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Date: 08/10/2024

DH-DD(2024)1130

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

Item reference: Action Report (08/10/2024)

Communication from Türkiye concerning the case of Dinc and Saygili v. Türkiye (Application No. 17923/09) - *The appendices in Turkish are available upon request to the Secretariat.*

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Réunion : 1514^e réunion (décembre 2024) (DH)

Référence du point : Bilan d'action (08/10/2024)

Communication de la Türkiye concernant l'affaire Dinc et Saygili c. Türkiye (requête n° 17923/09) (**anglais uniquement**) - *Les annexes en turc sont disponibles sur demande au Secrétariat.*

ACTION REPORT

***Dinç and Saygılı v. Türkiye* (no. 17923/09)**

Judgment of and final on 31 January 2023

Repetitive to

Oya Ataman v. Türkiye (no. 74552/01, final on 5 March 2007)

DGI

08 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

I. CASE DESCRIPTION

1. The case concerns a violation of the prohibition of ill-treatment under procedural aspect on account of the ineffectiveness of the criminal investigation which was carried out in relation to the applicants' complaints about the security forces' alleged used of excessive force while dispersing a demonstration. The case further concerns a violation of the applicants' right to freedom of assembly on account of their criminal conviction for their alleged unlawful acts during a demonstration they had participated (Articles 3 and 11).

2. On 10 June 2006 the applicants took part in a demonstration and during the scuffle that broke out between the security forces and the demonstrators, the applicants and two police officers were injured. A criminal investigation was initiated against the applicants and the Tuzla public prosecutor lodged a bill of indictment for their alleged unlawful acts during the demonstration. On 28 March 2008 the Tuzla Criminal Court of First Instance ("the trial court") found the applicants guilty and convicted them of the offences of incitement to commit an offence pursuant to Article 214 § 1 of the Criminal Code (Law no. 5237, "the CC"), attempted assault on private premises pursuant to Article 116 § 4 of the CC, and disobedient behaviour against public officers under Article 265 § 1 of the CC. It however suspended the pronouncement of the judgment pursuant to Article 231 of the Code of Criminal Procedure (Law no. 5271, "the CCP"). On 12 August 2008 the Kartal Assize Court dismissed the applicants' objections and the proceedings thereby became final (§§ 3-16 of the judgment). In the meantime, a criminal investigation was also initiated against the security forces for having used excessive force. On 22 April 2008 the Tuzla public prosecutor decided not to prosecute considering that the officers had acted in accordance with their duties. On 9 January 2009 the Kartal Assize Court dismissed the applicants' objections (§§ 17-19 of the judgment).

3. As concerns the applicants' complaints under Article 3 of the Convention, the Court held that the criminal investigation that had been carried out in relation to the applicants' allegations of use of excessive force -which had been concluded with a decision not to prosecute- had been ineffective on account of the public prosecutor's failure to duly collect and assess the relevant evidence (§§ 27-30 of the judgment).

4. In its examination under Article 11 of the Convention, the Court acknowledged that the interference had been prescribed by law and had pursued a legitimate aim. However, according to the Court, the applicants' convictions had not been necessary in a democratic society (§§ 36-40 of the judgment).

II. INDIVIDUAL MEASURES

Just Satisfaction

5. The Court awarded each of the applicants EUR 3,900 in respect of non-pecuniary damage. It also awarded the applicants, jointly, EUR 3,000 for costs and expenses (§§ 45 and 46 of the judgment).

6. These amounts were paid to the applicants within the deadline set forth by the Court. Payment information was published on HUDOC-EXEC.

Other Measures

7. Concerning the violation of Article 11 of the Convention, the authorities indicate that Article 311 of the CCP provides applicants with the opportunity to request the reopening of criminal proceedings within one year of a final judgment by the Court finding a violation. However, the applicants did not avail themselves of this remedy within the prescribed time-limit set forth in the law.

8. As regards the violation of Article 3 of the Convention, the authorities would like to note that Article 172 § 3 of the CCP provides the applicants with the opportunity to request the reopening of criminal investigations within three months of a final judgment by the Court finding a violation. However, the applicants did not avail themselves of this remedy within the prescribed time limit set forth in the law. In any event, the competent public prosecutor's office reviewed the case *ex*

officio on 9 November 2023, finding no grounds for reopening of the investigation which had become time barred in 2018 at the latest (see Annex).

Conclusion on Individual Measures

9. In the light of the information submitted above, the authorities take the view that no further individual measures are required/possible.

III. GENERAL MEASURES

10. The authorities recall that the issue of violations of the right to freedom of peaceful assembly, including prosecution/conviction of participants to demonstrations, continues to be examined under the *Oya Ataman* group of cases. The authorities also recall that issues related to the general measures to ensure effective investigations into allegations concerning the excessive/unlawful use of force by law enforcement officers are examined under the *Bati and Others* (33097/96) group of cases.

11. The authorities will keep, within the context of the supervision of the *Oya Ataman* and *Bati and Others* groups, the Committee of Ministers informed on the general measures taken/envisaged.

Publication and Dissemination Measures

12. The judgment was translated into Turkish and published on the Court's official website.

13. In addition, the Turkish authorities ensured that the translated text of the judgment, with an explanatory note, was circulated to the relevant public prosecutor's offices and first-instance courts, the Court of Cassation, the Constitutional Court, the Human Rights and Equality Institution of Türkiye and the Ombudsman Institution.

IV. CONCLUSION

14. The Turkish authorities consider that no further individual measures are required in the present case. They therefore would like to invite the Committee of Ministers to close the supervision of this case in respect of individual measures.

15. Concerning general measures, the Turkish authorities will maintain submitting further information under the *Oya Ataman* and *Bati and Others* groups,