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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (03/05/2018)

Communication from Turkey concerning the case of T.C. and H.C. v. Turkey (Application No. 34805/06)

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Communication de la Turquie concernant l'affaire T.C. et H.C. c. Turquie (requête n° 34805/06) (**anglais uniquement**)

DGI

03 MAI 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ankara, April 2018

ACTION REPORT

T.Ç and H.Ç. v. Turkey (34805/06)

Judgment of 26 July 2011, final on 26 October 2011

I. CASE DESCRIPTION

1. The case concerns a violation of the applicants' right to respect for private and family life on account of various procedural irregularities during domestic proceedings on paternal affiliation (Article 8). The case concerns also the excessive length of civil proceedings (Article 6).

2. The Court considered that the interpretation of the relevant legislation by the domestic courts concerning the paternal affiliation of the second applicant was not in conformity with the principle of legal security and that the right to respect of the applicants' private and family life was not guaranteed in the domestic proceedings because of various procedural irregularities. (violation of Article 8).

3. The Court stated that the proceedings started on 15 July 1999 and ended on 6 February 2006. The European Court held that, the excessive delay in civil proceedings, which lasted six years and seven months, does not comply with the requirement of "hearing within a reasonable time" provided in Article 6 of the Convention. (violation of Article 6/1)

II. INDIVIDUAL MEASURES

4. The Turkish authorities have taken measures to ensure that the violation in question has ceased and that applicants have been redressed for its negative consequences.

II.a. Reopening of the Proceedings

5. The applicants lodged an application with the 3rd Chamber of the Antalya Family Court (the Family Court) to request reopening of the impugned civil proceedings. Upon the request, the Family Court has reopened the proceedings and held the first hearing on 22 November 2012.

6. In the course of the reopened proceedings, the Family Court decided that DNA test shall be repeated. The DNA tests revealed that the applicant T.Ç. was the daughter of C.B with a possibility of 99.9%. On 18 February 2016, the 3rd Chamber of the Antalya Family Court annulled its previous decision dismissing the applicant's claim that she was C.B's daughter. The Court of Cassation upheld the annulment decision on 13 June 2017. A rectification request was made against the uphold decision. On 08 March 2018, The Court of Cassation rejected the rectification request as well. Thus, the annulment decision was finalized. As a result, paternity between C.B. and T.Ç. was re-established.

II.b. Just Satisfaction

7. The Government would like to recall that the European Court awarded just satisfaction to the applicants in respect of non-pecuniary damage together with cost and expenses. The amounts of just satisfaction awarded by the Court were paid in this case whereas there were short delays in the payment of just satisfaction.

8. In this case the interest amount was EUR 51,58 and the interest amount was low and however to this date; the applicants have neither objected to the delay in payment nor requested the payment of the interest amounts. The Turkish authorities therefore consider, in accordance with the Committee of Ministers' practice, that the delayed payment in this case should not prevent its closure (see, in particular, Resolution CM/ResDH(2014)298 concerning *Ormancı* group of cases against Turkey as well as Resolution CM/ResDH(2016)35 concerning *Atanasović* group of cases against "the former Yugoslav Republic of Macedonia").

9. The Government therefore considers that no further individual measures are required.

III. GENERAL MEASURES

10. The Turkish authorities have taken a number of measures aiming at preventing similar violations. These measures include, in particular, legislative amendments, enhancing the case-law of the high court, individual application and measures on the publication and dissemination of the European Court's judgment.

11. The Government would like to indicate that in line with the European Court's findings in the case at hand, it has taken a number of measures aimed at preventing similar violations.

III.a. Length of the Civil Proceedings

12. In this case, the Court held that there had been a violation of Article 6/1 of the Convention on account of the length of the civil proceedings. The Government would like to recall that the measures aimed at preventing excessive length of civil proceedings have been taken within the framework of the *Ormanci* group of cases. The Committee of Ministers decided to close this group of cases in December 2014 (see Resolution CM/ResDH (2014) 298).

13. The Government furthermore notes that the impugned facts in the cases took place before the measures have been taken within the framework of the *Ormanci* group of cases.

III.b. Right to private and family life

14. At the outset, the Turkish authorities would like to recall that the European Court substantiated its findings, as to the violation at hand, on two facts.

1. Lack of legal foreseeability on account of non-compliance by the domestic courts with the time limits envisaged in the Civil Code (Law no. 743);
2. The dismissal of applicant's objections concerning the DNA examination without sufficient reasoning.

The authorities would like to point out that the case was an isolated incident. This fact is also corroborated by that no similar application has been communicated to the authorities so far.

Furthermore, the general measures explained below are capable of preventing recurrence of a similar violation.

III.b.1 Legislative Amendments

15. On 01 January 2002, Civil Code No. 743 was repealed by Turkish Civil Code No.4271. The denial of paternity was also provided in the Law No. 4271.

16. Article 286 of Law No.743, which was in force at the time of case facts, granted the right to bring an action for the father without a time limit when there was a cogent reason. On the other hand, Law No. 4271 defines various time limits for the father to bring an action to deny the paternity, with regard to specific conditions of cases. Accordingly, unlike Law no. 743, it is not possible for the father to bring an action for the denial of paternity without a time limit under Law no. 4271.

17. Furthermore, the relevant incident was an isolated case, which stemmed from erroneous implementation of the applicable legislation. The domestic court misapplied Article 246 of the Law No. 743 and granted the right to bring an action for the parents of deceased C.B. This points out the fact that there was an isolated situation due to misapplication of the law. Indeed, this decision was annulled following the retrial.

18. Turkish authorities would also like to note that under the current legislation, the Civil Code (Law No. 4271), the parents of a deceased father cannot bring an action to deny paternal relationship established when the deceased was alive. Therefore, recurrence of a similar violation is not possible.

III.b.2 Case Law Court Of Cassation

19. The European Court held that the domestic courts failed to provide sufficient reasoning when dismissing the applicants' objections to the manner in which the DNA tests were conducted. In this context, the Turkish authorities would like to submit information on case law developments. In several cases the Court of Cassation quashed the first instance courts' judgments where the denial of paternity claims were admitted without a proper DNA test.

20. In the case which was the subject of the docket no. 2015/7771 of the 18th Civil Chamber of the Court of Cassation dated 16 February 2016, the decision was quashed. Within the scope of this case, the first instance court admitted the request of the father, who brought a case for the denial of paternity, without a proper DNA test on the grounds that he cannot be the father since he had been in jail for 5 years before the baby was born. However, the Court of Cassation did not approve the decision and quashed it since the denial of paternity claim was admitted without a proper DNA test (Annex 1).

21. In the case which was the subject of the docket no. 2015/12963 of the 18th Civil Chamber of the Court of Cassation dated 21 June 2016, the denial of paternity was requested between H.Ç.Ş. and S.Ş. The domestic court accepted the case. The defendant appealed against the decision. The Court of Cassation quashed the decision of the domestic court on the ground that the examination was conducted inadequately due to the absence of a DNA test (Annex 2).

22. In the case which was the subject of the docket no. 2015/7686 of the 18th Civil Chamber of the Court of Cassation dated 10 May 2016, the complainant requested the denial of paternity upon the determination that he was not the real father even though the complainant was married with the defendant. The domestic court accepted the request without a DNA test. However, the Court of Cassation ensured that a DNA test was done, stated that the decision should be rendered upon the results of the test and quashed the decision (Annex 3).

23. In the case which was the subject of the docket no. 2015/22688 of the 18th Civil Chamber of the Court of Cassation dated 9 February 2016, samples for a DNA test was collected during the proceedings regarding denial of paternity. However, Forensic Medicine Institute couldn't prepare a report since the complainant failed to pay the expert report fee. For this reason, the first instance court rejected the case due to the absence of evidence. However, the Court of Cassation quashed the decision and it decided that a DNA test shall be made and its costs shall be paid by the treasury on the condition that it shall be paid in due course by the party who was obliged to pay the costs, and the decision shall be rendered upon the results of the test (Annex 4).

24. In many judgments of the Criminal Chambers of the Court of Cassation, the quashing judgments were rendered on similar grounds and the file was transferred to the relevant court.

III.c. Individual Application Procedure

25. In addition to the measures above, another measure has been established to cease the violation at domestic level if any occurs.

26. The Turkish authorities would also like to indicate in that scope that, in 2012, legislative amendments were adopted to introduce a possibility of an individual application before the Constitutional Court in respect of violation of human rights. Although this is not a major response to the shortcomings identified by the European Court in this case, the Turkish authorities would like to point out that an individual in the applicant's situation can today seek the remedy of lodging an individual application to uphold his or her Convention rights, as in the present case. In this respect, the Turkish authorities would like to recall that the European Court indicated in the Hasan Uzun case (10755/13) that the individual application to the Constitutional Court should be considered an effective remedy as of 23 September 2012.

27. After 23 September 2013, applications were lodged with the Constitutional Court in respect of the right to a fair trial. The Constitutional Court delivered different judgments in accordance with the case-law of the ECtHR.

III.d. Publication and dissemination measures

28. The Turkish authorities ensured that the European Court's judgment was translated into Turkish and published on its official website which has been made available to the public and legal professionals alike (<http://hudoc.echr.coe.int>), which has Turkish interface.

29. The Turkish authorities also ensured that the European Court's judgment was disseminated to the competent bodies to ensure that similar violations are prevented. To this end, the European Court's judgment was transmitted to the court which rendered the impugned decision. In addition, the Government ensured that the translated text was disseminated to other relevant courts such as the Constitutional Court and the Supreme Administrative Court.

30. The Turkish authorities consider that those measures taken are capable of preventing similar violations and no other general measures are required.

IV. CONCLUSION

31. In light of what the Government has submitted in terms of the individual and general measures about how applicants are redressed for the negative consequences of the violation and how the probable future violations are to be prevented, the Government considers that all necessary general and individual measures which Turkey is obliged to take under Article 46 § 1 of the Convention have been properly taken. Taking those all into account, the Committee of Ministers is respectfully invited to close its examination thereof.

ANNEXES

- 1) The judgments of the Court Of Cassation