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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Meeting: 1419th meeting (December 2021) (DH)

Communication from an NGO (Diyarbakir Bar Association) (18/10/2021) in the case of Selahattin Demirtas v. Turkey (no. 2) (Application No. 14305/17) and reply from the authorities (21/10/2021)

Information made available under Rules 9.2 and 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419e réunion (décembre 2021) (DH)

Communication d'une ONG (Diyarbakir Bar Association) (1810/2021) relative à l'affaire Selahattin Demirtas c. Turquie (n° 2) (requête n° 14305/17) et réponse des autorités 21/10/2021) ***[anglais uniquement].***

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

THE COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

It was decided by the Diyarbakır Bar Association to notify 9.2 regarding the execution process of the decision of Selahattin DEMİRTAŞ/Turkey (No. 2) (Application no. 14305/17).

I am attaching the relevant documents.

Yours truly,

Diyarbakir Bar Association

Av. Nahit EREN

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Rule of Law Department of Execution of ECHR Decisions
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18.10.2021

The Diyarbakır Bar Association Committee of Ministers Bylaws are additional observations on the implementation of the Grand Chamber judgment of 22 December 2020, Selahattin Demirtaş v. Turkey (No. 2) (Application no. 14305/17) pursuant to Rule 9.2.

SUMMARY

In the decision of the European Court of Human Rights dated 22 December 2020 in Selahattin Demirtaş v. Turkey (No.2), European Convention on Human Rights article 10 (freedom of thought and expression), article 5/1 and article 5/3 (right to freedom and security), article 18 It concluded that there had been a violation of article 5 (limiting restrictions on rights) and article 3 of the Additional Protocol (right to free elections).

The court decided that Demirtaş's detention "followed the implicit aim of suppressing pluralism and limiting the freedom of political discussion, which is at the core of the concept of a democratic society", and that the Turkish Government "to take all necessary measures for the immediate release of Demirtaş" by taking individual measures.

Within the scope of the decision, continuing the detention of Selahattin Demirtaş will continue the violations and Turkey's Article 46/1 of the Convention. stated that it would violate its obligation to comply with the Court's decision pursuant to Article (Paragraph 442).

The Government of Turkey had not implemented the individual measures in the ECHR decision until the date of this notification. Selahattin Demirtaş, former deputy and former Co-Chair of the opposition Peoples' Democratic Party (HDP), is still being held in Edirne F Type Prison.

This notification of the Diyarbakır Bar Association includes information regarding the legal developments regarding both this trial and the ongoing lawsuits on the same charges, including the new indictment dated 30 December 2020 against Demirtaş, following the ECHR Grand Chamber decision dated 22 December 2020.

The Ankara 19th and 22nd Heavy Penal Courts ignored the ECHR decision and decided to continue the detention of Demirtaş. In this regard, the Ankara 22nd High Criminal Court accepted the 3,500-page indictment issued by the Ankara Chief Public Prosecutor's Office on 30 December 2020 against Demirtaş and 107 other defendants. The Ankara 19th High Criminal Court decided to merge the lawsuit filed at the 22nd High Criminal Court on the grounds that there was a legal and factual connection.

In the indictment, it was stated that HDP Co-Chairs and VQA members were responsible for the protests that resulted in the deaths of 37 people in 32 provinces as a result of the events that took place between 6-8 October 2014. He was accused of 30 different crimes, and it was claimed that Demirtaş committed these crimes by sharing his and his party's political views on social media and in his public speeches.

The Diyarbakır Bar Association observes that the Ankara Chief Public Prosecutor's Office's new indictment, which formed the basis for Demirtaş's continued detention, is based on the same facts and data that the Grand Chamber saw as insufficient grounds for Demirtaş's detention. In the Grand Chamber decision, it was stated that "the applicant was detained [on 20 September 2019] due to a new legal characterization of the 'acts and events' concerning the period of 6-8 October 2014, and that these actions and events were also stated in the application and on 2 September 2019. found that the deprivation of liberty which ended constituted part of its basis". (Paragraph 441) Therefore, the Court determined a continuity between Demirtaş's detention, which started from 4 November 2016 and lasted until 2

September 2019, and his detention starting on 20 September 2019, which is still ongoing, and the decision of 20 September was "returned to detention". defined as "return to pre-trial detention".

The new indictment is based on the same social media posts that were cited as evidence in the ongoing trial at the Ankara 19th High Criminal Court as evidence against Demirtaş. However, it was determined by the Grand Chamber that this evidence could not be interpreted as a call for violence. (Paragraph 327).

Diyarbakır Bar Association states that the decision of the Grand Chamber fully covers Demirtaş's ongoing detention and that his rights continue to be violated.

LOGIN

1) Diyarbakır Bar Association presents its observations and recommendations within the scope of Rule 9(2) of the "Statute of the Committee of Ministers on the supervision of the execution of decisions and friendly settlement conditions" regarding the legislative and judicial situation in Turkey for the implementation of the Demirtaş v. Turkey decision, which was supervised by the Committee of Ministers.

2) Bar Associations in Turkey were established within the scope of the Law No. 1136 on Attorneyship and are a professional organization in the nature of a public institution, whose members are all lawyers. In addition to the duties imposed on them by the law as a professional organization, they are the institutional organization of lawyers as a part of the judicial system and contribute to the development of law. Bar associations, in Article 76 of the Law on Advocacy No. 1136, "to develop the profession of attorney, to ensure honesty and trust in the relations of the members of the profession with each other and with the business owners, to defend and protect the professional order, morality, dignity, rule of law, human rights, and to meet the common needs of lawyers. It is defined as a professional organization in the nature of a public institution that carries out all the works for the purpose, has a legal personality and continues its activities according to democratic principles. Article 95 of the same Law states that the Board of Directors of the Bar Association is responsible for 'defending and protecting the rule of law and human rights and making these concepts work'.

3) Diyarbakir Bar Association is a bar that continues its monitoring and reporting activities in the field with the centers it has established for legal support due to the fact that it is in a region where violations of rights are very intense. Diyarbakir Bar Association was established in 1927. The number of lawyers registered with the Bar Association is 2100, and it is in the 12th rank in terms of the number of lawyers registered in Turkey. The applicant, Selahattin DEMİRTAŞ, is a lawyer registered with the Diyarbakır Bar Association under registration number 905.

4) Diyarbakir Bar Association conducts research on legal problems and rights violations faced by individuals and groups of individuals due to national or international authorities, aims to develop "human rights and freedoms", uses all national and international legal remedies in the most effective way, It is an independent non-governmental non-governmental organization that fights against human rights violations, documents and reports violations of rights, and advocates in national and international mechanisms.

5) notification of Diyarbakır Bar Association; It focuses on the individual measures that Turkey should take to implement the ECHR Grand Chamber's Selahattin Demirtaş v. Turkey (No. 2) decision, in particular ensuring the immediate release of Selahattin Demirtaş and general measures to resolve structural problems for politicians whose trial continues on the same charges. . In this context, it explains why the ECHR decision covers all of Demirtaş's current detention in Edirne F Type Prison.

6) Section I of the Communication underlines the main findings of the Grand Chamber judgment of 22 December 2020 on the application of individual measures. II. This chapter deals with the government's response to the Grand Chamber decision. III. This section draws the attention of the Committee of Ministers to Turkey's violation of its obligations by refusing to release Selahattin Demirtaş immediately despite the clear judgment of the Grand Chamber decision. It provides an analysis of the 30 December 2020 indictment issued by the Attorney General's Office. IV. This section examines the structural problem of Turkey's abuse of criminal justice in order to secure the detention of certain individuals in

the light of the ECHR's assessments. Section V includes the recommendations of the Diyarbakır Bar Association to the Committee of Ministers on the process of overseeing the execution of the ECHR's Demirtaş judgment.

III. Failure to Implement Immediate Individual Measures: Selahattin Demirtaş's Continuing Detention

7) Diyarbakir Bar Association has stated that the reactions given to the ECHR decision by Turkey's top public officials and the arguments that the ECHR judgments are not binding or that the ECHR judgment is not valid for Demirtaş's current detention are an unlawful act on the judicial authorities conducting the proceedings against Demirtaş. They report that it has created and continues to exert pressure or influence.

- **Ankara 22nd High Criminal Court trial no. 2021/6**

8) On December 30, 2020, the Ankara Chief Public Prosecutor's Office issued a new indictment against Demirtaş, who was accused of being involved in the events of 6-8 October 2014, and 107 people, including former HDP deputies, and the trial continues in front of the Ankara 22nd High Criminal Court on the basis of 2021/6. is doing. In the ongoing judicial process by the Ankara 22nd High Criminal Court, Demirtaş's detention continues, contrary to the binding court decision, by not complying with the ECHR's decision regarding immediate release.

9) Diyarbakır Bar Association is a re-characterization of the same facts and events dealt with by the Grand Chamber in the Selahattin Demirtaş v. Turkey (No. 2) decision of the Ankara 22nd High Criminal Court's case numbered 2021/6, which constitutes the basis for Demirtaş's ongoing detention. observes that. Therefore, the violation of Demirtaş's rights continues, as determined by the Court, with his continued detention.

- **Charges:**

10. The indictment of the Ankara Chief Public Prosecutor's Office, dated 30 December 2020, allegedly related to the events of 6-8 October 2014, was accepted by the Ankara 22nd High Criminal Court on 7 January 2021. The trial continues under the principle numbered 2021/6. In the indictment, Demirtaş is charged with 30 different crimes, some of which are listed below:

• Disrupting the unity and territorial integrity of the state (Article 302 of the Turkish Penal Code);
• Willful killing (37 times) (Article 82 of the Turkish Penal Code);
• Attempted murder (31 times) (Article 82 of the Turkish Penal Code, Article 35/1);
• Skilled looting (24 times) (Article 149 of the Turkish Penal Code);
• Damage to property (1750 times) (Article 151/1 of the Turkish Penal Code); and
• The crime of damaging the property is committed against the goods belonging to public institutions and organizations, allocated for public service or reserved for public use (1060 times) (Turkish Penal Code article 152/1/a)

11. The indictment is based on the unlawful basis that Demirtaş committed all these alleged crimes by sharing his and his party's political views on social media and in his public speeches. The Grand Chamber found that the speeches in question were protected within the scope of freedom of expression. Demirtaş was accused of being responsible for all crimes alleged to have been committed during these protests, claiming that he organized the protests that took place in 32 different cities across Turkey between 6-8 October 2014 through an extremely long and comprehensive indictment. Based on this, the prosecutor's office accused Demirtaş of all crimes allegedly committed during the events of 6-8 October 2014, stating that Demirtaş was a prominent member of the PKK (Kurdistan Workers' Party)/KCK (Kurdistan Communities Union) and that he was committed by the organization. argues that he should be held responsible for any crime.

- **Evaluation of the indictment in the light of the findings of the Grand Chamber about the same events and facts in the context of criminal law principles:**

The indictment is based on the same vague allegations and facts that the Grand Chamber found insufficient to justify Demirtaş's detention in its decision. The indictment does not contain any concrete evidence of Demirtaş's ties to any illegal act and does not provide a reasonable justification for

Demirtaş's continued detention. It also clearly contradicts the clear determinations of the Grand Chamber and Turkey's obligation to fulfill the judgments of the ECHR.

12. As the ECHR stated in its decision, the indictment accusing an important politician of such serious crimes is based on extremely "weak evidence". First, the real basis for the prosecution's accusations is Demirtaş's public speeches as a political leader and a series of social media messages he shared on Twitter on behalf of the HDP Central Executive Board. Despite the fact that the basis of the indictment was the Grand Chamber's determination that the arrest and trial of Demirtaş based on his political statements constituted a violation of his rights protected by the Convention, the same charges were made.

13. The Grand Chamber held that the charges of illegal organization crimes against Demirtaş, as interpreted and applied in this case, were not "foreseeable", that "this assessment can equally be applied to the charges relating to the applicant's speeches" and that "the co-chairman of the second largest opposition party, the applicant's statements did not constitute the reasonable suspicion that should be the basis for his arrest" (paragraph 337). Despite these clear determinations, the judicial authorities, ignoring the conclusions reached by the Grand Chamber, and citing the events of 6-8 October 2014 in which Demirtaş acted as a member/director of an illegal organization through certain political speeches, pursuant to Article 302 of the Turkish Penal Code. once again with the new indictment.

14. The court found that Demirtaş was detained [on 20 September 2019] due to a new legal characterization of the "acts and events" concerning the period of 6-8 October 2014, and that these actions and events were also alleged in the application and on 2 September 2019. found that deprivation of liberty which ended constituted part of its foundations" (paragraph 441). According to the court, Selahattin Demirtaş's return to detention on 20 September 2019 was not based on a new or different investigation launched to investigate allegations of crimes other than those previously examined before the Grand Chamber.

15. The facts and evidence included in the indictment, some of which are analyzed below, confirm the findings of the Grand Chamber that the indictment covers the same events:

a. Three social media messages, which were shared on the HDP's official Twitter account @Hdpgeneralmerkezi on 6 October 2014, calling for solidarity with the people of Kobane against the ISIS siege and urging the public to protest, were examined by the local courts in the Grand Chamber judgment as they were the basis for the applicant's initial arrest. The Grand Chamber decided that these calls could not be interpreted as calls for violence (paragraph 327). In the new indictment, these social media posts were once again based on the findings of the Grand Chamber and the accusations against Demirtaş regarding the posts.

b. The indictment also includes some political statements in which Demirtaş expressed his views on the events of 6-8 October 2014 as evidence of the alleged crimes. Among these statements, the Grand Chamber determined that Demirtaş's speeches on 13 October 2014 were protected within the scope of freedom of political expression.

c. The indictment also presented Demirtaş's political statements that were not related to the events between 6-8 October 2014 as evidence of the criminal charge. These speeches made between 2012 - 2013 and 2015 - 2019 contain statements criticizing the government's policies regarding the Kurdish issue. In its decision, the Grand Chamber examined Demirtaş's similar statements on the Kurdish question, self-government and autonomy (paragraphs 45-47 and 50). The Court finds that these statements "do not have the character of spreading the doctrine of terror, praising the perpetrator of the attack, humiliating the victims of the attack, calling for financing of a terrorist organization, or any similar activity" and that these speeches "are not intended to be an impartial observer of the applicant, unless other grounds and evidence justifying Demirtaş's detention are put forward." that the reason for his arrest might not have convinced him that he might have committed certain crimes" (paragraph 328).

16. The indictment remains silent as to whether Demirtaş's speeches fall within the scope of his parliamentary immunity. On this important issue, the Grand Chamber stressed that the national authorities had a procedural obligation to carry out a judicial review "whether the statements that were

the subject of the applicant's accusation and detention fell within the scope of his parliamentary immunity under Article 83 of the Constitution" (paragraph 261).

17. As stated in the 43. Grand Chamber decision, Demirtaş reached a resolution in the Assembly on October 9, 2014 (paragraph 26) and July 28, 2015 (paragraph 36) regarding the events of October 6-8, 2014, on October 11, 2011 (paragraph 28). process and Abdullah ÖCALAN, on 22 December 2015 (paragraph 46) and 12 January 2016 (paragraph 50), on self-management, autonomy and resistance, on 9 February 2016 (paragraph 51), 23 February 2016 (paragraph 52) and 4 October 2016 He made similar statements in (paragraph 54) on the Kurdish question and resistance. Considering that the charges against Demirtaş in the second indictment were based on statements similar to those expressed in the Parliament, the Diyarbakır Bar Association states that the judicial authorities have an obligation to make an assessment as to whether the statements are protected within the scope of parliamentary immunity (see paragraph 263).

18. In its decision Selahattin Demirtaş v. Turkey (No. 2), the ECHR examined the facts forming the basis of the indictment and Demirtaş's continued detention. Although the alleged acts are characterized differently, the "acts and events" of 6-8 October 2014, as confirmed by the Court, form part of the basis of Demirtaş's detention, which ended on 2 September 2019 and was found to be in violation of the Convention. In the light of the above explanations, Diyarbakır Bar Association considers that, in line with the conclusions reached by the Grand Chamber, the Turkish authorities have "launched a new criminal investigation by legally re-characterizing data previously deemed insufficient to justify detention" in order to nullify Demirtaş's right to freedom. Demirtaş's continued detention is a continuation of the violations found by the Grand Chamber (paragraph 440).

19. The interim decision of the Ankara 22nd High Criminal Court argued that the continuation of Demirtaş's detention was justified, claiming that the ECHR decision could not be applied to the current detention. According to the High Criminal Court, in paragraph 63 of the ECHR decision, it referred to the large number of criminal proceedings brought against Demirtaş by different judicial authorities and stated that the application before it was related to the investigation prepared by the Diyarbakır Chief Public Prosecutor's Office against Selahattin Demirtaş. Based on this, the local court alleges that the ECHR decision relates to Demirtaş's "first detention", which started on 4 November 2016 and continued until 2 September 2019. In this way, the Ankara 22nd Heavy Penal Court argued that the ECHR decision could not be applied to the applicant's "second detention", which started on 20 September 2019 and continued, with reference only to paragraph 63 of the ECHR's decision - without mentioning its evaluations in the next paragraphs of the judgment.

20. The Government also reflects the reasoning of the Ankara 22nd High Criminal Court in its notification to the Committee of Ministers regarding the execution of the Selahattin Demirtaş v. Turkey (No. 2) decision. After summarizing the findings of the Heavy Penal Court, the Government alleges that there were two separate arrest warrants against Demirtaş, and that the scope of the execution process of the Selahattin Demirtaş v. Turkey (No. 2) decision was limited to between 4 November 2016 and 7 December 2018.

21. The decision of the Ankara 22nd High Criminal Court and the Government's notification, the ECHR stated that Demirtaş's arrest on 20 September 2019 is not a separate arrest, but actually the same "return to detention" and that "the criminal investigation of the Ankara Chief Public Prosecutor's Office is currently in detention." It ignores the findings that the case pending before the Ankara 19th High Criminal Court is based on some of the evidence forming the basis of the case against the applicant. However, the ECHR considered that Demirtaş's detention was based on the same facts and should be understood as a whole, not as two separate and independent detentions, despite the 18-day period between them. In this context, the ECHR did not consider the decision regarding the re-arrest of Demirtaş on September 2, 2019, 18 days after his release, as a new detention, because the reasons for his detention, which were found insufficient by the ECHR, are the same as the case in which Demirtaş was previously arrested and is still on trial. For this reason, the ECHR has used the term "return to detention", emphasizing the continuity between the two periods of detention. The Diyarbakır Bar Association considers that the ECHR is clear on the term "return to detention" and that Demirtaş's

continued detention leaves no doubt as to the continuing nature of the violation of Article 5 of the Convention.

22. During the ongoing judicial process by the Ankara 22nd High Criminal Court, the defenses of some of the defendants were taken, and with interim decisions taken as a result of both the detention review and the hearings, decisions were made to extend Demirtaş's detention.

23. Failure to implement the ECHR decision in terms of individual measures in this way continues the violation of Demirtaş's rights, as well as the government's violation of Article 46/1 of the Convention. violation of the obligation to comply with the Court's decision pursuant to Article 442 (paragraph 442).

V. Demirtaş judgment of the ECHR as a Reflection of the Structural Problem of Abuse of Criminal Procedure in Turkey

24. In its decision, the Grand Chamber ordered the immediate release of Selahattin Demirtaş. In addition, as can be understood from the reasons given in the decision, the Court expressed the structural problem of abuse of criminal justice in Turkey, namely, politically motivated trials and unlawful arrests. Selahattin Demirtaş's case is not singular, and many HDP politicians are subjected to arbitrary judicial processes. It reflects a structural problem and practice that has arisen in the many other cases that have reached the Court and the Committee.

25. Having regard to this recurring problem of detention in Turkey for political purposes, the Grand Chamber, in the case of Selahattin Demirtaş v. Turkey (no. 2), despite the government's counter-arguments: "The Court therefore decided that in the present case the action concerning the applicant's period of 6-8 October 2014" and the events were "arrested due to a new legal characterization, and these actions and events also formed part of the grounds for the deprivation of liberty alleged in the application, which ended on 2 September 2019". Especially with Article 518. In the light of the findings reached regarding the violation of Articles, the Court emphasizes that the [decision-oriented] enforcement measures to be applied to the applicant's situation by the respondent State under the supervision of the Committee of Ministers must be in accordance with the conclusions reached and the substance of this decision." (Paragraph 441)

26. The Grand Chamber examined the application of Article 314 of the Turkish Penal Code in Demirtaş's case. The Court held that "the judicial authorities, the public prosecutors who conducted the criminal investigation and accused the applicant of a crime, the peace judgeships that decided on the first and/or on-going detention, the judges of the high criminal courts that decided on the continuation of the detention, and finally the judges of the Constitutional Court, It concluded that they adopted a broad interpretation with regard to the offenses set forth in Articles 314/1 and 314/2". statement was sufficient to accept that an active link had been established between the applicant and the armed organisation." (Paragraph 278)

27. In reaching this conclusion, the Court referred to the opinion of the Venice Commission on Articles 216, 299, 301 and 314 of the Criminal Code of Turkey and the observations of the Human Rights Commissioner on the same issue. The Court itself has found in some previous judgments that some provisions in Turkey's anti-terrorism legislation do not meet the Convention's standard of legality.

28. Anti-terror legislation no. 3713 does not comply with the principle of legality. These provisions are interpreted to penalize individuals for exercising rights protected under the contract. Turkey's judicial authorities still expose individuals to criminal proceedings for allegedly creating danger through their statements. The indictment claims that all defendants are directly responsible for each act allegedly committed by other persons during the events of 6-8 October 2014. The prosecution claims that all 108 defendants were members/directors of the illegal organisation. As a result of such an unpredictable and unreasonable interpretation of the Turkish Penal Code, Demirtaş is on trial for being a member/director of an illegal organization and other charges based on his tweets, statements and interviews.

29. Diyarbakir Bar Association and the ECHR, in the event that the individual measures directed by the decision to immediately release Demirtaş are not implemented, the Government's decision regarding

Demirtaş's case, 5/1 and 5/3, 10, 18 (together with Article 5) and It concludes that it is responsible for continuing violations of Article 3 of Protocol No. 1.

VI. Recommendations to the Committee of Ministers on Individual Measures

The Diyarbakır Bar Association makes the following calls to the Committee of Ministers on procedural matters:

i. The decision of Selahattin Demirtaş v. Turkey (No. 2) should be classified for follow-up under the qualified review procedure and should be accepted as the lead case under the heading of violations of Articles 5 and 18 of the Convention, specific to the detention of parliamentarians for political purposes.

Diyarbakır Bar Association makes the following calls to the Committee of Ministers regarding individual measures:

ii. In accordance with the ECHR's decision, a call should be made for the immediate release of Selahattin Demirtaş and it should be stated that Demirtaş's continued detention continues the violation of his rights, which the Court has found to be violated, as the Grand Chamber has found.
iii. It should be emphasized that the Grand Chamber decision also covers the continued detention of Selahattin Demirtaş. It should be emphasized that the decision will also cover future charges or detentions that may be brought forward, whose factual or legal basis is substantially similar, as mentioned by the ECHR.
iv. Considering the Grand Chamber's determination that the constitutional amendment that paved the way for Demirtaş's arrest did not meet the standard of legality of the Convention and that all proceedings initiated following the amendment should be deemed unlawful, a call was made to stop and drop all criminal proceedings against Demirtaş after his immunity was lifted with the constitutional amendment. must be found.
v. From the Turkish government, it is stated that the ECHR's exercise of Demirtaş's freedom of expression was unlawfully used as evidence of a crime against him and that Article 5/1 of the Convention was used. It should be requested that preventive legal measures be taken to prevent arbitrary judicial processes, including the dropping of all charges that had the implicit aim of suppressing pluralism and limiting the freedom of political discussion in Demirtaş's investigation and detention, in accordance with the findings of a violation of Article 18 along with Article 18.
vi. In this context, it should be emphasized that the 'restitutio ad integrum', which is a necessity for the execution of the ECHR decision, requires the end of the judicial threat that manifests itself in the form of arrest and trial against Demirtaş due to his political activities and statements.
vii. It should be noted that the Turkish government should take preventive measures in order to fulfill the requirements of the ECHR's decision and to carry out a fair trial and to prevent arbitrary judicial processes.
viii. Selahattin Demirtaş's continued detention violates Article 46 of the Convention regarding the binding nature of the ECHR's final decisions, and that this violates Article 46/4 of the Convention against Turkey. It should be noted that the article is applicable.

Permanent Representation of Turkey to the Council of Europe

Strasbourg, 21 October 2021

2021/33766324/33412704
Demirtaş (14305/17) v. Turkey

Ms Ovey,

I enclose herewith the Turkish Government's Submission in response to the Rule 9.2 Communication of the Diyarbakır Bar Association concerning the execution of the above-mentioned judgment.

Please accept, Ms Ovey, the assurances of my high consideration.

Çağla Pınar TANSU SEÇKİN
Co-Agent of the Government of the Republic of Turkey
before the ECtHR
Deputy to the Permanent Representative

Enc.: As stated

Ms Clare OVEY
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October, 2021

THE TURKISH GOVERNMENT'S SUBMISSION IN RESPONSE TO THE RULE 9.2 COMMUNICATION OF THE DIYARBAKIR BAR ASSOCIATION

***Demirtaş v. Turkey* (no. 14305/17)**

1. The Turkish authorities would like to make the following explanations in response to the submission of the Diyarbakır Bar Association dated 18 October 2021 with respect to the case of *Demirtaş v. Turkey* (no. 14305/17).

2. The Turkish authorities have summarised and submitted detailed and updated information as to the legal grounds for the applicant's current detention in the Communications to the Committee of Ministers ("CM") dated 1 February 2021, 16 February 2021, 17 February 2021, 29 March 2021, 2 July 2021, 29 July 2021, in the action plan dated 1 October 2021. The Turkish authorities reiterate these explanations in this regard and submit following additional information:

3. First of all, the Government would like recall that rule 9§2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements provides that the Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention.

4. Under the terms of Rule 9§2, the Diyarbakır Bar Association is neither a non-governmental organisation nor a national institution for the promotion and protection of human rights.

5. On the other hand, within the context of workshops under Drafting Group on Enhancing the National Implementation of The System of The European Convention On Human Rights (DH-SYSC-V), the issue whether the Bar Associations should also be included in the rule 9§2 has already been discussed in several times. However, there has been no a conclusion so far in this respect. In addition, the Committee of Ministers has not amended the rule 9 either.

6. Accordingly, the submission provided by the Diyarbakır Bar Association cannot be considered by the Committee of Ministers. Therefore, this submission should not be published and distributed to the delegates.

7. Without prejudice to the above stated position, the Turkish authorities would like to reiterate the following points for the sole purpose of cooperation with the Committee of Ministers in fulfilling their supervision duties. The submission provided here-in-below however cannot construed as a precedent for future communications of same and similar nature.

8. As mentioned in previous communications, the applicant's current conviction does not fall within the scope of the ECtHR judgment (see the communication dated 1 February 2021, paragraphs 28-77). Additionally, as of 3 May 2021, the applicant has a status of convict within the scope of the judgment of the Istanbul 26th Assize Court and in practice, does not have a status of detainee.

9. The ECtHR has never examined the judgment in question on points of law, notably the Istanbul Assize Court's 7 September 2018 dated judgment which has been defined as second set of proceedings. In the grand chamber's judgment this case was shortly referred to (§290-297) in so far as to determine the time spent in prison as a convict in the sense of Article 5§1(a) of the Convention. Accordingly, the authorities would like to underline that this case itself is not a subject matter of the ongoing supervision process. The Court has not delivered a judgment regarding this case.

10. Accordingly, the applicant is currently a convicted and not being kept in prison as a detainee. Therefore, even the decision of detention rendered within the scope of the proceedings before Ankara 22nd Assize Court is still valid, in practice, only the decision of conviction is applied for the applicant. Besides, the period which spent by the applicant in the prison as a convict on account of the judgment of the Istanbul 26th Assize Court has not been taken into account by the Court (See § 297 of the Judgment). The same fact is valid as of 3 May 2021 as well. That is why the applicant is no longer a detainee but a convict since 3 May 2021. In accordance with this judgment, Head Public Prosecutor's Office of Edirne, the province in which the applicant is being kept as convict, prepared a committal order (*müddetname*) on 6 May 2021. As can be seen in the said committal order, the applicant may be released on conditional date of release (*şartlı tahliye*) on 3 November 2021 and may be released on 3 January 2023 as foreseen date of release (*bihakkın tahliye*).

11. Lastly, the Government would like to reiterate on this issue that the applicant's detention within the scope of the proceeding which constituted the subject-matter of the violation judgment of the Grand Chamber ended 2 September 2019.

12. Even though the applicant is held in prison as a convict, his detention pending trial is still in force. The authorities would like to note that the applicant's current detention starting from 20 September 2019 subject to several applications pending before the Constitutional Court and the European Court. Accordingly, there is no a final decision with respect to the applicant's detention pending trial.

CONCLUSION

13. The Turkish authorities kindly invite the Committee of Ministers to take into consideration the above-mentioned explanations within the scope of the execution of the *Demirtaş* case.