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Date: 29/10/2021

DH-DD(2021)1135

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

Reply from the authorities (28/10/2021) following a 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 9.5 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)

Réponse des autorités (28/10/2021) suite à une 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 9.5 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

**THE TURKISH GOVERNMENT'S SUBMISSION
IN RESPONSE TO THE RULE 9.1 COMMUNICATION OF
THE APPLICANT'S LAWYERS**

Demirtaş v. Turkey (no. 14305/17)

1. The Turkish authorities would like to make the following explanations in response to the submission of the applicant's lawyer dated 20 October 2021 with respect to the case of *Demirtaş v. Turkey* (no. 14305/17).

2. The Turkish authorities have summarised and submitted detailed and updated information as to the legal grounds for the applicant's current detention in the Communications to the Committee of Ministers ("CM") dated 1 February 2021, 16 February 2021, 17 February 2021, 29 March 2021, 2 July 2021, 29 July 2021, in the action plan dated 1 October 2021 and communication dated 21 October 2021. The Turkish authorities reiterate these explanations in this regard and submit following additional information:

3. As mentioned in previous communications, the applicant's current conviction does not fall within the scope of the ECtHR judgment (see the communication dated 1 February 2021, paragraphs 28-77). Additionally, as of 3 May 2021, the applicant has a status of convict within the scope of the judgment of the Istanbul 26th Assize Court. Accordingly, the applicant is currently held in prison as a convict, not as a detainee.

4. The ECtHR has never examined the judgment in question on points of law, notably the Istanbul Assize Court's 7 September 2018 dated judgment which has been defined as second set of proceedings. In the Grand Chamber's judgment this case was shortly referred to (§290-297) in so far as to determine the time spent in prison as a convict in the sense of Article 5§1(a) of the Convention. Accordingly, the authorities would like to underline that this case itself is not a subject matter of the ongoing supervision process. The Court has not delivered a judgment regarding this case.

5. Accordingly, the applicant is currently a convicted and not being kept in prison as a detainee. Therefore, even the decision of detention rendered within the scope of the proceedings before Ankara 22nd Assize Court is still valid, in practice, only the decision of conviction is applied for the applicant. Besides, the period which spent by the applicant in the prison as a convict on account of the judgment of the Istanbul 26th Assize Court has not been

taken into account by the Court (See § 297 of the Judgment). The same fact is valid as of 3 May 2021 as well.

6. In accordance with this judgment, Head Public Prosecutor's Office of Edirne, the province in which the applicant is being kept as convict, prepared a committal order (*müddetname*) on 6 May 2021. As can be seen in the said committal order, the applicant may be released on conditional date of release (*şarhı tahliye*) on 3 November 2021 and may be released on 3 January 2023 as foreseen date of release (*bihakkın tahliye*).

7. The proceedings in relation to the applicant before 22nd Ankara Assize Court are carried out by independent courts and the evidence collected within the scope of this trial is appreciated by the relevant court and the applicant's detention status is evaluated within this scope independently of other proceedings.

8. Furthermore, the last hearing was held before the 22nd Ankara Assize Court on 18-27 October 2021. The Assize Court reviewed the applicant's detention in this hearing and decided that his detention to be continued. It has been decided that the next hearing will be held on 8-19 November 2021.

9. Lastly, the Government would like to reiterate on this issue that the applicant's detention within the scope of the proceeding which constituted the subject-matter of the violation judgment of the Grand Chamber ended 2 September 2019.

10. Even though the applicant is held in prison as a convict, his detention pending trial is still in force. The authorities would like to note that the applicant's current detention starting from 20 September 2019 subject to several applications pending before the Constitutional Court and the European Court. Accordingly, there is no a final decision with respect to the applicant's detention pending trial. The outcome of the proceedings should be awaited in the ongoing proceedings for the requirements of the principle of independence and impartiality of the judiciary.

CONCLUSION

11. The Turkish authorities kindly invite the Committee of Ministers to take into consideration the above-mentioned explanations within the scope of the execution of the *Demirtaş* case.