

DECISION No. 40/1995 (TURKEY)

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

Concerning: Leyla Zana, Hatip Dicle, Ahmet Turk, Orhan Degan,  
Selim Sadak and Sedat Yurttas, on the one hand and the Republic of  
Turkey, on the other.

1. It may be recalled with regard to the above-mentioned communication, to which the Government had not replied, that the Working Group, by its decision No. 33/1995 decided to keep the cases of the aforementioned persons pending until the source indicated to it how, as alleged by the source, the trial of those persons 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.

2. The source provided the Working Group further information as follows:

(a) As regards the rights of the defence. The lawyers of the defendants received power of attorney allegedly only at the end of the inquiry. They were therefore unable to follow the preliminary investigation and to examine the files prior to the trial. Moreover, the principle of adversarial proceedings was allegedly not observed at the trial before the State Security Court: Thus, the defence was unable to challenge the evidence presented by the prosecution, nor was it authorized to produce evidence in favour of the defendants or to examine witnesses,

(b) As regards the principle of the independence of the judiciary. The State Security Court allegedly does not offer sufficient guarantees of independence or, even more, of impartiality, for the following reasons:

- its members are appointed by a restricted committee presided by the Minister of Justice or his Counsellor;
- although under the Court's statutes judges have a mandate of four years, one of the judges, who is a member of the armed forces, has been serving on the bench since 1987;
- the judicial inquiry is carried out by the Public Prosecutor's Office and by the Police, and not by an independent judge.

The source alleges that the above-mentioned elements show that the State Security Court depends on the Executive and that it administers justice in a partial manner, in accordance with the Government's interests.

3. The Working Group considers that the shortcomings indicated by the source, which are related to the right to a fair trial, constitute a violation of articles 10 and 11 of the Universal Declaration of Human Rights, and of article 14 (1) and (2) of the International Covenant on Civil and Political Rights which is evidently of such gravity that it confers on the deprivation of freedom an arbitrary character.

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

The detention of Leyla Zana, Hatip Dicle, Ahmet Turk, Orhan Degan, Selim Sadak and Sedat Yurttas is declared to be arbitrary being in contravention of articles 10 and 11 of the Universal Declaration of Human Rights, and of article 14 (1) and (2) 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.

5. 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 30 November 1995.