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

Item reference: Action Plan (01/10/2021)

Communication from Turkey concerning the Gurban group v. Turkey (Application No. 4947/04).

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

Référence du point : Plan d'action (01/10/2021)

Communication de la Turquie concernant le groupe d'affaires GURBAN c. Turquie (requête n° 4947/04)
[anglais uniquement]

DGI

01/10/2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Ankara, September 2021

ACTION PLAN

on

Gurban v. Turkey (4947/04)

Judgment of 15 December 2015, final on 13 October 2016

Öcalan v. Turkey (no.2) (24069/03, 197/04, 6201/06 and 10464/07)

Judgment of 18 March 2014, final on 13 October 2014

Kaytan v. Turkey (27422/05)

Judgment of 15 September 2015, final on 15 December 2015

Boltan v. Turkey (33056/16)

Judgment of 12 February 2019, final on 12 May 2019

I. CASE DESCRIPTION

1. The case concerns violation of the Convention on account of the absence of any review mechanism in Turkish legislation for the aggravated life imprisonment sentence imposed on the applicants (Violation of Article 3). Accordingly, the legislation was characterized by the absence of any mechanism that would allow the review, after a certain minimum term, of a life sentence imposed for the crimes committed by the applicant in order to verify whether legitimate grounds still justified the continuation of his detention. The Court held that such an “irreducible” sentence amounted to inhuman treatment.

2. In addition, with regard to the Öcalan v. Turkey (no.2) case, the Court examined the prison conditions provided in the term between 12 May 2005 – 8 March 2012 (§96). As a result, the European Court found violation of Article 3 of the Convention in relation to the applicant’s conditions of detention up to 17 November 2009 (§147). In this respect, the material time concerning this particular violation is the period between 12 May 2005 – 17 November 2009.

3. Additionally, the Court considered that the conditions of detention imposed on the applicant during the period subsequent to 17 November 2009 did not attain the severity threshold to constitute inhuman treatment within the meaning of Article 3 of the Convention. Therefore, the Court concluded

that there had been no violation of Article 3 of the Convention on the ground of the conditions of detention imposed on the applicant during the period after 17 November 2009.

II. INDIVIDUAL MEASURES

4. The authorities have taken measures to ensure that the violations in question have been ceased and that the applicant has been redressed for their negative consequences.

A. Just Satisfaction

5. The European Court awarded just satisfaction in respect of non-pecuniary damages sustained by the applicants as well as cost and expenses. The authorities would like to note that the sums of just satisfaction awarded in the said cases have been paid within the time-limit set by the Court.

B. Other individual measures

Öcalan v. Turkey (no.2) (24069/03) case

6. As regards the prison conditions in respect of *Öcalan v. Turkey* case, the authorities would like to state that the violation found by the Court is related to the conditions of the applicant's detention prior to 17 November 2009. In other words, the Court found no violation as regards the conditions of the applicant's detention during the period after 17 November 2009. In fact, the Court expressed its appreciation for the improvements in the conditions of his detention. Therefore, the judgment itself constitutes a presumption that the violation prior to 17 November 2009 has been remedied.

Other cases (Kaytan v. Turkey (27422/05), Gurban v. Turkey (4974/04) and Boltan v. Turkey (33056/16)

7. These cases concern violation of the Convention on account of the absence of any review mechanism in Turkish legislation for the aggravated life imprisonment sentence in order to verify whether legitimate grounds still justified the continuation of their detention.

8. The authorities consider that the individual measures that can be taken in relation to the applications in question are related to the general measures and should be examined under the heading of general measures. Accordingly, the authorities are of the opinion that there is no further individual measure that can be taken with regard to these applications.

III. GENERAL MEASURES

Legal Framework Concerning the Conditional Release

9. These cases concerns the absence of any mechanism that would allow the review, after a certain minimum term, of a life sentence imposed for especially serious crimes just as committed by the applicants.

10. As regards the regulations in Turkish legislation within the scope the conditional release, with the amendment made in the Execution Law in 2020 (Law No. 7242), the conditional release rate will be applied as 1/2 instead of 2/3 as a rule, in the execution of term imprisonment sentences (Article 107-2 of the Law no 5275).

11. In terms of some exceptional crimes, the conditional release rate will be applied 2/3 instead of 1/2 such as;

- Those who are sentenced to a term of imprisonment for the crimes of deliberate killing (TCC, 81,82,83),

- Those who are sentenced to the crime of torture and aggravated torture due to its consequences (TCC, 94,95),

- Those who are convicted of the crime of manufacturing and trading drugs or stimulants (TCC 188).

12. The Turkish Authorities would like to note that, as a rule, conditional release is possible for convicts who were sentenced to aggravated life imprisonment. However, exceptionally certain offences are exempted from this possibility.

13. The authorities would like to state that a similar mechanism also still exists in some other member States such as Italy, Hungary and Ukraine. It is seen that such measures have been taken in order to provide deterrence, especially within the scope of the fight against organized crime.

14. On the other hand, the Government would like to note that there are individual applications pending before the Turkish Constitutional issues arising from the similar facts giving rise to the violation judgment.

The power of the President of the Republic commuting or remitting the sentences

15. In the Turkish legal system, “amnesty” is divided into two categories as "general amnesty" and "clemency". A "general amnesty" abolishes both punishment and crime. However, “clemency” abolishes only the punishment, not the crime. That is, the “general amnesty” removes not only all the criminal consequences of the conviction, but also the criminal nature of the act.

16. However, “clemency” does not eliminate the criminal nature of the act, but eliminates, reduces or changes the sentence. This type of amnesty called “*Grâce*” in the doctrine and abolishes or reduces final sentence of one or more prisoners or changes it to a lighter type of penalty. The power of “*Grâce*” is usually a power vested to the Presidents of the state.

17. In this context, the President of Republic of Turkey is also granted the power of remittance and commutation under certain circumstances defined in the Article 104 of the Constitution of the Republic of Turkey. According to the Article 104, the President can "commute or remit, on grounds of chronic illness, disability, or old age, or all part of the sentences imposed on certain individuals" after the convict's or his or her representative's application. If the Forensic Medicine Institution determines that the convict suffers from chronic illness, disability, or old age, the Ministry of Justice presents the situation to the President.

18. The “*Grâce*” authority granted to the President by the 1982 Turkish Constitution was limited by the reasons of "chronic illness, disability, or old age". It is seen that this authority, which is in the quality of “*Grâce*” granted to the President by the 1982 Turkish Constitution, is limited by the reasons of "permanent illness, disability, growing old". Therefore, the "authority of amnesty" (“*Grâce*”) granted to the President has the characteristic of individual amnesty that can be used depending on individual reasons.

19. This power of the President is one of the powers that he has as the head of the state.

20. This authority has been used for a total of nine convicts since 2015. The President of the Republic of Turkey has remitted the sentence of four convicts in 2015, one convict in 2017, three convicts in 2019 and one convict in 2020.

The power to announce general amnesty of the Grand National Assembly of Turkey

21. Additionally, the parliament of Turkey has the power to announce general amnesty.

22. The 1982 Constitution made a distinction between clemency and general amnesty. In Article 87, which lists the duties and powers of the Grand National Assembly of Turkey in general, the authority to declare general and special amnesty has been included in the Parliament's powers. In October 2001, some provisions of the Constitution were amended, including Article 87, which enumerates the powers of the Turkish Grand National Assembly. With the amendment made in Article 87, the scope of the Parliament's power of amnesty has been expanded.

23. After this amendment, the Turkish Grand National Assembly was given the authority to enact an amnesty law for all crimes (including crimes against the state). But the only exception of the power of amnesty is forest crimes. Because, according to Article 169 of the Constitution (paragraph 3), “..*general and special amnesty cannot be granted exclusively for forest crimes. Crimes committed with the aim of burning forests, destroying or shrinking forests cannot be included in the scope of general and special amnesty...*”.

24. Since the establishment of the Turkish Grand National Assembly, a total of 51 different laws have been enacted, including general amnesty and clemency.

Prison Conditions

25. The authorities would like to reiterate that the issue of prison conditions in respect of Öcalan v. Turkey case, is related to the conditions of the applicant's detention prior to 17 November 2009. In other words, the Court found no violation as regards the conditions of the applicant's detention during the period after 17 November 2009. In this regard, the Government considers that there is no need for taking any measures in respect of the conditions of the applicant's current detention.

Publication and dissemination measures

26. The Turkish authorities ensured translation, publication and wide dissemination of the European Court's judgment in this case in order to raise awareness on the Court's findings and prevent similar violations. It is available on <http://hudoc.echr.coe.int/sites/tur/pages/search.aspx?i=001-142087>.

27. Moreover, the translated judgment has been circulated to the relevant authorities such as the Constitutional Court, the Court of Cassation, and the Ministry of Justice General Directorate of Prisons and Detention Houses.

V. CONCLUSION

28. The Government will duly inform the Committee of Ministers of the execution of this judgment and of the general measures to be taken for the prevention of similar violations.