

DECISION No. 33/1995 (TURKEY)

Communication addressed to the Government of Turkey
on 7 February 1995.

Concerning Leyla Zana, Hatip Dicle, Ahmet Turk, Orhan Degan,
Selim Sadak, Sedat Yurttas and Prof. Fikret Baskaya, 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 cases 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 each of the cases 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 cases, 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. The communication as received from the source, a summary of which has been transmitted to the Government, concerned the following persons: Leyla Zana, Hatip Dicle, Ahmet Turk, Orhan Degan, Selim Sadak and Sedat Yurttas, all of them former deputies of the pro-Kurdish Democracy Party (DEP) who were arrested in Ankara on 2 and 3 March after they were stripped of their parliamentary immunity. (With regard to the first four persons mentioned above, the Chairman of the Working Group on Arbitrary Detention addressed, on 8 March 1994, an urgent appeal to the Government of Turkey.) It was reported that the former deputies (with the exception of Sedat Yurttas) were sentenced on 8 December 1994 by the Ankara State Security Court to prison terms of 15 years for "setting up and membership of an armed group". Sedat Yurttas was reportedly sentenced to seven and a half years' imprisonment for "aiding and abetting an armed group".
6. According to the source, the trial of the former deputies was conducted in conditions which violated the accepted international norms regarding fair trial, and in particular those concerning the rights of the defence and the principle of the independence of the judiciary.
7. The communication also concerned Prof. Fikret Baskaya, born in 1940, writer and academic. He was arrested on 17 March 1994 at his home in the town

of Bolu and was reportedly sent to the prison of Haymana, near Ankara, where he was to serve 15 months' imprisonment. Prof. Baskaya had been convicted by the Istanbul State Security Court of "disseminating separatist propaganda", under article 8/1 of the "Anti-Terror Law" (Decree No. 3713), in connection with a book he wrote about the socio-economic evolution in Turkey since the 1920s. He was sentenced on 16 August 1993 to 20 months' imprisonment and fined around 42 million Turkish Lira. It was reported that he had been previously acquitted of the charge, but the acquittal was quashed by the Supreme Court of Appeals after an appeal by the Istanbul State Security Court, and his sentence was ratified on 22 December 1993.

8. The source added that Prof. Baskaya had worked as a columnist for the pro-Kurdish newspaper Ozgur Gundem, whose staff have allegedly suffered many attacks. The book for which he was convicted contained criticism of the Government's policy on the Kurds. It was further reported that article 8 of the "Anti-Terror Law" carried a maximum sentence of five years' imprisonment for persons who "disseminate separatist propaganda", and that over 60 writers and journalists have been sentenced under that law for discussing or commenting on the Kurdish question.

9. As regards the case of the first six aforementioned persons, the Working Group deems that it should remain under examination, pending information by the source as to which were the rights of the defence that were allegedly violated and what was the violation of the principle of the independence of the judiciary alleged to have occurred in this particular case.

10. As regards the case of Prof. Fikret Baskaya, who was convicted of "disseminating separatist propaganda" under article 8/1 of the "Anti-Terror Law", Decree No. 3713, the Working Group recalls that in its Decision No. 7/1995 (Sedat Aslantas v. the Republic of Turkey), it expressed concern - as it had already done in its reports of 1994 and 1995 to the Commission on Human Rights - at 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. In the present case, Prof. Fikret Baskaya is accused on account of his book on the socio-economic evolution in Turkey since the 1920s, chapter IV of which is critical of the policy of the Government of Turkey towards the Kurdish population. Resorting to the aforementioned article 8/1 against Prof. Fikret Baskaya in order to penalize him for the contents of his book therefore constitutes a violation of his right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

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

(a) The cases of Leyla Zana, Hatip Dicle, Ahmet Turk, Orhan Degan, Selim Sadak and Sedat Yurttas remain pending until the source provides the Working Group with the information indicated in paragraph 6 of the present decision.

(b) The detention of Prof. Fikret Baskaya 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.

12. Consequent upon the decision of the Working Group declaring the detention of Prof. Fikret Baskaya 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