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

Communication from the applicant (20/10/2021) in the case of Selahattin Demirtas v. Turkey (No. 2) (Application No. 14305/17).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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

Communication du requérant (20/10/2021) relative à l'affaire Selahattin Demirtas c. Turquie (n° 2) (requête n° 14305/17) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

20 OCT. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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20.10.2021
Sent by e-mail

COMMUNICATION

**In accordance with Rule 9.1 of the Rules of the Committee of Ministers regarding the
supervision of the execution of judgement**

in the case of *Selahattin Demirtaş v. Turkey* (no. 2) [GC]

(App. No: 14305/17)

1. The applicant welcomes the decision taken by the Committee of Ministers (Committee) on 14-16 September 2021 -on the execution of the European Court of Human Rights' (ECtHR) *Selahattin Demirtaş v. Turkey* (no. 2) judgment- dismissing the Turkish government's argument that the applicant's detention and conviction falls outside of the scope of the Grand Chamber judgment and calling for his immediate release.¹ The developments in the legal proceedings against Mr. Demirtaş following our Rule 9.1 submission dated 24 July 2021² and the Government's action plan of 1 October 2021³ may be found below.
2. The hearings in the case concerning the applicant's second detention dated 20 September 2019 were planned for 20 September-1 October 2021, and began on 20 September 2021. However the hearings were postponed after the court president tested positive for Covid-19. The next hearings in this case will be held on 18-19-21-22-25-26-27 October 2021.
3. Since our first Rule 9.1 submission of 21 January 2021, the local courts have continued to adopt decisions further extending Mr. Demirtaş's detention which constitutes a continuing violation of Mr. Demirtaş's rights, as well as a breach of the obligation by the Government to abide by the Court's judgment in accordance with Article 46(1) of the Convention. Our subsequent appeals against the decisions prolonging Mr. Demirtaş's pre-trial detention and requests for his pre-trial release have been categorically rejected. A list of those decisions are as follows:
 - On 10 August 2021, we lodged an objection against the decision on the continuation of the applicant's pre-trial detention according to the decision of the Ankara 22nd

1 [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1411/H46-39E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1411/H46-39E)

2 [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)749E](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)749E)

3 [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)984E](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)984E)

Assize Court on 9 August 2021. The appeal was rejected on 23 August 2021 by Ankara 23rd Assize Court.

- The objection to the detention decision of Ankara 22nd Assize Court dated 6 September 2021 was submitted on 15 September 2021 and was rejected on 17 September 2021 by Ankara 23rd Assize Court.
 - The objection to the detention decision of Ankara 22nd Assize Court dated 23 September 2021 was submitted on 30 September 2021 and was rejected on 6 October 2021 by Ankara 23rd Assize Court.
4. The Constitutional Court is as liable as domestic first instance courts for the execution of the judgments of the ECtHR and the decisions of the Committee. The applicant's applications awaiting before the Constitutional Court were discussed in detail in the Rule 9.1 submission dated 17 May 2021 (see paras. 23-25). The individual application concerning the applicant's second detention in the case currently pending before the Ankara 22nd Assize Court was brought before the Constitutional Court on 7 November 2019. Individual applications concerning the non-execution of the ECtHR's Grand Chamber judgment dated 22 December 2020 were brought before the Constitutional Court on 14 January 2021 and 4 February 2021. The individual application concerning the 4 year 8 month prison sentence upheld by the Court of Cassation was brought before the Constitutional Court on 10 May 2021.
 5. Currently there are two main obstacles before the applicant's release: the case before the Ankara 22nd Assize Court where he is kept in pre-trial detention and the 4 year 8 months prison sentence upheld by the Court of Cassation. Even if the applicant is released by the Ankara 22nd Assize Court, his release will not be possible due to the prison sentence that was upheld. For this reason, it is crucial that the Constitutional Court urgently delivers its judgment on the applications concerning his detention and prison sentence and that the applicant is released, hence partially executing the ECtHR judgment and the Committee's decisions.
 6. Although the aforementioned are applications which, by their nature, must be examined urgently and although the Committee's decisions taken in its March and September sessions have been notified to the Constitutional Court on 7 July 2021, 30 July 2021 and 20 September 2021, no judgment has yet been delivered in these applications.
 7. The project "Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights" funded by the European Union and the Council of Europe was launched on 24 September 2021 by a conference organized as part of the "Ninth Anniversary of Individual Applications in Turkey". The Minister of Justice Abdülhamit Gül and the President of the Constitutional Court Zühtü Arslan were speakers at this conference and both highlighted the binding nature of Constitutional Court judgments. Minister Gül stated that "It is an imperative provision of the law and a requirement of the rule of law that everyone must abide by the judgments of the

Constitutional Court.”⁴ Stating that Article 153 of the Constitution clearly and certainly stipulates that the judgments of the Constitutional Court are binding, President Arslan underlined that no institution, including the judiciary, is granted a margin or appreciation in abiding by the judgments or executing them without any change. Nor are there any exceptions on this matter, said President Arslan. He further pointed out that first instance courts have no choice but to execute the judgment when the Constitutional Court delivers a judgment for retrial and stated that “as expressed in the Court’s judgments, this is not a matter of choice but a requirement stemming from the Constitution and the law”.⁵

8. Without any doubt, these statements delivered in relation to Constitutional Court judgments must be held valid for ECtHR judgments as well. However, the fact that the Constitutional Court did not find a violation in Osman Kavala’s application despite the ECtHR judgment and the Committee’s decisions and the prolonged avoidance of the Constitutional Court to deliver a judgment on Selahattin Demirtaş’s applications clearly demonstrate that the Constitutional Court also resists against executing the judgments of the ECtHR.
9. This resistance remains evident in the action plan submitted by the Government. The Government has claimed that the applicant’s second detention dated 20 September 2019 and the 4 year 8 months prison sentence which was upheld by the Court of Cassation fell out of the scope of the ECtHR Grand Chamber judgment and that the Committee’s decision delivered in its session on 14-16 September 2021 went beyond the Committee’s mandate of supervision. In the action plan, the Government has merely repeated arguments which have already been refuted in the applicant’s submissions in January 2021, May 2021, July 2021, in Rule 9.2 submissions by civil society organizations submitted in 8 February 2021 and 26 July 2021⁶ and in the decision and notes of the Secretariat dated 16 September 2021⁷.
10. High-ranking state officials also continue to target the applicant and his family. The applicant’s wife Başak Demirtaş attended a television show on 6 October 2021 and spoke about the applicant’s legal status by discussing the ECtHR judgments and the Committee’s decisions. On the same day around noon, President Erdoğan gave new remarks on the 6-8 October events at the AKP group meeting at the Grand National Assembly and targeted the applicant and the HDP⁸: “It is the seventh anniversary of the 6-8 October events. Upon the call of PKK ringleaders and giving the events in Syria as an excuse, the HDP executives at the time released their supporters onto the streets and shed the blood of tens of innocent people. We know very well how these raving, vile people that lynched anyone who was not with them, lynched anyone with a beard, violently murdered many innocent people, including Yasin Börü. Those who activated this rampant crowd that set schools,

⁴ <https://t24.com.tr/haber/adalet-bakani-gul-herkesin-anayasa-mahkemesi-kararlarina-uyyasi-hukukun-emredici-hukmudur,980797>

⁵ <https://www.anayasa.gov.tr/en/president/presidents-speeches/opening-address-project-on-supporting-the-effective-implementation-of-turkish-constitutional-court-judgments-in-the-field-of-fundamental-rights/>

⁶ [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)192revE](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)192revE) and [http://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)759E](http://hudoc.exec.coe.int/eng?i=DH-DD(2021)759E)

⁷ https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a3a820

⁸ <https://www.youtube.com/watch?v=uXLCsvkVPhY> (starting from 10.28 and 14.25) and <https://www.tccb.gov.tr/haberler/410/130789/-turkiye-ye-her-alanda-nasil-cag-atlatmissak-yarin-da-buyuk-ve-guclu-turkiye-yi-yine-biz-insa-edecegiz->

dormitories, buses, houses, streets on fire, today pay the price for the blood on their hands in prison.” On 7 October 2021, following the President’s statement, the Radio and Television Supreme Council (RTÜK), which oversees television shows, initiated an inquiry into the television channel because of Başak Demirtaş’s statements.⁹

11. The Government’s actions in the case of the Mr. Demirtaş, similar to those in Mr. Kavala’s case, have so far demonstrated that the Government maintains its resistance against executing the binding ECtHR judgments which clearly found a violation of the applicant’s rights. On numerous occasions, the Government has disregarded the Committee’s calls for the applicant’s release. In Kavala’s case, despite the Committee’s strong expression of its “resolve to serve formal notice” to possibly initiate infringement proceedings, the applicant was not released from detention. The Government’s attitude towards the execution of the ECtHR’s judgments is one of resistance and recalcitrance, and as such, it must not be taken lightly. The Committee must deploy all available means to ensure that the ECtHR judgment is duly and timely executed by the Government and that Mr. Demirtaş is immediately released from detention.

Notably, we urge the Committee to:

- (i) request the Government of Turkey to release Mr. Demirtaş immediately;
- (ii) request the Government of Turkey to take measures compatible with the Grand Chamber judgment and to drop all the charges brought against the applicant together with the removal of all other negative consequences of the constitutional amendment;
- (iii) urge the Constitutional Court of Turkey to conclude, without delay and in line with the Grand Chamber judgment, the individual applications which are listed between paragraphs 23 and 25 of our Rule 9.1 submission dated 17 May 2021;
- (iv) urge the Government of Turkey to take measures ensuring that Mr. Demirtaş retains his right to stand and campaign for elections, especially bearing in mind that the upcoming election period bears a great significance for Turkey’s political future; and

We invite the Committee of Ministers to:

- (v) examine the applicant’s situation at each regular and human rights meeting of the Committee until such time that he is released;
- (vi) invite the Secretary General of the Council of Europe, member states and international human rights organisations to raise the case and the ongoing judicial harassment faced by the applicant in diplomatic talks between members of the Council of Europe and Turkey;
- (vii) write a letter to the Minister of Foreign Affairs of Turkey to urge the Government to fully execute the Grand Chamber judgment;

⁹ <https://twitter.com/rtukkurumsal/status/1445777369122312207> and <https://www.duvarenglish.com/turkeys-media-regulator-probes-fox-tv-for-basak-demirtas-broadcast-news-59108>

(viii) underline that the continuing detention of Mr. Demirtaş constitutes a violation of Article 46 of the Convention on the binding nature of final judgments of the ECtHR which may trigger Article 46(4) of the Convention.

We remain at the Department's disposal should any additional information be required.

Yours faithfully,

Legal representatives of the Applicant

Att. Benan Molu

Att. Ramazan Demir

Att. Mahsuni Karaman

