

DECISION No. 34/1995 (TURKEY)

Communication addressed to the Government of Turkey
on 21 April 1995.

Concerning Selahattin Simsek, 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 concern that to date no information has been forwarded by the Government concerned in respect of the case in question. With the expiry of 90 days from the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.
3. (Same text as paragraph 3 of Decision No. 35/1994.)
4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Turkey. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government in spite of the opportunity which was given to it to do so.
5. Selahattin Simsek, a teacher, born in 1954, has been in prison since 1980. In 1983 he was convicted, under article 125 of the Turkish Penal Code, of separatism and of involvement in a robbery and a killing on behalf of the illegal PKK movement, and sentenced to death by a military court. In 1991, after a change in the law, his death sentence was commuted to 20 years' imprisonment. He is at present being held in Ceylan Prison.
6. According to the source, Mr. Simsek's trial was unfair, for the following reasons: he was allegedly tortured for four weeks during his interrogation by the police; during the trial eye-witnesses of the crimes imputed to him did not identify him; his conviction was based on the incriminating and contradictory statements by other defendants who also had allegedly been tortured and who made use of the "Repentance Law", reducing their sentences if they made confessions incriminating others. The source also reported that Mr. Simsek, who ever since his arrest has consistently claimed to be innocent, had appealed to the Military Courts on 14 November 1994 for a retrial. On 22 November 1994 his petition was referred to the Civilian Appeal Courts. No new development has been reported since that time regarding the outcome of his petition.
7. It is apparent from the facts as described above, which were not contested by the Government in spite of the opportunity given to it to do so, that the present case involves a series of grave violations to the right to a

fair trial (torture during interrogation by the police of the person concerned; alleged eye-witnesses of the crimes imputed to him failed to identify him; evidence for his conviction based on statements by other defendants who were allegedly tortured and who made use of the "Repentance Law", reducing their sentences if they made confessions incriminating others. These violations, being in contravention of article 5 of the Universal Declaration of Human Rights and of articles 7 and 14.3 (b), (e) and (g) of the International Covenant on Civil and Political Rights, are of such gravity that they confer to the detention an arbitrary character.

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

(a) The detention of Selahattin Simsek is declared to be arbitrary, being in contravention of article 5 of the Universal Declaration of Human Rights and of articles 7 and 14.3 (b), (e), and (g) of the International Covenant on Civil and Political Rights, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture and the present decision to the Special Rapporteur on the question of torture.

9. Consequent upon the decision of the Working Group declaring the detention of Mr. Selahattin Simsek, 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 14 September 1995
