

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: Abel Campos
Tel: 03 88 41 26 48

Date: 18/11/2013

DH-DD(2013)1245

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1186 meeting (3-5 December 2013) (DH)

Item reference: Action report (07/11/2013)

Communication from Turkey concerning the cases of Ohran Çaçan and Sarp Kuray against Turkey
(Applications No. 26437/04 and 23280/09)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1186 réunion (3-5 décembre 2013) (DH)

Référence du point : Bilan d'action

Communication de la Turquie concernant les affaires Ohran Çaçan et Sarp Kuray contre Turquie (requêtes n° 26437/04 et 23280/09) (*anglais uniquement*).



EXECUTION

of European Court of Human Rights Judgment

in the case of Orhan ÇAÇAN/TURKEY (26437/04) dated 23 March 2010

and Sarp KURAY v. TURKEY (23280/09) dated 24 July 2012

ACTION REPORT

A. THE FACTS

1. The applicant, Orhan ÇAÇAN, alleged that the criminal proceedings conducted against him had not been fair on account that the Istanbul State Security Court had rejected his request for the re-examination of a witness who had withdrawn his statement against the applicant during the criminal case filed against the applicant. The applicant had been charged with membership of the terrorist organization, the PKK.

2. The applicant, Sarp Kuray, was a former naval officer and had been one of the youth leaders of the 1968 young generation in Turkey. The criminal proceedings were brought against him following the military coup of 12 March 1971. In 1980, he created a secret organisation – “The Partisan Way”. Then he fled from Turkey before the 12 September 1980 coup. In 1987 he and his friends created the “16 June Movement”, an illegal Marxist-Leninist organisation.

3. On 22 October 1993, he returned to Turkey and was arrested and taken into custody at the airport on arrival. On 25 March 2008, the Istanbul Assize Court sentenced Mr. Kuray to life imprisonment for attempting to overthrow the constitutional order by force, a sentence upheld on 22 October 2008 by the Court of Cassation. Relying on Article 6 (right to a fair trial within a reasonable time). He alleged that his case had not been examined within a reasonable time and that he had not been given a fair trial.

B. CONTENT OF THE JUDGMENT

4. In the Çaçan case, the European Court of Human Rights (the Court) concluded that the applicant's right to examine the witnesses against him was in violation of Article 6/ 1 and 6/3

–d of the Convention. In its judgment, the Court held that the applicant was to be paid 1800 Euros (EUR) in respect of non-pecuniary damage and EUR 150 in respect of costs and expenses.

5. In the Kuray case, the Court held that there had been a violation of Article 6/1 of the Convention on account of the length of the criminal proceedings and a violation of Article 6/1-3 (right to obtain attendance and examination of witnesses) of the Convention because of an unfair trial. The Court also held that Turkey pay the applicant EUR 10.000 in respect of non-pecuniary damage.

C. INDIVIDUAL MEASURES

Just Satisfaction

6. The just satisfaction awarded by the ECtHR in Çaçan Case has been paid and the relevant documents indicating the payment have been submitted to the Department of Execution of Judgments on 30 June 2011.

7. The just satisfaction awarded by the Court in Kuray judgment was paid to the applicant. The relevant documents indicating the payment have been submitted to the Department of Execution of Judgments.

Reopening of the Proceedings

8. The applicant, Orhan Çaçan, applied to the İstanbul 11th Assize Court (the Assize Court) with a request of retrial on 03 May 2013 in accordance with Article 311/1 (f) of the Code of Criminal Procedure (CCP). The Assize Court rejected the applicant's request to reopen the criminal proceedings pursuant to the Article 318, 319 of CCP in its decision of 17 May 2013. However, the İstanbul 12th Assize Court quashed the said decision on 20 June 2013 after examining the applicant's appeal. The criminal proceedings have been reopened and are still pending to date.

9. The applicant, Sarp Kuray, applied to the İstanbul 9th Assize Court (the Assize Court) with the request of retrial on 12 November 2012 in accordance with Article 311/1 (f) of the Code of Criminal Procedure. Pursuant to this request, the Assize Court reopened the criminal proceedings and held the first hearing on 19 November 2012. The criminal proceedings are still continuing.

D. GENERAL MEASURES

1- Translation and Publication of the Judgment

10. The judgments in question have been translated into Turkish and published on the official web site of the Human Rights Department of the Ministry of Justice.

11. They are available on <http://www.inhak.adalet.gov.tr/ara/karar/orhancacan2010.pdf>, http://www.inhak.adalet.gov.tr/ara/karar/sarp_kuray.pdf

12. In addition, the translated texts of the judgments have been circulated to the relevant courts and authorities.

2- Legislative Arrangements

13. The right to produce witnesses was granted to the accused in Article 232 of the then existing Code of Criminal Procedure Law (CCP), however, the right to examine the witnesses was only granted to the party who produced the witness and to the relevant court.

14. The right of the parties to examine or to question the witnesses of the counter party (cross-examination), was not explicitly set out in the then existing law.

15. The new Code of Criminal Procedure (the new CCP) entered into force on 1 June 2005, a date that comes after the trial of the applicants, which is the subject of these applications.

16. The right to "*examine witnesses against the accused*", guaranteed by Article 6 § 3 (d) of the Convention, is regulated in Article 201/1 of the new CCP.

"POSING DIRECT QUESTIONS

Article 201-(1) The public prosecutor, defence counsel or the lawyer who participates at the hearing as a representative may ask direct questions to the accused, to the intervening party, to the witnesses, to experts, and to other summoned individuals, adhering to the rules of discipline at the main hearing. The accused and the intervening party may also direct questions with the help of the chief justice or judge. If there is an objection against the

directed questions, then the president of the court renders a decision on whether the question may be asked or not. Related persons may reiterate the questions, if necessary."

17. The right to "produce witness for the defence" is set out in Article 177/1 of the new CCP.

"REQUEST BY THE SUSPECT IN ORDER TO COLLECT DEFENSE EVIDENCE

Article 177 – (1) In cases where the accused requests to summon the witness or expert to appear in the main trial, or requests defence evidence to be collected; he shall submit his written application thereof with the president of the court, or the trial judge, indicating the events they are related to, at least five days prior to the day of the main hearing."

18. Within this framework, the rights of the accused set out in Article 6 § 1 (d) of the Convention are guaranteed by a more clear provision as set forth in the new CCP.

19. Consequently, similar violations are prevented from occurring as a result of the amended legislation.

3- Training and the Activities Raising Awareness

20. The new and clearer arrangements relating to the right to produce witnesses for the defence and the right to examine the witness for prosecution were the subject of vocational training seminars on the new Code of Criminal Procedure which entered into force in 2005, and in the training of the judge-prosecutor candidates within the framework of their related syllabus.

21. It has been more than 8 years since the entry into force of the codes in question. The regulations brought with the new legislation have settled into place.

4- Execution of the Judgment

22. Turkey has taken all necessary individual measures for the execution of the two judgments. In light of the submissions made above, the Government maintains that Turkey has taken the necessary general measures and that no additional individual measures are needed for the execution of the Çaçan Group Cases. The Government therefore respectfully invites the Committee of Ministers to close the examination of these cases.