

OPINION No. 22/2000 (TURKEY)

Communication addressed to the Government on 16 July 1999

Concerning Hüda Kaya

The State is not a Party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified by resolution 1999/50 and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. Hüda Kaya was arrested during a demonstration in October 1998, together with a group involving a total of 75 demonstrators. All had taken part in a demonstration in the city of Malatya over the banning of Muslim female students from Turkish universities who adhered to the Islamic dress code. The case has since become known as the "Malatya 75".

6. Originally, according to the source, the participants in the case, including Hüda Kaya, were charged with a variety of offences under the Turkish Penal Code; some apparently were detained without charges. At the end of June 1999, they were rearraigned and charged, under section 146 of the Turkish Penal Code, for attempting to overthrow the constitutional order of Turkey by virtue of their “hand in hand” demonstration in October 1998. It is noted that the participants in the demonstration acted peacefully throughout.
7. The source notes that in the case of Hüda Kaya, the prosecutor of the State Security Court asked for the death penalty to be imposed if the accused was found guilty.
8. The trial of Hüda Kaya and her co-accused began in Malatya on 22 June 1999. Military personnel and armed security personnel were prominently in evidence in the courtroom. The press was allowed to attend, but certain observers from human rights groups, including the Turkish human rights group Mazlumder, allegedly were refused admission. In spite of the tight security, many of the defendants were seated in the public gallery, thereby indicating that they were not in themselves perceived to be a threat to the public. During the initial stage of the proceedings, it became clear that 40 of the 75 accused (not, apparently, Hüda Kaya) had been awarded bail, whilst the other 35 were remanded in custody. The charges against five of the accused were dropped at the end of the day.
9. During the court session, the trial judge inquired whether any of the defendants had been subjected to ill-treatment whilst in police custody. Several defendants replied in the affirmative. According to the source, there was no full disclosure of all documents, photographs and other documentary evidence used by the prosecution against the defendants. Several of the charges against the accused appear to have been based on their being in possession of certain books or other reading materials. The judge allegedly questioned some of the defendants as to why they had been in possession of books on the Kurdish issue in the Kurdish language. Hüda Kaya herself was asked whether she had written a newspaper article stating that the “system” had to be changed. She replied that she had written the article while she was in custody.
10. Several of the lawyers for the defendants argued that whatever crimes their clients were charged with, they did not merit the death penalty. It was further argued that the imposition of capital punishment on any of the defendants would be contrary to the European Convention on Human Rights, to which Turkey is a party.
11. In the evening of 22 June 1999, the proceedings were adjourned to the following month.
12. In its reply to the Group, the Government observes that:
 - (a) It has been established through a security check that Ms. Hüda Kaya, one of the participants in the demonstration against the law prohibiting female students from wearing headscarves to attend secondary education institutions, held in Malatya on 9 October 1998, was in possession of a text spreading hatred and discrimination among the public. During her interrogation, she confessed that the text was written and distributed by herself at the demonstration;

(b) Ms. Kaya, together with three persons caught at the demonstration, was transferred to the authorities on 12 October 1998. While the other three persons were released by the Office of the Chief Prosecutor, Ms. Kaya was arrested and imprisoned at the Malatya prison. She was later released;

(c) It has been established through the medical reports, issued respectively on 9, 10 and 12 October 1998, that she was not subjected to ill-treatment or torture during this period;

(d) On 7 May 1999, a group of 4,500-5,000 people, following Friday prayers, demonstrated against the measures to ensure freedom of thought and religion taken by the administration of İnönü University in Malatya. Ms. Kaya was noticed in the video recordings made by the police. On that basis, she was arrested on 19 May 1999 and imprisoned at the Malatya prison. The medical report issued on the day of her arrest confirmed that she had not been subjected to ill-treatment or torture;

(e) Ms. Kaya did not lodge any complaint with the Office of the Chief Prosecutor pertaining to ill-treatment or torture;

(f) Following the demonstration at the İnönü University, and upon the indictment by the Office of the Chief Prosecutor of the State Security Court of Malatya, a lawsuit was lodged against the demonstrators on the ground of "participating in the offence of attempting to overthrow the constitutional order". The legal process against the demonstrators is in full compliance with the principles of a state of law. The fact that the prosecutor requested capital punishment in his indictment does not mean that their sentences will be in that direction. In fact, at the first court session of 22 June 1999, the charges against 5 of the accused were dropped, and at the second session on 11 August 1999, 14 of them were released. The last session was held on 9 September 1999; however some cases, including Ms. Kaya's, are still pending.

13. The Government's reply was forwarded to the source on 20 April 2000 for comments. In its comments, the source points out that what the Government calls a demonstration against "the measures to ensure freedom of thought and religion taken by the administration of İnönü University in Malatya" was in fact a demonstration to protest against the banning from the university of female students wearing Muslim headscarves.

14. The Working Group notes that according to the source there was only one demonstration - in October 1998 - on the purpose of which the source disagrees with the Government. In the Government's opinion, on the other hand, there were two demonstrations, one in October 1998 and another on 7 May 1999, to protest against the measures taken to ensure freedom of thought and religion at İnönü University. However, the Government and the source both agree that Hüda Kaya, after being released once, was rearrested on 19 May 1999 and that the charges against her and the other demonstrators had been changed to "attempting to overthrow the constitutional order" under section 146 of the Turkish Penal Code. Nor is it contested that Hüda Kaya's trial opened on 22 June 1999 and that the case is still pending. Lastly, the Government does not state anywhere in its reply that violence was used during the demonstration.

15. With regard to the death penalty referred to by the source, the Working Group recalls that, as the Government points out, it is merely a sentence requested by the prosecutor which the judges might not accept.

16. It is the view of the Working Group that the basis for Hüda Kaya's detention and the charges against her lies in fact only in her participation in the October 1998 demonstration, and possibly a demonstration on 7 May 1999, even though, in so doing, she was only exercising peacefully her right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights.

17. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Hüda Kaya is arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

18. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights, and to take initiatives with a view to becoming a State party to the International Covenant on Civil and Political Rights.

Adopted on 14 September 2000