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Meeting: 1514th meeting (December 2024) (DH)

Item reference: Action Plan (16/10/2024)

Communication from Türkiye concerning the case of DINK v. Turkey (Application No. 2668/07) - *The appendices in Turkish are available upon request to the Secretariat.*

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Communication de la Türkiye concernant l'affaire DINK c. Turquie (requête n° 2668/07) (**anglais uniquement**) - *Les annexes en turc sont disponibles sur demande au Secrétariat.*

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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

ACTION PLAN

DINK v. Türkiye (2668/07)

Judgment of 14 September 2010 and final on 14 December 2010

I. CASE DESCRIPTION

1. The case concerns the violation of the right to freedom of expression on account of the conviction of the journalist and newspaper editor Hrant Dink for denigrating Turkishness under Article 301 of the Criminal Code (violation of Article 10).

2. It further concerns the failure of the Turkish authorities to take steps to prevent Hrant Dink's murder by members of an ultranationalist group, despite having been reasonably informed of a real and imminent threat to his life (substantive violation of Article 2). In addition, the authorities failed to conduct an effective investigation to identify and punish the officials who had failed to take action to prevent the assassination, including a chief police officer who allegedly revealed his support for the suspects (procedural violation of Article 2). The Court also criticised the lack of independence of the Governorship and Provincial Administrative Council in investigating the allegations against members of security forces as well as the restrictions on access for Hrant Dink's close relatives to the investigation files.

3. Finally, the case concerns a violation of the right to an effective remedy on account of the inability of the applicants to claim damages (violation of Article 13 in conjunction with Article 2).

II. INDIVIDUAL MEASURES

4. The Government has taken measures to ensure that the violation at issue has been ceased and that the applicants have been redressed for its negative consequences.

A. Just Satisfaction

5. The Court awarded EUR 100,000 for Rahil Dink, Delal Dink, Arat Dink, Sera Dink and EUR 5,000 for Hasrof Dink in respect of non-pecuniary damage. The Court also awarded the applicants jointly EUR 28,595 in respect of costs and expenses.

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6. These amounts were paid to the applicants within the deadline set forth by the Court.

Payment information was published on HUDOC-EXEC.

B. The Proceedings Against the Individuals Concerned

1. The Current Status of Proceedings Against the Principal Perpetrator

7. On 19 January 2007 Hrant Dink, a writer at Agos Newspaper, was killed in Istanbul as a result of an armed assault; the perpetrator of the incident Ogün Samast was arrested and placed in detention; in the course of his trial together with other accused, the case file in respect of the accused Ogün Samast was disjoined and registered under the case file before the Istanbul 2nd Juvenile Assize Court due to his being younger than the age of 18 and as a result of the proceedings, on 25 July 2011 he was sentenced to imprisonment of 22 years and 10 months in total for the offences of murder, possession of unlicensed firearms, and this decision was upheld by the judgment of the 1st Criminal Chamber of the Court of Cassation dated 21 March 2012 (E. 2012/173, K. 2012/2005). In addition, the trials of the accuseds, who were not public officials, on the charges of instigating intentional killing and other offences were conducted by the Istanbul 14th Assize Court and they were sentenced to various penalties.

2. The Main Case Regarding the Trial of Officials

8. As regards, *inter alia*, the public officials responsible for the aforementioned murder, the trial was conducted under the file no. E. 2016/32, K. 2021/56 (see Annex 1) of the Istanbul 14th Assize Court (the Assize Court). On 26 March 2021 the Assize Court delivered various decisions in respect of the accuseds, and upon appeals against these decisions, the 2nd Criminal Chamber of the Istanbul Regional Court of Appeal delivered its decision on 28 April 2022 (see Annex 2) and the 3rd Criminal Chamber of the Court of Cassation delivered its decision on 21 June 2023 (see Annex 3).

9. In the context of this file, the file concerning the fugitive accuseds, whose defence could not be taken due to an arrest warrant against them, was disjoined. The file no. E. 2021/24 of the Istanbul 14th Assize Court against the fugitive accuseds was later joined with the file no. E. 2023/103 of the same court, and the execution of the arrest warrants is being awaited.

10. As regards accused who were public officials at the material time, the trials were conducted before the Istanbul 14th Assize Court in the case no. E. 2016/32, K. 2021/56. As a result, these accused were sentenced prison terms as indicated below.

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11. The Assize Court sentenced two accused, namely Head of Intelligence Department of the General Directorate of Police and Chief of Branch of the Intelligence Department at the General Directorate of Police, to aggravated life imprisonment for premeditated intentional killing within the scope of a terrorist organisation. The Court of Cassation upheld the decision and the decision against the accused became final.

12. As is seen, the accused, who were in critical positions on the date of the incident, failed to do what they should have done as required by their duties in order to prevent the murder of Hrant Dink were imposed sentences as the actual perpetrators of the offence due to their will to complicity in the premeditated murder.

13. On the other hand, the Assize Court sentenced twelve accused to imprisonment for terms varying between 10 years and life imprisonment for the offences of intentional killing, aiding intentional killing, intentional killing by negligence.

14. Upon appeal, the Court of Cassation, on 21 June 2023, considering the responsibility of the accused in the murder, quashed the decision on the ground that they should have been sentenced to heavier penalties. The proceedings regarding these accused are currently pending.

15. In the light of the above information the Committee will be kept updated as regards the developments in the on-going proceedings.

3. Offence of Abuse of Office by Public Officials

16. The authorities would also like to emphasise that a large number of public officials have been prosecuted for abuse of office on the grounds that they were responsible for the failure to take the necessary measures in connection with the murder. Among these officials was the then-incumbent Director of the İstanbul Provincial Police Department.

17. The statutory limitation period for the offence of abuse of office is eight years pursuant to Article 66 of the Turkish Criminal Code. This period shall be extended by up to half in case of interruption of the statutory limitation period pursuant to Article 67 § 4 of the Turkish Criminal Code. Taking into account the date of the offence and the elapsed time, the Assize Court decided to discontinue the proceedings against 27 public officials in accordance with Article 223 § 8 of the Code of Criminal Procedure due to the expiry of the statutory limitation period.

18. At this point, the authorities would like to reiterate that criminal proceedings have been initiated against those responsible and a number of officials have received serious sentences. However, the prosecutions for the offence of abuse of office were time-barred due to the expiry of the time periods stipulated in the law and the case was discontinued. In this

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context, the authorities are of the view that the judicial authorities have taken the steps necessary to execute the Court's judgment.

4. Disciplinary Investigation against Public Officials

19. By the decision issued on 09 October 2018 as a result of the disciplinary investigation conducted by the High Disciplinary Board of the Ministry of Interior against 17 persons, including high-level executives serving as the Provincial Police Chief and the Director of the Intelligence Branch of the General Police Department at the material time, it was decided that there was no need to issue a decision in respect of a person since a disciplinary investigation had been conducted before and that the file would be discontinued in respect of the other persons due to the expiry of the statutory limitation period concerning the power of the administration to impose penalty in accordance with Article 29 of the Law no. 7068, without prejudice to objection. Moreover, on 29 March 2018 the disciplinary investigation initiated by the High Disciplinary Board of the Ministry of Interior against 8 persons, including high-level officials, was discontinued due to the expiry of the statutory limitation period, subject to objection. Accordingly, the disciplinary investigations conducted against those responsible were completed.

20. While the above-mentioned disciplinary investigation was at the preliminary examination stage, the lawyer of Rahil (Rakel) Dink, the wife of Fırat (Hrant) Dink, was provided with the opportunity to access to the case file. Furthermore, the lawyer obtained copies from the case file and sent a petition including his submissions concerning the disciplinary investigation.

III. GENERAL MEASURES

21. The Turkish authorities have taken a number of measures aimed at preventing similar violations. These measures included, in particular, the legislative measures, publication and dissemination of the European Court's judgment.

A. Isolated Nature of the Violation

22. In the reasoning of the decision rendered by the Istanbul 14th Assize Court on 26 March 2021; it was concluded that: "In the collective assessment of all case files concerning the organisation (FETÖ/PDY), it was understood that according to the findings obtained, it was ensured that the perpetrators of the impugned murder committed on 19 January 2007 by means of the members of the FETÖ/PDY armed terrorist organisation were instigated and encouraged in order to achieve the organisational goal; the pieces of evidence, news mechanisms and reports that would enable access to the perpetrators and thus the prevention

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of murder were hidden and the murder was ensured to be committed by tracking the perpetrators until the moment of murder; the pieces of evidence were tampered with and the traces of the organisation were wiped out after the murder; the State institutions were linked with the murder through media outlets of the organisation with the broadcasts made for a specific purpose and with specific degenerated information; the investigations conducted into the murder in respect of public officials were directed in line with the interests of the organisation and those unfavourable were tried to be silenced by means of applying all kinds of pressure; as a result of the appointment made by the organisation to the Istanbul province as a continuation of the power it gained in public bureaucracy, it followed up and implemented the whole process stated to be of grave nature and leading up to the attempt to take over the State in order to achieve its ultimate aim by conducting many illegal conspiracy investigations in line with this policy.

23. In the incident of the killing of Hrant DİNK, the chief editor of Agos newspaper, with an act premeditated by the instigators Yasin Hayal and his group and committed on 19 January 2007 by the hitman Ogün Samast, the accuseds in 3 groups, consisting of members of the police, Gendarmerie personnel and other accuseds (the founder and executives of the FETÖ/PDY Armed Terrorist Organisation and also some members of the judiciary) had been informed beforehand of the fact that Hrant DİNK would be killed and of the perpetrators of the crime, that the accuseds, who were public officials and who had the obligation to prevent murder by virtue of their duties, powers and positions (statutory obligation) ensured the commission of the murder by failing to carry out operations against the organisation who would commit the murder and to provide personal, physical and spatial protection to the deceased Hrant DİNK with some of them being involved in premeditation in person and some of them being secondary or primary participants (*fer'i veya asli iştirak*) and that these acts were committed on behalf of the FETÖ/PDY armed terrorist organisation and in line with its destructive purposes". Accordingly, the accused were sentenced to imprisonment for varying terms.

24. As it can also be understood from the above-mentioned reasoning of the trial court, the said act was not actually a result of the negligence that is attributable to the security forces, but a planned act of the FETÖ/PDY armed terrorist organisation which deliberately infiltrated into the State.

25. The Government would like to underline that this terrorist organisation planned and committed the murder as a part of their planning to destabilise the Country. The authorities

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would also like to note that the members of this organisation have been dismissed from the State as a result of investigations initiated after 15 July coup attempt.

B. Legislative Measures

26. According to Article 5 of the Constitution, it is among the fundamental aims and duties of the State to “ensure the welfare, peace and happiness of the individual and society, rights and freedoms of the individual... to provide the conditions required for the development of the individual’s material and spiritual existence.”

27. Likewise, in Articles 17 and 19 of the Constitution, protection of an individual’s material and individual existence is separately and clearly listed among the citizens’ rights. The State fulfils this obligation in the framework of general security and safety services and by means of the general law enforcement officers, the police and the gendarmerie.

Secondary Legislation on Protection

28. At the outset, the Government would like to underline that protective services for individuals who face terrorist threats are carried out in confidentiality in accordance with the Regulation on Protective Services prepared in accordance with the Prevention of Terrorism Act (Law no. 3713) and the Directive on Protective Services regarding the implementation of the Regulation.

29. The process regarding the requests of persons whose placement under protection is subject to a request is as follows. First of all, these persons must apply to the Governor’s Office of their place of residence with information and documents proving that their life is in danger.

30. Upon the application, after the necessary examinations and inquiries are carried out by the relevant authorities, if deemed appropriate, Close Protection and On-Call Protection orders will be issued by the relevant province’s Governor’s Office. If it is deemed necessary to issue a Special Protection order, the relevant request will be sent to the Central Protection Commission.

31. In addition, as regards other threats not related to terrorist organisations, the measures of protection are taken within the scope of the Circular on the Protection of Threatened Persons (no. 2022/17, dated 30 December 2022).

32. In such a case, the person concerned should apply to the Police Station or Gendarmerie Station in the location where protection in the context of public security is requested.

33. In order to determine the acts and actions to be taken within the framework of the detailed inquiry and examination to be carried out by the relevant units, a decision will be

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taken by the commission to be chaired by the Deputy Governor to be designated by the Governor and consisting of the Deputy Director of Provincial Police Department responsible for the Public Security Branch and the Head of the Public Security Branch for the zones under police jurisdiction, and the Deputy Commander of the Provincial Gendarmerie Command and the Head of the Public Security Branch for the zones under gendarmerie jurisdiction.

34. In this context, when journalists face a real and imminent threat to their lives, they apply to the official authorities and request that urgent protective measures be taken. In addition, a protective order may also be issued without complaint for individuals whose protection is established to be necessary by the intelligence units on the basis of the risk and threat situation.

35. According to the forms of protection, while journalists under threat may be provided with uninterrupted protection on 24-hour basis, close protection may be allocated by accompanying the person outside his/her residence. In addition, the house or workplace of an individual may be placed under uninterrupted protection for 24 hours by means allocating a point in the house and workplace. Forms of protection are determined according to the level of threat to an individual.

C. Other Violations

36. As regards the issue of the conviction of persons for denigrating Turkishness under Article 301 of the Criminal Code, the general measures regarding this violation are being examined by the Committee in the context of the *Altuğ Taner Akçam* case (see the decisions adopted at the 1294th meeting, September 2017).

37. With regard to the lack of an effective investigation (including the issue of obtaining administrative authorisation to prosecute civil servants and public officials) and the lack of an effective remedy due to the inability to claim damages, these issues are examined by the Committee under the *Batı and Others* group of cases against Türkiye (see the decision adopted at the 1265th meeting (September 2016) (DH)).

D. Projects and Awareness-raising Activities

38. The Justice Academy of Türkiye is the sole institution for pre-service and in-service training of judges and prosecutors. The Academy has been providing candidate judges and public prosecutors with compulsory pre-service trainings on human rights.

39. Within the scope of pre-service training, since January 2022, 4,691 candidate judges and prosecutors have been provided with courses on human rights and protection, as well as 4,758 on freedom of expression, 5,461 on investigation procedures, and 962 on prosecution practices.

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40. The authorities would also like to indicate that the candidates have to pass a final exam to be appointed as a judge or public prosecutor. The final exam involves, *inter alia*, questions concerning these subjects.

41. The judges and public prosecutors are routinely provided in-service trainings concerning human rights. Participation to these courses is compulsory. Information on several courses relevant to the issues examined in the *Dink* case is provided below.

42. Within the scope of in-service trainings, 1,633 judges and prosecutors have received trainings on the right to a fair trial, effective investigation techniques, special investigation procedures, hate crimes and criminal legislation and freedom of expression since January 2022.

43. Within the scope of distance learning programmes, 345 judges and prosecutors followed modules on the protection of freedom of expression on the internet, the right to life and the prohibition of torture and ill-treatment.

44. Within the scope of the Project on Supporting the Effective Implementation of Turkish Constitutional Court Judgments in the Field of Fundamental Rights, 195 judges and prosecutors have received in-service training in 2024.

45. As a part of the Project on Strengthening the Criminal Justice System and the Capacity of Justice Professionals on Prevention of the European Convention on Human Rights Violations in Türkiye (CASII), 1,915 judges and prosecutors were provided with in-service training on the right to liberty and security and reasoned judgment in criminal law.

46. What is more, certificate-awarding distance learning activities are conducted via the “HELP (Human Rights Education for Legal Professionals) E-learning Platform” with the aims of enhancing the knowledge of law professionals serving under the Ministry of Justice in the field of human rights, equipping and enabling them to reflect the Convention on their daily professional practices in the best way possible, and raising their awareness and level of knowledge about the Court’s judgments and decisions in their fields of interest.

47. Türkiye is in the first place among other member States in respect of the number of users in the HELP e-learning platform.

48. Within the scope of HELP trainings, 307 participants received online training on alternatives to detention and punishment involving deprivation of liberty, reasoning of criminal judgments, procedural safeguards in criminal proceedings and victims’ rights.

49. In addition, with the amendment made on 15 January 2020 to Article 6 entitled “Principles of Promotion” of the “Principle Decision on the Grade Promotion of Judges and Prosecutors”, in the promotion of judges and prosecutors, consideration will be given to

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whether the persons concerned caused a finding of violation by the European Court of Human Rights or the Constitutional Court, as well as the nature and gravity of the violation, and the efforts of the persons concerned to safeguard the rights enshrined in the European Convention on Human Rights and the Constitution.

E. Individual Application to the Constitutional Court

50. The authorities would furthermore like to highlight that a person in the applicants' situation has at his or her disposal today an effective remedy to bring the violation to an end and obtain redress before the domestic authorities. In particular, following the European Court's judgment, in 2012, the legislative measures were taken to introduce an individual application before the Constitutional Court in respect of human rights violations. An individual in the applicants' situation could therefore pursue today the avenue of lodging an individual application to uphold his or her Convention rights, including in the present case. The Constitutional Court is also able to award just satisfaction in case of finding a violation of human rights. In this respect, the Turkish authorities would like to recall that the European Court indicated in the *Hasan Uzun* case (application no. 10755/13) that the individual application to the Constitutional Court should be considered an effective remedy as of 23 September 2012.

51. The authorities would also like to state that in its judgment of 17 July 2014, in the case of *Rahil Dink and Others* (no. 2012/848)¹, the Constitutional Court held that there had been a violation of Article 17 the Constitution, on the grounds that there had been no effective investigation and that the applicants had not been able to participate effectively.

F. Publication and Dissemination Measures

52. The judgment was translated in Turkish and published on the Court's official website.

53. In addition, the Turkish authorities ensured that the translated text of the judgment, with an explanatory note, was circulated to the relevant judicial authorities, the Constitutional Court, the Court of Cassation, the Human Rights and Equality Institution of Türkiye and the Ombudsman Institution.

IV. CONCLUSION

54. The Committee of Ministers will be duly informed of the execution of the judgment and the general measures to be taken for prevention of the similar violations.

¹ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2012/848>