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

Item reference: Updated action plan (05/10/2021)

Communication from the Republic of Moldova concerning the case of Ozdil and Others v. the Republic of Moldova (Application No. 42305/18)

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

Référence du point : Plan d'action mis à jour (05/10/2021)

Communication de la République de Moldova concernant l'affaire Ozdil et autres c. République de Moldova (requête n° 42305/18) (**anglais uniquement**)



DGI

05 OCT. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA GOVERNMENT AGENT

No. 06/7541

Chisinau, 5 October 2021

UPDATED ACTION PLAN **for the execution of the judgment of the European Court of Human Rights** in the case of *Ozdil and Others v. the Republic of Moldova* (no. [42305/18](#)) of 11 June 2019, final as of 11 September 2019

The Government of the Republic of Moldova (hereinafter “the Government”) hereby submit their position regarding the questions raised by the Committee of Ministers during the latest examination of the above-mentioned case at the 1398th meeting from 9-11 March 2021, concerning the individual and general measures undertaken by the national authorities (see [CM/Del/Dec\(2021\)1398/H46-15](#)).

I. CASE DESCRIPTION

1. The present case concerns the transfer to Turkey, in September 2018, of five Turkish nationals residing in the Republic of Moldova with their families for long periods of time and employed as teachers in secondary schools. The Court found that the applicants’ deprivation of liberty on 6 September 2018 had been neither lawful nor necessary within the meaning of Article 5 § 1 (f), nor devoid of arbitrariness. The applicants’ deprivations of their liberty amounted to an extra-legal transfer of persons from Moldova to Turkey which circumvented all guarantees offered to them by domestic and international law.

2. The Court also found that the applicants’ forcible transfer led to a radical disruption of their private and family lives and that they did not enjoy the minimum degree of protection against arbitrariness. It concluded that the interference with their private and family lives was not in accordance with a “law” satisfying the requirements of Article 8.

II. INDIVIDUAL MEASURES

National proceedings on granting refugee status to the applicants

3. On 10 October 2018 one of the applicants’ wife, Sevgi Çelebi, challenged in court the decision of Bureau for Migration and Asylum (hereinafter “the BMA”) rejecting her husband’s application for asylum. On 9 December 2020 the Chisinau Court of Appeal obliged the BMA to grant refugee status to the applicant Müjdat Çelebi. The Court of Appeal noted that the applicant met the legal criteria for obtaining a refugee status and

that the relevant authorities had not proven that he posed a threat to the national security. The Security and Intelligence Service (hereinafter “the SIS”) filed an appeal on points of law against that decision, arguing that the panel of judges examining the case had not directly considered either the notification of the SIS or the materials concerning the circumstances which allegedly proved that the applicant was a threat for the national security.

4. By a final decision of 17 March 2021¹, the Supreme Court of Justice accepted the Security and Intelligence Service’s appeal on points of law and quashed the Court of Appeal’s decision of 9 December 2020. The Supreme Court, referring *inter alia* to the Court’s judgment in the present case, held that the appellate court was obliged to directly assess all the evidence, including secret information, in order to reach a fair balance between the national security and the rights and safety of the asylum seeker. Nevertheless, the Court of Appeal failed to request and study the secret materials issued by the SIS, which had served as a basis for that applicant’s expulsion, and issued a hasty decision when accepting the applicant’s administrative action. As a result, the Supreme Court sent the case for a new examination by the appellate court. The case is currently pending before the Chisinau Court of Appeal, which will have first to consider all the information offered by the SIS, and only then adopt a decision.

5. As for the applicants Riza Doğan and Mehmed Feridun Tüfekçi, the actions lodged by their wives, challenging the BMA’s decisions on dismissing their applications for asylum were rejected by the first instance court on 23 and, respectively, 17 July 2020. They have lodged appeals against those judgments, which are pending before the Chisinau Court of Appeal.

6. In the context of the above-mentioned proceedings, the appellate court has not started yet the consideration of the merits of those cases. However, it shall decide on all the important aspects of the case, including on the necessity of studying the secret materials issued by the SIS, once initiating the consideration of the merits of the cases, bearing in mind the remarks made by the Supreme Court of Justice as to classified materials in the case of Sevgi Çelebi.

7. The Government will keep the Committee of Ministers informed in regard to the outcome of those proceedings.

The pending criminal proceedings against the former Head of the Security and Intelligence Service

8. On 15 July 2020 the former Head of the Security and Intelligence Service was found guilty for abuse of office committed by a high-ranking official and sanctioned with a fine of 88000 Moldovan lei and with the prohibition of holding public function for a period of 5 years.

9. One of the applicants’ wife, Ms Galina Tüfekçi, challenged that criminal sentence, seeking a harsher criminal punishment for the former head of the SIS. The case is currently pending before the Chisinau Court of Appeal. The court has only conducted public sessions so far. However, it has not initiated the examination of the

¹ http://jurisprudenta.csj.md/search_col_civil.php?id=60285

merits of the case. At this procedural phase, the parties have not requested the examination of the case in closed sessions.

10. The Government will inform the Committee of Ministers about any evolutions in these proceedings.

The applicants' current situation in Turkey and the outcome of the criminal proceedings against them

11. The Government have requested from the Turkish Government detailed information concerning the current situation of the applicants in Turkey, the outcome of the appeal proceedings in the criminal cases against them, including their possibility of having family visits while in detention, and will submit details in this respect at a later stage.

III. GENERAL MEASURES

The implementation of the Constitutional Court's Decision of 13 November 2020

12. The Government recall that on 13 November 2020 the Constitutional Court of the Republic of Moldova declared the unconstitutionality of several provisions of Law no. 200 of 16 July 2010 on the Status of Aliens, which refer to the impossibility of an alien, declared undesirable on grounds of national security, to know the reasons for that decision, as well as the provisions which allow the removal of an alien on grounds of danger for the national security or the public order, when there are justified concerns that his/her life would be in danger in the country of destination or that he/she would be subjected to torture, inhuman or degrading treatment therein.

13. For the purpose of implementing those findings, the national authorities issued a bill of law amending the Law on the Status of Aliens, as well as the Administrative Code. According to that bill of law, the decision for declaring a person as undesirable will include a summary of the reasons underlying that decision, to the extent that it is compatible with the protection of confidentiality of that information.

14. The draft of law also excludes the individuals, whose lives could be threatened in the countries of destination or who could be subjected to torture, inhuman or degrading treatment therein, from the exceptions to the prohibition of removing or expelling an individual from the Republic of Moldova, even when the latter represents a threat to the public order or to the national security.

15. The national authorities also proposed the amendment of the Administrative Code, so as to expressly provide the national courts' competence of conducting a proper control of the proportionality of the individual and normative administrative acts in situations related to, *inter alia*, the national security of the Republic of Moldova.

16. The bill of law shall be firstly approved by the Government and thereafter sent for adoption to the Parliament. The Government will keep the Committee of Ministers informed about the outcome of these legislative amendments.

The oversight and accountability mechanism of the secret services

17. The Rules of the Moldovan Parliament provides the existence of a subcommittee exercising the parliamentary control on the Intelligence Service's activity, within the Parliamentary Committee on National Security, Defence and Public Order. The subcommittee shall supervise the manner in which the secret services obey the principles of legality, the human rights and fundamental freedoms, the democratic order, as well as ensure the non-admission of the secret services' political engagement, in compliance with the Constitution of the Republic of Moldova and the national laws regulating the secret activity. The members of the subcommittee have access to secret information and, therefore, may request any data on the activity of the Security and Intelligence Service, except for information related to the operative activity and the identity of undercover agents. The subcommittee is ruled by a representative of the parliamentary opposition. Since the new parliamentary elections were held on 11 July 2021, the opposition shall propose their candidate to the position of Chairperson of that subcommittee. After the election of its president and members, the subcommittee might consider to conduct a thorough analysis on the actual oversight and accountability mechanism of the Security and Intelligence Service.

18. As for the de-classification of the materials related to the parliamentary inquiry conducted by the Committee on National Security, Defence and Public Order on the circumstances of the present case, it should be noted that the Committee's sessions in this regard were not of an investigatory nature, but rather of an informative nature, the Members of Parliament being only informed about all the circumstances of the present case.

19. On 7 September 2021 the President of the Parliamentary Committee on National Security, Defence and Public Order addressed an official letter to the Security and Intelligence Service, requesting the de-classification to the general public of the materials underlying the applicants' expulsion from the Republic of Moldova to Turkey on 6 September 2018. The authorities are currently reflecting on this matter.

CONCLUSION

The Government will keep the Committee of Ministers informed about the outcome of the national proceedings pending in the present case, as well as on the applicants' individual situation in Turkey. At the same time, they commit themselves to provide the Committee of Ministers with further information on the general measures undertaken or envisaged in order to ensure the full execution of the Court's judgment in the present case.



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