was ratified by the Supreme Court on 22 September 1993. The source added that much of the controversy surrounding the book focused on the introduction, which Mr. Aslan maintained was written by Musa Anter, a well-known writer and journalist who was murdered in September 1992. According to the source, his arrest and conviction could also be motivated by official disapproval of his work with the German television network, which was the only foreign news network with a bureau based in Turkey.

(b) Dr. Halük Gerger, a member of the Executive Committee of the World Federation of the United Nations Association, was reportedly sentenced by the Ankara State Security Court to a prison term of one year and eight months and to a fine of 208 million Turkish liras, under article 8/1 of the Anti-Terror Law (Decree No. 3713). According to the source, his appeal against his

sentence was rejected on 27 April 1994. Three other charges against Dr. Gerger under the same law were allegedly currently before the Istanbul State Security Court, and one investigation under article 159 of the Penal Code was pending. The source claimed that all the charges against Dr. Gerger were related to his peaceful activities in favour of democratic and human rights aspirations of the Kurdish population of Turkey. These activities included sending a message to a public meeting, writing articles in legally published newspapers in defence of the rights of Kurds in Turkey and criticizing the conduct of the security forces for the manner in which they treat Kurds.

(c) Mrs. Sedat Aslantas, a lawyer, Deputy Secretary-General of the Turkish Human Rights Association (THRA) and President of the Diyarbakir branch, was reportedly arrested by four plainclothes policemen and taken to the Anti-Terror Branch of Ankara Police Headquarters on 12 May 1994. According to the source, Mrs. Aslantas was transferred from police custody to Ankara Central Closed Prison; two warrants for her arrest were issued in absentia: one in connection with the trial of 16 lawyers, Mrs. Hüsniye Ölmez, Mrs. Meral Danis Bestas, Mr. Mesut Bestas, Mr. Sabahattin Acar, Mr. Baki Demirhan, Mr. Sinasi Tur, Mr. Arif Altunkalem, Mr. Nevzat Kaya, Mr. Vedat Erten, Mr. Tahir Elçi, Mr. Niyazi Cem, Mr. Fuat Hayri Demir, Mr. Gazanfer Abbasiouglu, Mr. Selim Kurbanoglu, Mr. Imam Sahin and Mr. Arzu Sahin of the Diyarbakir Bar Association, currently taking place before Diyarbakir State Security Court, and the other in connection with a press statement issued on 27 May 1993 by the "Democratic Platform", a group of leading members or representatives of trade unions, associations and publications in Diyarbakir, protesting against human rights violations in the region. A trial was allegedly opened before Diyarbakir State Security Court against the 24 signatories of this joint press statement. They were charged with making "separatist propaganda". The source added that on or around 20 April 1994, 21 of them were convicted and sentenced to 20 months' imprisonment and a fine of 208 million Turkish lira each. Mrs. Aslantas was reportedly imprisoned to serve this sentence, although an appeal was still pending.

6. In its reply, the Government of Turkey states that Mr. Günay Aslan and Dr. Halük Gerger were convicted, by due process of the law and under article 8/1 of Decree No. 3713, on charges of jeopardizing the territorial integrity of the country by disseminating separatist propaganda. Their detention cannot, therefore, be considered as arbitrary. Again according to the Government, a warrant for the arrest of Mrs. Sedat Aslantas was issued on 17 September 1993 by the Diyarbakir State Security Court as a result of her failure to appear, as summoned, before the Diyarbakir Prosecutor's Office in order to make a statement in connection with the Office's investigation of a pamphlet which contained propaganda aimed at the territorial integrity of the Republic of Turkey and in which her name appeared. Mrs. Aslantas was reportedly arrested in Ankara on 12 May 1994 and brought before the State Security Court there, which confirmed the arrest warrant the same day. Since at the time she was being tried by the Diyarbakir State Security Court for her membership in an illegal terrorist organization, Mrs. Aslantas was transferred to Diyarbakir on 5 June 1994 and questioned on 8 June 1994 by the Court, which upheld her arrest. Thus, once again, in the view of the Government, the detention cannot be considered as arbitrary.

7. In their observations, the various sources maintain, contrary to the declarations of the Government of Turkey, that the only reason for detaining the aforementioned individuals was because they had, in writing, defended the rights of the Kurds and denounced the manner in which those populations had been treated by the security forces. Their detention is thus arbitrary: in acting as they did, the individuals in question had only been exercising their right to freedom of opinion and expression.

8. The Working Group notes that:

(a) The Government of Turkey has confirmed that Günay Aslan, Halük Gerger and Sedat Aslantas are in fact being detained pursuant to article 8/1 of the Anti-Terror Law (Decree No. 3713), under which any person who "disseminates separatist propaganda" is subject to prosecution.

(b) In its reply, the Government does not indicate in what manner the writings of the individuals in question, from which the Government might have cited relevant excerpts, actually constitute such propaganda. In its annual reports to the Commission and, in particular, in its reports E/CN.4/1994/23 and E/CN.4/1995/31, the Working Group drew attention to its concern regarding the imprecise nature of charges such as those provided under article 8/1 of the Anti-Terror Law, which could be used as a pretext for grave violations of the right to freedom of opinion and expression.

9. The Working Group accordingly takes the view that the application of the aforementioned article 8/1 to the individuals referred to above, who protested in writing against the policy of the Government of Turkey towards the Kurds, without it having been demonstrated, moreover, that in so doing those individuals resorted or incited to violence, constitutes a violation of their right to freedom of opinion and expression, a right guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

10. In the light of the above the Working Group decides:

The detention of Günay Aslan, Halük Gerger and Sedat Aslantas is declared to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 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.

11. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons 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 provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 31 May 1995.