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

Communication from an NGO (Alevi Philosophy Centre (ADO)) (08/11/2021) in the cases of ZENGİN, MANSUR YALCIN AND OTHERS, CUMHURİYETÇİ EĞİTİM VE KÜLTÜR MERKEZİ VAKFI and İZZETTİN DOĞAN AND OTHERS v. Turkey (Applications No. 1448/04, 21163/11, 32093/10, 62649/10).

Information made available under Rule 9.2 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 d'une ONG (Alevi Philosophy Centre (ADO)) (08/11/2021) relative aux affaires ZENGİN, MANSUR YALCIN ET AUTRES, CUMHURİYETÇİ EĞİTİM VE KÜLTÜR MERKEZİ VAKFI et İZZETTİN DOĞAN ET AUTRES c. Turquie (requêtes n° 1448/04, 21163/11, 32093/10, 62649/10) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Istanbul 8. Nov.2021

DGI

08 NOV. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

The Committee of Ministers of the Council of Europe

Directorate of Human Rights

Department for the Execution of Judgments.

Re: 1419th CoM meeting. (Additional notes to our letter of 11. October.2021)

Cumhuriyetçi Eğitim ve Kültür Vakfı Group of Cases (32093/10 - 62649/10), Zengin Hasan and Eylem- Mansur Yalçın Group of Cases (1448/04 – 21163/11)

We have worked on the ACTION PLAN of Turkey dated 5 October 2021 as well as Turkey's additional SUBMISSION dated 3 November 2021 that we became aware through Hudoc-Exec public notification. We are sorry to express that the ACTION PLAN once again reveals that Republic of Turkey appears to be supposing that execution of orders gets completed by the payments of awards to the applicants. Therefore, we want to remind once again that paying awards is not enough by itself for implementation of a judgment unless individual and general measures thereof are completed and implemented.

We kindly want to underline that; Article 46 of the convention reads;

- “1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”***
- 2. The final judgment of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution.”***

CoM measures implementation of judgements according to three main criteria (Art. 6 of Rules of CoM);

- 1. Whether any “just satisfaction” (often a combination of pecuniary losses, non-pecuniary losses, legal fees, and interest payments) awarded by the court under Article 41 of the convention has been paid;***
- 2. Whether individual measures have been taken to ensure that the violation in question has ceased and restitutio in integrum achieved—in other words, that the injured party is restored, to the extent possible, to the same situation he or she enjoyed prior to the violation;***
- 3. Whether general measures have been adopted, so as to prevent “new violations similar to that or those found, putting an end to continuing violations.”***

We are at the opinion that general measures have not been taken and implemented fully in any of our cases as we have previously summarized in our communication dated 11 October 2021.

Upon working on the ACTION PLAN of Turkish authorities dated 5 October 2021 we want to kindly draw attention to following points:

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Articles 14,15 and 19 of the ACTION PLAN (Zengin-Yalcın) states that subject children have passed the age of compulsory religious culture and ethics classes by ignoring millions of other children who are in school ages. We would like to point out that millions of our children that are currently subject to similar applications, therefore necessary steps should be taken to fulfil the judicial requirements in accordance with the judgements. Turkey's above-mentioned understanding is contradictory to Rule of Law Art. 6 and against the requirements of Court judgement which states; ***“Court found that the content of the religious culture and ethics classes in primary and secondary schools, and their compulsory nature with only limited possibilities of exemption, offers no appropriate options for the children of parents who have a religious or philosophical conviction other than that of Sunni Islam”¹ (violation of Article 2 of Protocol No. 1).”***

As Educational cases were transferred to ENHANCED SUPERVISION procedures, we believe that above comments sufficiently explain our position and views.

Articles 30, 31 and 33 of the ACTION PLAN:

ACTION PLAN Article 33 declares the fact that ***“The impending extraordinary situations interrupted the implementation of these schedule as planned since the major concern was to restore the public order and to eliminate challenges posed to the national security.”*** We just want to emphasize that public order can only be restored by obeying the national and international agreements and Rule of Law. Implementation of Court judgements is actually an important tool to eliminate challenges.

Article 91 states that ***“The Committee of Ministers will be regularly informed about the measures taken as regards the execution of the judgments of İzzettin Doğan v Turkey, Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey, Mansur Yalçın vd v. Turkey and Hasan Eylem Zengin v. Turkey.”***

We totally agree with the above statement as it is in conformity with our views. Judgement of İzzettin Doğan reads:

“Generally, the Court found that “the attitude of the State authorities towards the Alevi community, its religious practices and its places of worship is incompatible with the State’s duty of neutrality and impartiality and with the right of religious communities to an autonomous existence”.

States’ duty of neutrality, impartiality and the right of autonomous existence of religious communities are still unobserved and unachieved. Therefore, claims of satisfactory implementation by only payment of awards for some cases are far from being sufficient. Implementation process of the case of İzzettin Doğan and others have not even started or discussed publicly yet. State’s duty and impartiality in relation with the rights of Alevi communities’ autonomous existence and equality of state benefits provided to Sunni Muslim may only be achieved with various multi-dimensional legal and administrative corrections and implementations. The ROAD MAP requirement of the Addendum 4 of the European Council Committee of Ministers decisions (1362nd meeting, 3-5 December 2019) actually pointed out this fact. Thus, we would like to point out once again that unless all legislative – judiciary implementations are fully completed, violations mentioned in the Court judgements are still valid to a great extent.

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We have a few comments on information provided by Articles 41-43-45-46. (Case 32093/10)

Art. 41. Although Tarsus Cem house have completed all necessary local court procedures, their payment request for the electricity bills was rejected by the Presidency of Religious Affairs, the institution that has to pay the bills in accordance with current legislation.
<https://www.cumhuriyet.com.tr/turkiye/mahkeme-kararina-karsilik-diyanet-cemevlerinin-elektrik-faturasini-odemiyor-1881362>

Art.43. Art 45. It was noted by Article 3 of CoM 1362th meeting that, “**emerging practice of the domestic courts to order the partial reimbursement of lighting costs to cemevis bring proceedings**; however, authorities have not yet fulfilled the requirement of General Measures according. to Rule of Law Art 6 para 2 and 3.

Therefore, although the case law is in conformity with the Rule of Law, individual and general measures have not yet been adopted at all.

Art.46. ACTION PLAN reads: **Regarding the ECtHR judgments, all the judicial authorities harmonised their case law in conformity with the Court’s findings. Therefore, this issue is no longer constitutes a subject open to discussion in Turkish Judiciary.** In contrary Court judgement reads: *“If a State introduced a privileged status for places of worship, all religious groups which so wished had to be offered a fair possibility of seeking the benefit of such status and the established criteria had to be applied in a non-discriminatory manner.”* Furthermore, according to Rule of Law Art.6 all implementational activities must be in accordance with individual and general measures. So far Alevi community have not enjoyed any benefit from the benefits provided to Sunni Muslim community.

We have summarized our views about Turkey’s HRAP (Human Rights Action Plan) in our earlier communication dated 11 October 2021.

Art. 90 and 91 of the ACTION PLAN states that violations at hand have been ceased, which is not agreeable due to above mentioned comments. We just like to underline once again that no progress have been registered in legal status of Alevi or any other belief group yet in country.

On the other hand, Grand Chamber Judgement 62649/10 (İzzettin Doğan v Turkey) have not yet been subject to any implementation initiative nor to any corrective execution. All violations stated in judgement are still valid and continues in country. Below articles are from judgement:

184. The existence of an Alevi community with deep roots in Turkish society and history, the importance for that community of being legally recognised, the Government’s inability to justify the glaring imbalance between the status conferred on the majority understanding of Islam, in the form of a religious public service, and the almost blanket exclusion of the Alevi community from

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that service, and also the absence of compensatory measures – the choice made by the respondent State appears to the Court to be manifestly disproportionate to the aim pursued.

185. In conclusion, the difference in treatment to which the applicants, as Alevis, have been subjected has no objective and reasonable justification.

There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 9.

As no progress has ever been recorded in the above judgement, it is hard to accept that “violations at hand have been ceased” as indicated in the ACTION PLAN.

Additionally we want to underline once again that upon working on Turkey’s submission dated 3 November 2021 we object to Article 23, since ECtHR Judgements indicate various violations and Turkish authorities also declare that “The Committee of Ministers will be regularly informed about the measures taken as regards the execution of the judgments of İzzettin Doğan v Turkey, Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey, Mansur Yalçın vd v. Turkey and Hasan Eylem Zengin v. Turkey.”. Above statement confirms that “violations have NOT been ceased” as even writers of the report feel obliged to note that they will keep informing CoM about developments, which proves that implementation process is still at early periods as actual reality of today. We may only add that a long time have passed since those judgments were taken.

Our notes about Turkey’s SUBMISSION dated 3. Nov.2021 related to chapters are as follows:

Chapter I – Introduction;

Insistence on problems that needs to be resolved may only lead to a deadlock of communication.

Chapter II - As to the Alleged Absence of Non-Discriminative Exemption Procedure

Current exemption procedures are rather majoritarian than being pluralist. Questioning parent’s beliefs is against convention. Meetings with Alevi’s may produce positive results when and if their views are reflected to curriculum and syllabuses.

Ch. III. As to the Allegation that Less Coverage is Given to the Alevism in the Compulsory RCE Lesson’s Textbooks

The 20-pages referring to Alevi denomination among 1800-page curriculum of 4th-12th year RCE syllabus gives an important idea about the impartiality and scientific structure of the curriculum.

While Turkey has taken steps in line with court judgements, authorities have persistently tried to preserve Sunni sectarian approaches. Changes of curriculum in 2006,2008,2011 and 2018 and ratio of 20/1800 in RCE books are proofs of such speculative defensive attitudes of authorities. We as an NGO keep asking for corrections according to court judgements.



Books and teaching materials need to be compatible with rules of objectivity and pluralism, teachers should be trained to protect fundamental rights and freedom in class as well as to avoid any kind of discrimination and blasphemy.

Ch. 4- IV. As to Other Allegations of the NGOs

As Turkey monopolizes religious services and education on basis of Sunni-Hanafi Muslim, with thousands of medium level theological schools (Imam-Hatip (Imam-Orator) high schools and many faculties, while there is not a single Alevi school in country, while 180 years old historic Halki Seminary is closed for the last 50 years it is hard to agree that “everyone enjoys the freedom of conscience, religion, thought and where acts of worship, religious rites, and ceremonies” in country. Despite the aim of Turkish authorities’ willingness to eliminate the reasons leading to the violations at hand and court judgements, it is hard to understand reasons of continuing violations, discriminations, blasphemy and allegations.

REVIEW:

- Implementations of “Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı (no. 32093/10)” case and the Hasan and Eylem Zengin (no. 1448/04) group of cases still need General Measures.
- Implementation of “İzzettin Dogan v. Others” (62649/10) case implementation has not yet started. The ACTION PLAN submitted in Oct.2021 is more concentrated on history and educational cases, very few references are made to problems mentioned in Court judgement.
- Educational cases remain at ENHANCED FOLLOW UP status.

Alevi Community is expecting a satisfactory and legitimate ACTION PLAN that may solve long standing problems of Turkey and Religious Freedom as summarized by court:

“Nevertheless, if a State introduced a privileged status for places of worship, all religious groups which so wished had to be offered a fair possibility of seeking the benefit of such status and the established criteria had to be applied in a non-discriminatory manner.”

Kindest regards

Dogan Bermek

Alevi Philosophy Center Association

