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Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

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

Item reference: Action Report (11/10/2024)

Communication from Türkiye concerning the case of Orman and Others v. Türkiye (Application No. 73708/11)

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

Référence du point : Bilan d'action (11/10/2024)

Communication de la Türkiye concernant l'affaire Orman et autres c. Türkiye (requête n° 73708/11) (**anglais uniquement**)

ACTION REPORT

***Orman and Others v. Türkiye* (no.73708/11, judgment of and final on 23 April 2024)**

Repetitive to

Işıkırık v. Türkiye (no. 41226/09, final on 9 April 2018)

I. CASE DESCRIPTION

1. The case concerns a violation of the applicants' (five applicants) right to freedom of assembly on account the criminal proceedings carried out against them for the offences of membership of a terrorist organisation or committing an offence on behalf of an armed terrorist organisation without being a member of it, due to their alleged unlawful acts during a demonstration they had participated in (Article 11).

2. On 7 December 2004 the applicants took part in a demonstration and the Ankara Public Prosecutor filed an indictment accusing them of having carried out unlawful acts during the demonstration. On 22 April 2010 the Ankara Assize Court ("the trial court") sentenced applicant Bakır to a term of imprisonment for membership of a terrorist organisation pursuant to Article 314 § 2 of the Turkish Criminal Code (Law no. 5237). The trial court also sentenced the remaining four applicants to a term of imprisonment for committing an offence on behalf of an armed terrorist organisation without being a member of it in breach of Article 220 § 6 of the Turkish Criminal Code taken in conjunction with Article 314 § 2 thereof. On 25 April 2011 the Court of Cassation upheld the first instance judgment as far as these convictions were concerned and the proceedings thereby became final. Later, following the entry into force of Laws nos. 6352 and 6459, amending various laws, the trial court initially reduced the applicants' –i.e. the latter four applicants– imprisonment sentence for the offence of committing an offence on behalf of an armed terrorist organisation without being a member it, and subsequently lifted these four applicants' impugned conviction with all its consequences (§§ 2-10 of the judgment).

3. Concerning the four applicants' convictions of the offence of committing an offence on behalf of an armed terrorist organisation without being a member of it, which were subsequently lifted, the Court, referring to its case-law, found that Article 220 § 6 of the Criminal Code had not been "foreseeable" in its application and that it had not provided them sufficient protection against arbitrary interference. Accordingly, the interference had not been prescribed by law (§ 24 of the

judgment). Regarding the conviction of applicant Bakır of the offence of membership of a terrorist organisation, the Court concluded that the domestic courts had failed to give relevant and sufficient reasons in convicting him under that provision. The interference had therefore not been necessary in a democratic society (§§ 27-31 of the judgment).

II. INDIVIDUAL MEASURES

Just Satisfaction

4. The Court did not see any causal link between the violation found and the pecuniary damage allegedly suffered by the applicants. It therefore dismissed their claims in that regard (§ 35 of the judgment).

5. The Court awarded each of the applicants EUR 7,500 in respect of non-pecuniary damage. It also awarded them, jointly, EUR 1,000 for costs and expenses (§ 36 of the judgment).

6. These amounts were paid to the applicants within the deadline set forth by the Court.

Other Measures

7. As concerns applicant Bakır, the authorities indicate that Article 311 of the Code of Criminal Procedure (Law no. 5271) 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 applicant did not avail himself of this remedy within the prescribed time-limit set forth in the law.

8. Regarding the remaining four applicants, the authorities would like to recall that, as indicated by the Court in its judgment (§ 10 of the judgment), the applicants' criminal convictions of the offence of committing an offence on behalf of an armed terrorist organisation without being a member of it, giving rise to the present violation, were lifted along with all of its consequences. The applicants accordingly do not have any criminal records in respect of their initial criminal convictions for the imputed offence.

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.

III. GENERAL MEASURES

10. The authorities recall that the issues of unjustified criminal convictions pertaining to the offences of committing an offence on behalf of an armed terrorist organisation without being a member of it and membership of a terrorist organisation continue to be examined under the groups of *Işıkırık* and *Öner and Türk* (no. 51962/12), respectively.

11. The authorities will keep, within the context of the supervision of *Işıkırık* and *Öner and Türk*, 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 first-instance courts, the public prosecutors' offices, 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. Regarding general measures, the Turkish authorities will maintain submitting further information under the *Işıkırık* and *Öner and Türk* groups of cases.