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Meeting:	1514th meeting (December 2024) (DH)
Item reference:	Action Plan (07/11/2024)

Communication from Türkiye concerning the case of B.S. v. Türkiye (Application No. 14820/19) - *The appendices in Turkish are available upon request to the Secretariat.*

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Réunion :	1514e réunion (décembre 2024) (DH)
Référence du point :	Plan d'action (07/11/2024)

Communication de la Türkiye concernant l'affaire B.S. c. Türkiye (requête n° 14820/19) ***(anglais uniquement)*** - *Les annexes en turc sont disponibles sur demande au Secrétariat.*

7 November 2024

ACTION PLAN

B.S. v. Türkiye (14820/19)

Final Judgment of 21 March 2024

I. CASE DESCRIPTION

1. The case concerns violations of Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights (ECHR).

2. The present case concerns the allegation that in case of the applicant's deportation to Iran, she would face the risk of life imprisonment or death, as well as ill-treatment by Iranian authorities and/or by her ex-husband, due to her alleged conversion to Christianity from Islam.

In 2017, the applicant entered Türkiye legally, while her son entered the country unlawfully. After arriving in Türkiye, the applicant made an application for international protection. During her interview (Annex-I), she stated that she was Muslim, had no issues with the Government and had never experienced ill-treatment. She also mentioned to have been divorced from her husband 10 years ago, that after her divorce she lived in Tehran for 8 years without any significant problems and had not faced any real threats except from her husband's persistent attempts to renconcile. The applicant further explained that she did not have sufficient funds to go directly to Europe, and that she applied for international protection because she had heard that individuals granted such status were able to be resettled in Europe.

After the Directorate of Migration Management rejected her application for international protection, the applicant appealed the decision, claiming she had converted from Christianity to Islam during the legal proceedings. However, her appeals were rejected by the domestic courts as she failed to provide convincing evidence regarding the alleged threat of torture and ill-treatment.

3. The Court found that there would have been procedural violations of Articles 2 and 3 of the Convention if the applicant were to be returned to Iran without an *ex nunc* assessment by the domestic authorities of her alleged religious conversion and its consequences.

II. INDIVIDUAL MEASURES

A. Just Satisfaction

4. The Court hold that the finding of a violation constituted in itself sufficient compensation

for the non-pecuniary damage and rejected the other claims of the applicant for just satisfaction.

B. Other Measures

5. According to the latest information in the case file, the applicant left our country legally from the Istanbul Airport on 14 December 2022 on her own initiative and has no record of entering after this date. Therefore, there is no risk of the applicant being deported to her country of origin.

Following the Court's decision, the applicant submitted a request for a retrial before the Trabzon Administrative Court (Annex-II). The said Court accepted the request for retrial and, after a detailed examination of the case, issued its final judgment on 17 July 2024 (Annex-III).

In its decision, the domestic court reconsidered its previous ruling and noted that while the applicant claimed to have converted to Christianity from Islam, she had not provided any concrete evidence to support her assertion. The domestic court also assessed the applicant's individual situation by reviewing "The Report of Country of Origin" submitted by the Presidency of Migration Management.

The Trabzon Administrative Court concluded that, even if the applicant's claim of conversion were true, changing one's religion or being a Christian is not prohibited by law in her home country, nor is it considered a crime, as long as the individual does not engage in any form of preaching or propaganda to the extent of carrying out missionary activities, proselytizing or attracting members to the house churches. The said court ultimately determined that the applicant had not presented any credible evidence or documentation to suggest that her conversion would expose her to risks of torture, inhuman, or degrading treatment or punishment.

Nonetheless, the Government would like to recall that this decision is open to review before the Constitutional Court.

III. GENERAL MEASURES

6. The existing legal framework regarding the prohibition of non-refoulement is regulated by the Law on Foreigners and International Protection. Article 52 of the aforementioned Law stipulates that *"Foreigners may be deported to their country of origin, transit country or a third country upon a deportation order."* On the other hand, according to Article 4 of the said Law which guarantees the principle of non-refoulement, *"No person protected under the scope of this Law shall be returned to a place where she/he would be subjected to torture, inhuman or*

degrading punishment or treatment, or where her/his life or freedom would be threatened on account of her/his race, religion, nationality, membership of a particular social group or political opinion.".

Furthermore, it is specified in Article 4 of the Regulation on the Implementation of the Law on Foreigners and International Protection, which entered into force on 17 March 2016, that no foreigner shall not be deported or removed to a country where it is understood from the inquires conducted that she/he would face threats. It is also provided that actions which will be taken against such persons shall be taken in accordance with the other provisions of the said Law regarding international protection, residence or deportation.

In addition, Article 51 of the said Regulation, states that while determining the country which the foreigner is to be deported, the authorities shall take into consideration the citizenship status of the foreigner, if the foreigner will be accepted in the country to which she/he is intended to be removed and, if any, the request of the foreigner for a safe third country.

All transactions imposed in the framework of the Law on Foreigners and International Protection are carried out in accordance with the principle of non-refoulement. All administrative procedures within the scope of the said Law are established in the light of the said provisions and the relevant articles of the ECHR and the well established case-law of the European Court of Human Rights.

The provisions of the above-mentioned legislations were duly applied to the applicant's proceedings before administrative and judicial authorities.

7. The Government would also like to draw attention to the Constitutional Court's judgment on the case of *Masoud Talebi (Application No: 2023/26088, Date of decision: 19 March 2022).* According to the said decision *"Where there are substantial grounds for believing that a foreigner would face a real risk of death or ill-treatment in the country that she/he will be deported, the State has an obligation not to deport that person. Although the applicant stated that he had held a high position in house church before leaving, continued such activities in Türkiye -where he has been since 2016-, and these activities were published on various social media platforms, it seems to be a notable deficiency that the public authorities did not consider whether this situation posed a risk to the applicant, but instead only examined it in the context of converting religion. (...) The information and documents provided by the applicant to the*

administrative and judicial authorities, indicating that he has been active as a Christian religious official, constitute sufficient evidence for conducting an examination and inquiry in this regard. While it is within the discretion of the administrative court to evaluate the validity and evidentiary value of the submitted information and documents, the complete lack of any examination regarding the applicant's claims demonstrates that the diligence required by Article 17 of the Constitution has not been observed."

As shown by the Constitutional Court's above mentioned judgment, if credible evidence is present indicating that the applicant would suffer death or ill-treatment in the country due to her/his conversion of religion, the allegations put forward by the applicant are duly examined.

Translation and Dissemination of the Judgment

8. The judgment was translated into Turkish and was circulated to the relevant institutions including the Ministry of Justice, the Constitutional Court and the Ministry of the Interior Presidency of Migration Management. The Turkish authorities consider that the European Court's findings are thus disseminated among the competent authorities to ensure that similar violations are prevented.

9. The above explanations show that current legislation and the judicial practice have evolved to prevent any future similar violations. However, as the violation at hand is classified as a leading case in the HUDOC-EXEC, the Turkish authorities stand ready to further inform the Committee of Ministers on the general measures, if need be.

IV. CONCLUSION

10. Individual measures are ready for closure as there exists no risk of deportation due to the applicant's departure from Türkiye on her own free will.

11. Given that the Court's findings are also duly disseminated and that the legislation and the judicial practice evolved in line with the European Court's caselaw, the authorities consider that the case does not require adoption of any further general measures as well.

12. The authorities therefore is of the opinion that the case may be proposed for closure of execution of the Court's judgment by the Committee of Ministers.