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*Contact: John Darcy*
*Tel: 03 88 41 31 56*

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

Item reference: Revised action report (27/03/2018)

Communication from Turkey concerning the case of KAHRAMAN v. Turkey (Application No. 60366/00)

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Communication de la Turquie concernant l'affaire KAHRAMAN c. Turquie (requête n° 60366/00)
***(anglais uniquement)***

**Ankara, March 2018**

# REVISED ACTION REPORT

## Kahraman v. Turkey (no.60366/00) Group of Cases

## I. CASE DESCRIPTION

1. There are 19 cases supervised under *Kahraman* group of cases

2. In these cases, the applicants, with various capacities, such as cadet, army officer, civil servant or retired personnel, were related to the Turkish Armed Forces. They lodged applications with the Supreme Military Administrative Court (SMAC) against the Ministry of Defence for the annulment of their dismissal as a result of disciplinary investigations. Their applications were dismissed by SMAC on the basis of documents submitted by the Ministry of Defence, which, under Article 52 of the Law no. 1602, were not accessible by the applicants given that they were classified". Against this background, the European Court found violations of the right to a fair trial on account of the applicants' lack of access to the classified documents (violations of Article 6 § 1).

3. In *Okur*, *Tamay And Others*, *Karaarslan*, *Okan Erdoğan*, *Miran*, *Özcan Korkmaz and Others*, and *Cihangül* the European Court also found violations of Article 6 § 1 on account of non-communication of the written opinion of the principal public prosecutor to the applicants in the course of administrative proceedings.

## II. INDIVIDUAL MEASURES

4. The Turkish Government has taken measures to ensure that the violations at issue have ceased and that the applicants are redressed for their negative consequences.

### *Reopening of Proceedings*

5. The applicants have right to request reopening of the impugned proceedings following the European Court`s judgment finding a violation..

6. In only one case, notably in *Keloğlan and Others*, one of the applicants, *Tarık Kuruldak*, requested reopening of the proceedings and the domestic court granted leave for reopening. Within the course of the reopened proceedings the domestic court communicated the classified documents, which gave rise to the violation at hand, to the applicant`s lawyer. As a result of the reopened proceedings, the domestic court quashed its previous judgment.

7. In one case, *Ünal,* the time-limit for requesting reopening of the proceedings has not prescribed yet. The applicant may request reopening of the impugned proceedings until 14/11/2018.

8. In the remaining cases, the applicants did not request for reopening of the impugned proceedings.

***Just Satisfaction***

9. The Court awarded just satisfaction in respect of non-pecuniary damage in 16 cases. In three cases, namely *Ilter*, *Ozcan Korkmaz* and *Ünal*, the applicants did not submit a claim for just satisfaction. Therefore, the Court held that there was no call to award them any sum in respect of pecuniary or non-pecuniary damages sustained. In *Ünal*, one of the applicants claimed 5,144 euros (EUR) as for costs and expenses. The Court awarded the applicant 1000 EUR in this respect. The sum awarded was paid within the deadline set by the European Court.

10. The Government ensured that the just satisfaction amounts awarded was paid the applicants as well as costs and expenses, i.e. within the deadline set by the Court. However, in the case of *Keloğlan* and *Kiziroglu*, the outstanding amounts resulting from late payment were EUR 47.32 and EUR 24.04. These are very low amounts and, 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").

11. The authorities therefore consider that these applicants were also redressed for the damage sustained by way of the just satisfaction awarded by the European Court.

12. In this sense, the Turkish authorities consider that all necessary individual measures have been taken and no other measures are required in this respect.

## III. GENERAL MEASURES

13. The Turkish authorities have taken a number of measures aiming at preventing similar violations. These measures include, in particular, legislative measures and measures on the publication and dissemination of the Court's judgment.

**III.a. Access to the Classified Documents**

14. In the judgments, examined under *Kahraman* group of cases, the European Court found that the Article 52 of the Law on Supreme Military Administrative Court (No. 1602) was the underlying reason for the violations at hand. In particular, the Court noted that the SMAC dismissed applicants` access to classified documents included in the case file by virtue of this provision. Within this scope, the Government would like to state that the following measures have been taken.

***Legislative Measures***

15. By the Constitutional amendment which was entered into force after the referendum of 16 April 2016 and published in the Official Gazette on 11 February 2017, military courts (including the Military Court of Cassation and the Supreme Military Administrative Court) were completely abolished with the "Law on Amendment of the Constitution of the Republic of Turkey" (provisional Article 21).

16. In addition, the Law No. 1602 was completely abolished by Article 203 (1-ç) of the State Emergency Decree No.694 on 25 August 2017. Accordingly, Article 52 of the Law no. 1602 is not in force anymore.

17. As the Supreme Military Administrative Court was abolished, the civil administrative courts have taken over its jurisdiction. Today competent courts, in respect of the military related administrative cases, are civil administrative courts. For this reason, in cases similar to the ones examined under *Kahraman* group of cases, the applicable legislation is today the Code of Administrative Procedures (Law no. 2577).

18. In the Code of Administrative Procedure, there is no a provision similar to Article 52 in question. Indeed, a provision - regarding that the classified documents cannot be examined by the parties or their representatives, Article 20§4 of Law no. 2577, was abolished in 1994. Therefore, the parties to the case have access to classified documents without any constraint.

***Case-law of the Council of State***

19. As a result of legislative amendments mentioned above the Council of State (the Supreme Administrative Court) replaced the Supreme Military Administrative Court. In this respect, the case-law of the Council of State has a significant importance to show legal practice concerning applicants having access to classified documents in administrative cases.

20. In a judgment dated 12/7/2008, the Joint Administrative Chambers of the Supreme Administrative Court quashed the decision of first instance on the ground that the applicants` right to have access to the whole case-file had not been respected, which ran foul with the principle of equality of arms (Application no. 2005/3292). (See Annex 1, the judgment of the Joint Administrative Chambers of the Supreme Administrative Court).

21. In another judgment dated 16/4/2015, recalling the amendments into the Law No. 2577 introduced in 1994, the Supreme Administrative Court quashed the decision of the first instance court and remitted the case on the basis of failure to secure the applicants` access to the investigation file. (see Annex 2, the judgment of the 16th Chamber of the Supreme Administrative Court dated 16 April 2015).

22. On this basis, the Turkish authorities would like to indicate that the Council of State`s case law is fully aligned with the European Court's findings.

**III.b. Communication of Observations of the Chief Public Prosecutor of the Supreme Military Administrative Court**

23. In the seven judgments under the *Kahraman* group of cases (*Okur, Tamay And Others, Karaarslan, Okan Erdoğan, Miran, Özcan Korkmaz and Others,* and *Cihangül),* the Court found violation of Article 6§1 also on account of non-communication of the observations of the Chief Public Prosecutor of the Supreme Administrative Military Court to the applicants.

24. The authorities would like to recall that the measures aimed at preventing said violation in respect of the Supreme Administrative Court have been taken within the framework of the *Dikel (8543/05)* group of cases. The Committee of Ministers decided to close this group of cases in September 2014 on the basis of legislative amendments introduced into Article 47 of the Law No. 1602 (see Resolution CM/ResDH (2014)124, 1206th meeting).

25. The European Court had found violation of Article 6 on account of failure by courts to provide the applicants with a copy of the written opinion of Public Prosecutor before the Council of State in a number of cases. This issue was examined under *Meral* (33446/02) group of cases. Pursuant to general measures taken the Committee decided the closure of *Meral* group (see Resolution CM/ResDH(2012)226).

26. On this basis, the Turkish authorities would like to note that as the future military administrative cases similar to the ones at hand will fall in the Council of State`s jurisdiction, the general measures taken under Meral are also relevant for the cases examined under *Kahraman*.

27. In this respect, recalling that the general measures taken under *Meral* were found effective by the Committee in 2012, the authorities consider that no further general measures are necessary.

**III.c. Individual Application Right before the Constitutional Court**

28. The authorities would furthermore like to highlight that a person in the applicants' situation has at his or her disposal today an effective remedy to bring the violation to an end and obtain redress before the domestic authorities. In particular, following the European Court's judgment, in 2012, the legislative measures were taken to introduce an individual application before the Constitutional Court in respect of human rights violations. An individual in the applicants' situation could therefore pursue today the avenue of lodging an individual application to uphold his or her Convention rights, including in the present case. The Constitutional Court is also able to award just satisfaction in case of finding a violation of human rights.

29. In this regard, on 26 June 2014, the Constitutional Court, upon a complaint, found a violation of right to fair trial on the grounds that the applicant's request to examine the documents submitted to the Supreme Military Administrative Court was dismissed (*Bülent Karataş*, Application no. 2013/6428, 26 June 2014). In this case the Constitutional Court followed the European Court`s case-law.

**III.d. Publication and dissemination measures**

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

31. Furthermore, the European Court's judgments have been transmitted together with an explanatory note on the European Court's findings to the domestic courts involved in this case as well as to other relevant courts such as the Constitutional Court, the Court of Cassation, the courts which rendered the impugned decisions and the relevant institutions.

32. The Government therefore considers that the above-mentioned measures are capable of preventing similar violations.

## IV. CONCLUSION

33. In light of the information submitted above the Turkish authorities consider that all necessary measures have been taken to prevent similar violations and the Committee of Ministers is respectfully invited to close the supervision of execution of *Kahraman* group of cases.