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SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES



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Date: 08/10/2024

DH-DD(2024)1124

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Meeting: 1514th meeting (December 2024) (DH)

Communication from the applicant (03/10/2024) concerning the case of Fellner v. Turkey (Application No. 13312/08).

Information made available under Rule 9.1 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 : 1514^e réunion (décembre 2024) (DH)

Communication du requérant (03/10/2024) relative à l'affaire Fellner c. Turquie (requête n° 13312/08)
[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

JÜLİDE ERTÜRK
AVUKAT

COUNCIL OF EUROPE
DEPARTMENT FOR THE EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS

DGI

03 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

30.09.2024, Ankara

Reference : Fellner and Others v. Turkey (Application no. 13312/08 and 840 other applications (**request for revision of the judgment of 10 October 2017**))

Explanations : We would like to inform the Committee of Ministers about above mentioned case

On 12.03.2018, 12.07.2018, 13.09.2018, 25.09.2018, 17.12.2018, 24.06.2019, 06.08.2019, 12.11.2019, 27.11.2019, 20.01.2020, and **23.3.2022** we submitted to Your Authorities the payments that the Turkish government made in respect of the execution of the ECtHR judgment Fellner and Others v. Turkey (Application no. 13312/08 and 840 other applications) and the unjust and incorrect implementations the Turkish government carried out in conflict with the ruling of the said judgment, and requested that the correct and complete execution of the ECtHR judgment be ensured.

Within the scope of the execution of the ruling, the government persisted on the same incorrect implementation, (**In the case of Fellner and Others v. Turkey (request for revision of the judgment of 10 October 2017)**), paying 1.393.365,96 TL on 15.05.2024 (for 16 applicants).

The conclusion section of the ECHR judgment regarding the revision decision (dated 12 September 2023) of Fellner and Others v. Turkey case (Application no. 13312/08) contains the following wording:

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"(a) that the respondent State is to pay, within three months to the heirs of the deceased applicants listed in Appendix 2 the amounts indicated in the same appendix, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on those amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;"

Within the scope of execution of the judgment the sum of 1.393.365,96 TL paid on 15.5.2024 for 16 people as just satisfaction related to some of our applicants.

As mentioned above, the ECHR judgment entails that the payment should be made:

-in Turkish Liras at the rate applicable at the date of settlement,

If it is not paid within the three months from the date of judgment the interest should be added to principal amount.

However,

The payment didn't made within the time limit which is set by the Court,

No default interest is paid in any shape or form, and

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The Government took into account preceding year's exchange rate which is resulted a payment of insufficient amount (Payment made on 15.5.2024; but 13.12.2017's exchange rate is calculated for payment. That is caused %88 of loss of the money.13.12.2017's exchange rate is 4.51 TL, 15.5.2024's exchange rate is 35.01 TL.

The date of payment and exchange rate used have significant results when we take into consideration the currency devaluation in Turkey.

As a result, the payment hasn't been made in accordance with the judgment's requirements (precise date, amount, exchange rate used etc.)

As we have stated in our petition dated 23.3.2022, The application numbers of these applicants to whom the payments were made are listed below, and other details are not emphasized in order not to impose a burden on Your Authorities. Should the need for it arise during the examination, a table showing the correct amounts to be paid by the government in the proper execution of the ECHR judgment and the incomplete payments made to the applicants will be provided.

So far, the government has not made any additional payments upon our requests regarding incomplete and faulty payments. And in its new payments, the Government did not display a change in its implementation, which is the subject matter of the complaint.

While we filed applications to Your Authorities with an aim to benefit from the protections provided by the international law, we also filed complaints against the government's incomplete payments, in respect of the protection of the rights provided by the domestic law.

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In these cases, the first instance courts ruled on the dismissal of action **with no examination** of the case on the grounds that:

*"The monitoring of the execution of a finalized ECtHR judgment is within the scope of the duties of the Committee of Ministers, and the Committee of Ministers can refer a matter to the ECtHR in case it determines that a high Party of the Convention is refusing to act in accordance with the finalized judgment in a case it is a party of, and since the payment, which is the subject matter of the case, is a practice within the essence of the execution of an ECtHR judgment, it has been concluded that it **cannot be monitored** through administrative proceedings and it is not possible to examine the merits of the case."*

We filed an appeal against these judgments, but the Court of Appeals issued rulings in the same nature. And upon our appeal to the decision of the Court of Appeals, the Council of State conclusively upheld these decisions.

As a result of the government's improper execution of the ECtHR judgment, the **dismissal** of the applicants' filed complaints before the domestic courts **on the grounds that Your Authorities are in charge of the matter**, and these **dismissals being upheld by the authority for the appeals, the Council of State**, the applicants filed a suit in Constitutional Court and the case is still pending. A need for filing another request has emerged for the reporting of the most recent developments and for the elimination of the applicants' grievances.

As it can be seen, the failure of the domestic legal authorities to ensure the proper execution of the ECtHR judgment has resulted in the further violation of the rights granted by the ECHR, and therefore will cause an obligation to file another complaint before the ECtHR against these rulings by the domestic courts. Yet, the applicants finally gained the opportunity to receive compensation through an ECtHR judgment 19 years later. However, even

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though it has been approximately 7 years since the date of the ECtHR judgment, the applicants still have not been able to receive their compensation completely and properly. **As you would also be aware, this constitutes further heavy burdens on the applicants.**

As your authorities would observe, the damages that the applicants suffered are continuing due to the faulty payments by the government. Due to the government's failure to execute the judgment properly and in accordance with the ruling, the amounts of compensation (in terms of payment dated 15.5.2024) has decreased almost by 88 percent, and in addition to this loss, further damages were suffered due to the lack of interest payment. If these sufferings are not eliminated by Your Authorities, the ruling by the ECtHR stating that the applicants should receive a just compensation will not have a material correspondence for the applicants.

In conclusion, at this point, the ECtHR judgment has **not** been executed in accordance with the ruling, and for the reasons explained above, we request that the suffering of the applicants is put to an end, and the proper execution of the ECtHR judgment in accordance with the contents of the ruling to be provided **urgently**, also taking into consideration that the damages were incurred 24 years ago.

Sincerely,


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Lawyer

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The list of ECtHR application numbers to which payments were made in accordance with the revision decision (dated 12 September 2023) of the case of Fellner and Others v. Turkey(10 October 2017) is as follows:

16 applications to which payments were made on 15.5.2024:

APPLICATION NUMBER	
1.	7920/10
2.	8113/10
3.	16043/10
4.	20805/10
5.	21519/10
6.	24112/10
7.	27638/10
8.	27665/10
9.	27751/10
10.	32366/10
11.	32884/10
12.	35857/10
13.	37127/10
14.	37357/10
15.	38992/10
16.	39011/10

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