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Date: 01/02/2016

DH-DD(2016)124

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Meeting: 1250 meeting (8-10 March 2016) (DH)

Item reference: Action report (28/01/2016)

Communication from Turkey concerning the case of Özpınar against Turkey (Application No. 20999/04)

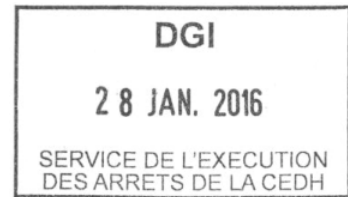
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Réunion : 1250 réunion (8-10 mars 2016) (DH)

Référence du point : Bilan d'action

Communication de la Turquie concernant l'affaire Özpınar contre Turquie (Requête n° 20999/04)
(*anglais uniquement*)



ACTION REPORT

Execution of the Judgment of the European Court of Human Rights

Özpınar v. Turkey (20999/04)

Judgment of 19 October 2010, final on 19 January 2011

I. CASE DESCRIPTION

1. The case at hand concerns dismissal of applicant from her office as a judge by a decision of the High Council of Judges and Prosecutors (HCJP) following a disciplinary investigation arising from her private life. The European Court of Human Rights ("the Court" or "ECtHR") found that there had been a violation of Article 8 and Article 13 in relation with Article 8, as the interference with the applicant's private life had not been proportionate to the legitimate aim pursued (§ 86).

II. INDIVIDUAL MEASURES

2. The Turkish authorities have taken measures to ensure that the violation at issue has ceased and that the applicant is redressed for its negative consequences.

1) Just Satisfaction

3. The Court considered that there was no need to award the applicant any sum on damages.

2) Reinstatement of office

4. Following the request made by the applicant, the punishment in the form of dismissal of the applicant from her office was repealed on 21 June 2011 by the General Assembly of the HCJP (Annex 1).

5. Additionally, with its decision on 19 October 2011, the HCJP concluded that the applicant be reinstated to her office since there has been no obstacle for her to become a judge or a prosecutor (Annex 2). In accordance with that decision, the applicant was appointed to her office on 26 November 2011.

6. The Government considers that the measures are redressed the applicant for the negative consequence of the decision and therefore no other individual measures are required.

III. GENERAL MEASURES

7. The Turkish authorities have taken a number of measures aimed at preventing similar violations. These measures included, in particular, the legislative amendments, the practice adopted by the HCJP subsequent to the ECtHR's judgment in the case of *Özpınar*, the introduction of the individual application remedy to the Constitutional Court and the publication and dissemination of the judgments of the ECtHR.

1) Legislative Amendments

8. On 7 May 2010 new provisions were introduced into the Turkish Constitution, including Article 159. Prior to the constitutional amendments introduced in 2010, the decisions of the HCJP had been excluded from the judicial review pursuant to Article 159 of the Turkish Constitution.

9. Following the aforementioned constitutional amendment, judges and public prosecutors who are dismissed from their offices, have been entitled to lodge an appeal to the Council of State against the decisions on dismissal from office.

10. With the aforementioned constitutional amendment, the number of the HCJP members increased from 5 to 22, an objection procedure to the General Assembly of the HCJP against all kind of decision has been introduced to the process, and the right for practicing judges and public prosecutors to vote candidate members has been ordained. With regard to that right, majority of members of the HCJP have been elected from judiciary and most of them among practicing judges and prosecutors.

2) Individual Application to the Constitutional Court

11. Individual application procedure has been introduced through the constitutional amendments made in 2010, and as of 23 September 2012 the Constitutional Court has started to receive individual applications. Article 148 of the Constitution stipulates that anyone who considers that his/her constitutional rights set forth in the European Convention on Human Rights ("the Convention") have been infringed by a public authority shall have the right to apply to the Constitutional Court after exhausting other existing domestic remedies.

12. As regards an incident similar to the impugned decision, the Constitutional Court concluded in the judgment no. 2013/1614¹ of 3 April 2014 concerning an individual application that the sanction imposed on the applicant, who has been dismissed from civil

¹ See: <http://www.kararlaryeni.anayasa.gov.tr/Uploads/2013-1614.doc>

service as a result of a disciplinary investigation initiated upon receiving unverified information about some of his/her pictures on the Internet, was in breach of Article 20 of the Constitution, which corresponds to the “*right to respect for private life*” guaranteed under Article 8 of the Convention. The Constitutional Court rendered its judgment finding a violation in line with the Court’s case-law in the case of *Özpınar*.

3) The HCJP Decisions Following the ECtHR’s *Özpınar* Judgment

13. Following the impugned decision, the HCJP rendered other precedent decisions. Those decisions are in compliance with the judgments of the Court within the meaning of Article 8 of the Convention.

14. Following the Court’s judgment finding a violation in the case of *Özpınar* (no. 20999/04), with regard to the investigations carried out on different dates on account of the allegation that some judges and prosecutors lost their professional dignity and influence, and their personal honor and reputation due to their faulty and improper behaviors and relationships such as having emotional relationships in their private lives with persons of same profession or other professions despite being married or single and staying together with them in various hotels and houses, the HCJP decided that there was no ground for imposing a penalty on those judges and prosecutors, or upon the objections filed by the persons concerned, the General Assembly repealed the penalties imposed (Annex 3).

4) Publication and dissemination measures

15. The Court’s judgment in the case of *Özpınar* (no. 20999/04) has been translated into Turkish and published on the official web site of the European Court of Human Rights.

16. It is available on <http://hudoc.echr.coe.int/tur?i=001-120128>, which has Turkish interface.

17. In addition, the translated text of the judgment has been circulated to the relevant institutions such as the High Council of Judges and Prosecutors, the Human Rights Inquiry Committee of the Turkish Grand National Assembly, the Constitutional Court, the Court of Cassation and the Ministry of Interior.

18. The Turkish Government considers that all necessary general measures have been taken and those measures are capable of preventing similar violations, and therefore no other general measures are required.

IV. CONCLUSION

19. In the light of the abovementioned submissions, the Turkish Government considers that it has taken all necessary general and individual measures for the execution of the judgment. For the fact that Turkey has thus fully complied with its obligations under Article 46 § 1 of the Convention, the Committee of Ministers is respectfully invited to close its examination on this case.

ANNEXES

1. Decision no. 2011/206 of the General Assembly of the High Council of Judges and Prosecutors, dated 21 June 2011
2. Decision no. 2011/291 of the General Assembly of the High Council of Judges and Prosecutors, dated 19 October 2011
3. Report on the sample decisions of the HCJP



REPORT

Summaries of the sample decisions of the HCJP issued subsequent to the Court's judgment finding a violation in the case of Özpınar

1. In an investigation initiated against the public prosecutor E.A. on the basis of a letter of advice sent under a fake name, it has been alleged that although he was married, he had a relationship with a woman and that he lost his professional dignity and influence, and his personal honor and reputation due to his faulty and improper behaviors and relationships such as staying together with the women in question in a house and various hotels without hesitating to indicate his profession. On 29 January 2013 the 2nd Chamber of the High Council of Judges and Prosecutors ruled in its decision that E.A. should be reprimanded pursuant to Article 65 § 2(a) of the Law no. 2802 on Judges and Prosecutors. On 27 May 2015 the General Assembly of the High Council of Judges and Prosecutors decided to accept the objection filed by the public prosecutor in question against the reprimand and concluded that there was no ground for imposing a penalty on the public prosecutor, and this decision became final.

2. In the decision issued on 11 March 2014 by the 2nd Chamber of the High Council of Judges and Prosecutors, it was decided with respect to the judges M.G. and F.A., in respect of whom an investigation was carried on account of the allegations that they were constantly together during work hours, lunches and dinners and outside the working hours and that they stayed together in a hotel despite the fact that they were both married, that the investigation file be discontinued pursuant to Article 87 of the Law no. 2802 on Judges and Prosecutors. The decision in question became final on 13 May 2014 in respect of M.G. and on 20 May 2014 in respect of F.A.

3. An investigation was carried out in respect of the judge S.Ö. on account of the allegation that he lost his professional dignity and influence, and his personal honor and reputation due to his faulty and improper behaviors and relationships such as having a private and emotional relationship, when he was off-duty, with a woman working in the court house where he was serving his duty and staying together with the women in question in a hotel. In this regard, on 10 May 2012 the 2nd Chamber of the High Council of Judges and Prosecutors decided that the judge S.Ö. should be punished with the change of place of duty under Article 68 § 2 (a) of the Law no. 2802 on Judges and Prosecutors. The judge S.Ö. filed an objection against that decision, relying on Article 32 of the Law no. 6572 and Provisional Article 19 of the Law no. 2802. It was decided that the penalty (imposed on 10 May 2012 by the 2nd

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Chamber of the High Council of Judges and Prosecutors and became final on 3 July 2013) in the form of change of the place of duty should be repealed and that there was no ground for imposing a penalty on the judge for his action; and this decision became final.