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

Communication from an NGO (ClientEarth) (15/10/2024) concerning the Genc and Demirkan group of cases v. Turkey (Application No. 34327/06) (appendices in Turkish are available at the Secretariat upon request).

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 : 1514^e réunion (décembre 2024) (DH)

Communication d'une ONG (ClientEarth) (15/10/2024) relative au groupe d'affaires Genc et Demirkan c. Turquie (requête n° 34327/06) (des annexes en turc sont disponibles auprès du Secrétariat sur demande)
[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.

15 October 2024

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COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the
supervision of the execution of judgments and of terms of friendly settlements by**

ClientEarth

OKYAY and OTHERS v. TÜRKİYE/ Genç and Demirkan v Türkiye Group of Cases

(Application No.: 36220/97¹)

1. This is a submission pursuant to Rule 9.2 of the Rules of the Committee of Ministers, regarding Türkiye's compliance with the European Court of Human Rights' judgment in *Okyay and Others v Türkiye* (application no. 3220/97) ("the Okyay judgment"). In view of the upcoming discussion of the Okyay judgment at the meeting of the Committee of Ministers in December 2024, the Communicant ClientEarth would like to give an update on the continued non-implementation of the judgment.
2. Client Earth is a specialist, non-profit environmental law organisation, whose work, among other things, includes applications and third-party submissions before the European Court of Human Rights and other international human rights bodies in cases linked to environmental issues.² Given its combination of technical knowledge on environmental and human rights, as well as Türkiye-specific experience, ClientEarth is uniquely placed to communicate about the status of implementation of the Okyay judgment. ClientEarth submits that Türkiye, despite its efforts, is not taking sufficient measures to remedy the breach found by the European Court of Human Rights in the Okyay judgment.

Background

National Courts and the European Court of Human Rights

3. The Okyay judgment concerns the national authorities' failure to implement the domestic courts' interlocutory orders and judgments to shut down three thermal power plants that have polluted the environment in the province of Muğla, Türkiye.³ As noted by the administrative courts as far back as 1996, the facilities in question have operated without the requisite permits for construction, gas emissions and discharge of waste water.⁴ According to the administrative courts, whose judgments were later upheld by the Supreme Administrative Court, the facilities' continued operation had already

¹ European Court of Human Rights, *Okyay and Others v. Turkey*, application No: 36220/97.

² For example, ClientEarth has made third party submissions and applications in the cases of *Greenpeace Nordic and Others v. Norway*, *Verein KlimaSeniorinnen Schweiz* and *Daniel Billy and Others v. Australia*.

³ European Court of Human Rights, *Okyay and Others v. Turkey*, application No: 36220/97, para. 17.

⁴ European Court of Human Rights, *Okyay and Others v. Turkey*, application No: 36220/97, para. 17.

resulted in environmental pollution and could cause “irreparable harm to the public”.⁵ On 3 September 1996, the Council of Ministers of Türkiye decided that the Muğla thermal power plants would continue to operate regardless of the Aydın Administrative Court’s decisions.⁶ On 9 December 1996, ten individuals applied to the European Court of Human Rights alleging that their right to a fair trial under Article 6 of the European Convention on Human Rights had been violated due to the administrative authorities’ failure to enforce the administrative courts’ decisions and orders to halt the operation of the three Muğla thermal power plants.⁷

4. On 12 July 2005, the European Court of Human Rights found that the national administrative authorities failed to comply with the Aydın Administrative Court’s interlocutory order to suspend the operation of the Muğla thermal power plants; failed to enforce the Supreme Administrative Court decisions upholding the Aydın Administrative Court’s judgments within the prescribed time-limits; and that the decision of the Council of Ministers that the thermal power plants should continue to operate was “tantamount to circumventing the judicial decisions”.⁸ Overall, the European Court of Human Rights considered that the national authorities failed to comply in practice and within a reasonable time with national courts’ judgments, violating the applicants’ right to a fair trial.⁹

Committee of Ministers of the Council of Europe

5. On 14 February 2007, the Committee of Ministers of the Council of Europe (“the Committee of Ministers”) adopted an Interim Resolution that urged the Turkish government to “enforce the domestic court order”.¹⁰ The case was later placed under the enhanced procedure for supervision due to its complexity.
6. At its 1383rd meeting, the Committee of Ministers acknowledged various reports and proceedings pointing towards the shortcomings in the filtering and treatment systems of the power plants, and shining a light on proceedings concerning the expansion of mining facilities without an environmental impact assessment (EIA), all of this “*suggesting the persistence of a situation that is potentially dangerous for the local population*”.¹¹ It also took note of the legislative processes concerning the deferral of environmental obligations for coal power plant operators for years. Based on the above, the Committee of Ministers further requested detailed information on the Muğla coal plants and their auxiliary facilities from the Turkish government. The requested information included the reasons for the Yatağan power plant’s failure to obtain environmental permits, information concerning ongoing court proceedings, and “*the most recent official studies carried out by the competent health and environment monitoring bodies on the impact of the current operation of facilities in question and their auxiliaries [sic], on human health and the environment.*”
7. On 21 June 2021, the State Party submitted an Action Report stating that the national authorities have taken individual and general measures to implement the judgment.¹² The State Party claimed that “the

⁵ European Court of Human Rights, Okuy and Others v. Turkey, application No: 36220/97, para. 22, 23, 29, 32.

⁶ European Court of Human Rights, Okuy and Others v. Turkey, application No: 36220/97, para. 36.

⁷ European Court of Human Rights, Okuy and Others v. Turkey, application No: 36220/97, para. 1 and 3.

⁸ European Court of Human Rights, Okuy and Others v. Turkey, application No: 36220/97, para. 73.

⁹ European Court of Human Rights, Okuy and Others v. Turkey, application No: 36220/97, para. 74-75.

¹⁰ Council of Europe Committee of Ministers, Interim Resolution CM/ResDH(2007)4, Execution of the judgment of the European Court of Human Rights in the case of Ahmet Okuy and others against Turkey.

¹¹ Council of Europe Committee of Ministers, Interim Resolution CM/ResDH(2007)4, Execution of the judgment of the European Court of Human Rights in the case of Ahmet Okuy and others against Turkey.

¹² 1411th meeting (September 2021) (DH) - Action Report (21/06/2021) - Communication from Turkey concerning the cases of Bursa Barosu Baskanligi and Others v. Turkey (Application No. 25680/05), Genc and Demirkan v. Turkey (Application No. 34327/06) and AHMET OKYAY AND OTHERS v. Turkey (Application No. 36220/97) [DH-DD(2021)644].

power plants are not harmful for the environment any more as of today”¹³. However, the environmental and health impact studies requested by the Committee of Ministers are not included in the Annex to the Action Report.

8. On 17 May 2022, local non-governmental organisation KARDOK submitted a Rule 9.2 Communication pointing out significant gaps in the Action Report. They also pointed out the State Party’s failure to implement the court judgment in the face of ongoing environmental pollution, the destruction of livelihoods by the expansion of mining facilities, systematic practices pertaining to the exclusion of a large number of activities from the scope of the EIA, as well as the comparable situation of 10 other power plants which were granted under the same legal regime as that applicable to the Muğla coal plants.

Submissions of the Communication

9. As of the date of this Communication, the Muğla power plants continue to be operational. The Communicant submits that the State Party is failing to execute the Okyay judgment by not implementing the domestic court judgments. The domestic courts’ orders were clear and are not under dispute: the Muğla power plants were required to suspend operations on the grounds of their harm to the environment and the public. Instead of implementing this clear order, the State Party chose to keep these facilities operational, for decades causing irreversible harm to environment, human health and livelihoods in the region. In what follows, the Communicant sets out the impacts of the State Party’s failure to execute the judgment, notably regarding environmental pollution and health impacts on the one hand, and climate change on the other.

Environmental pollution and health impacts

10. The Muğla coal plants have caused and continue to cause significant environmental pollution. This environmental pollution is a direct consequence of the State Party’s actions enabling the Muğla power plants to benefit from extensive environmental exemptions and deferrals. The Muğla power plants have been operating since the 1980s and failed to obtain full environmental permits until 2021.¹⁴ The State Party allowed for their continued operation despite the operators’ repeated failure to complete the required rehabilitations, particularly relating to the coal ash deposit sites.¹⁵ In violation of the legal requirements, the Muğla coal plants have never been subjected to EIA.¹⁶ The operation of the Muğla coal plants also led to expansions of lignite mining the region – the majority of which has also never been subjected to EIA.
11. Local civil society, including the Chamber of Engineers, the Climate Change Research and Policy Association and KARDOK, has repeatedly raised concerns about the inadequate flue gas desulphurisation, denoxification, dust collection, coal ash storage and wastewater treatment facilities at the Muğla coal plants. This data was complemented by strong indications of ongoing pollution in the

¹³ 1411th meeting (September 2021) (DH) - [Action Report \(21/06/2021\) - Communication from Turkey concerning the cases of Bursa Barosu Başkanlığı and Others v. Turkey \(Application No. 25680/05\), Genc and Demirkan v. Turkey \(Application No. 34327/06\) and AHMET OKYAY AND OTHERS v. Turkey \(Application No. 36220/97\) \[DH-DD\(2021\)644\]](#), para. 85.

¹⁴ Ministry of Environment, Urbanization and Climate of Türkiye, [Database on environmental licenses, environmental permits and temporary operation certificates](#), Permits, licenses and temporary operation certificates granted to the Muğla power plants. For an overview see also Annex II of 1436th meeting (June 2022) (DH) - Rule 9.2 - Communication from an NGO (KARDOK) (05/05/2022) in the case of AHMET OKYAY AND OTHERS v. Turkey (Application No. 36220/97) (Genc and Demirkan group, 34327/06).

¹⁵ 1436th meeting (June 2022) (DH) - Rule 9.2 - Communication from an NGO (KARDOK) (05/05/2022) in the case of AHMET OKYAY AND OTHERS v. Turkey (Application No. 36220/97) (Genc and Demirkan group, 34327/06), para. 16.

¹⁶ 1436th meeting (June 2022) (DH) - Rule 9.2 - Communication from an NGO (KARDOK) (05/05/2022) in the case of AHMET OKYAY AND OTHERS v. Turkey (Application No. 36220/97) (Genc and Demirkan group, 34327/06), para. 41 and 42.



region. For example, civil society findings pointed towards “alarming levels of air pollution” in 2022, after the issuance of environmental permit and license certificates for the coal plants.¹⁷ Further, a report on the hydrogeological effects of the Milas coal mines and thermal power plants found that the Yeniköy ash storage site did not have adequate containment channels in place resulting in spills into water resources and discharge into forest areas.¹⁸

12. Nevertheless, public authorities continued to grant environmental permits to the facilities in question: For example, environmental permits relating to emissions into the air, noise control, wastewater discharge and sanitary landfill licenses were granted by the Ministry for Environment, Urbanisation and Climate Change to the Yeniköy coal plant on 11 March 2022 and to the Kemerköy coal plant on 2 August 2023. The grounds for these new permits (as for the previous ones) are unknown to the public because the preparatory studies and data from continuous emissions monitoring systems are not disclosed.

13. Subsequent to the issuance of these permits, the operator of both the Yeniköy coal plant and the Kemerköy coal plant, YK Enerji, published a statement dated 4 August 2023, containing the following section about ongoing environmental rehabilitations¹⁹:

“We have realised the first and only rehabilitation investment in our country for the development of flue gas treatment systems in all our power generation units in accordance with European Union standards and to increase efficiency at a total cost of EUR 280 million. Approximately 60 per cent of this investment has been completed and the investments continue in stages. Since the decommissioning of all units would create problems in energy supply, the works have to be carried out in stages. In accordance with the plans of the General Electric experts carrying out the rehabilitation work, two units have been completely renovated and the third unit is nearing the end. Each of the two refurbished units has an output of 232.6 MW. By the end of 2024, the project is expected to be completed”.

14. Based on this statement, it can be concluded that three of the total five units of the Kemerköy-Yeniköy complex did not have flue gas treatment systems in place in August 2023 despite the permits issued. These systems were necessary to meet the emission limit values applicable since 2019.

15. Local non-governmental organisation KARDOK challenged the recent permits issued for the Yeniköy and Kemerköy coal plants before the Muğla Administrative Court.²⁰ In addition to the above-mentioned arguments about air pollution, coal ash disposal sites and wastewater treatment facilities, KARDOK pointed out that the Kemerköy coal plant lacked the necessary infrastructure and permits for deep sea discharge. The case filed for the cancellation of the environmental permits for the Kemerköy coal plant is now being heard on appeal, at KARDOK’s request. The first-instance court delivered its judgment despite the absence of an expert assessment. Furthermore, the Ministry, as defendant, also failed to submit the information requested by the court concerning continuous air emissions monitoring systems.²¹ The case filed for the cancellation of environmental permits for the Yeniköy coal plant is also at the appeals stage. In the Yeniköy case, the Ministry submitted the plant's emission data from continuous emissions monitoring systems in response to the court's insistent request. Although the

¹⁷ Deutsche Welle, [Yatağan'da hava kirliliği alarm veriyor](#) [own translation: Air pollution in Yatağan is alarming], 6 January 2022.

¹⁸ Hüseyin Kırmızıtaş, Report prepared for the Climate Action Network Europe: [Yeniköy Termik Santrali, Kül Depolama Sahası ve İkizköy Açık Kömür Ocaklarının Su Kaynaklarına Etkisinin Değerlendirilmesi](#) [own translation: Assessment of the Impacts on Water Sources of Yeniköy Thermal Plant, Ash Deposit Site and İkizköy Open Pit Coal Mines], 28 February 2022.

¹⁹ Own translation of section of statement in Annex I to this Communication: Statement by YK Enerji dated 4 August 2023.

²⁰ Muğla 2. Administrative Court, Cases 2023/2916 Esas [Merits] and 2024/130 Esas [Merits].

²¹ Muğla 2. Administrative Court, Cases 2023/2916 Esas [Merits] and 2024/130 Esas [Merits], Submission for Appeal submitted by the claimant KARDOK.



data presented showed that the plant did not meet the emission limit values for the plant to obtain an environmental permit, the court did not suspend the execution of the permit. In addition, despite repeated requests by KARDOK, no expert examination has yet been conducted in the file.

16. The State Party's failure to address the pollution caused by the Muğla power plants also has stark health implications for individuals living the vicinity and beyond. For example, a study by physicians found that the occurrence of deaths associated with cardiovascular diseases are significantly higher in the impact zone of the Muğla power plants in Yatağan than in less impacted zones such as Bodrum.²² The health NGO HEAL has estimated that the three Muğla power plants alone are responsible for 280 premature deaths per year²³ - adding up to 68,324 premature deaths between 1982 and 2020.²⁴ Continuing their operation until 2063, as foreseen in their electricity generation licenses, instead of 2030, would equate to 19,835 premature deaths and more than 30 billion euros in health expenses.²⁵ Despite these evidenced health impacts, public health screenings, initiatives for enhanced access to health services and compensation schemes have been missing.
17. These environmental and health implications would not have occurred had the State Party executed the administrative court judgments and later, the Okyay judgment in a timely manner and in good faith. It is clear in light of the European Court of Human Rights' case law that the principle of *restitutio in integrum* applies: the reparation must as far as possible reverse all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.²⁶
18. At its 1383rd meeting the Committee of Ministers noted: "*individual measures in these cases, save in the Kumbaracıbaşı case, are strictly linked to and dependent on the adoption of the general measures which are necessary for the protection of the population from the environmental pollution...*".²⁷ The Committee of Ministers further referred to European Court of Human Rights' case law concerning States' positive obligations in relation to industrial activities which by their very nature may be dangerous. The Committee of Ministers accordingly recognises that States have the positive obligation to put in place and implement an adequate legal and regulatory framework covering the licensing, operation, exploitation, security and control of such activities.
19. Locals have been exposed to excessive levels of environmental pollution, risks and harms to their health, and severe threats to their livelihoods, for years. In these circumstances, it is impossible to conclude that the current permits issued for the facilities and filter rehabilitations decades after the relevant court judgments are sufficient to address the severity of the violation at hand. The principle of *restitutio in integrum* requires at the very least that comprehensive public health initiatives and ecosystem rehabilitations should have been put in place before the State Party could be deemed as taking steps to make reparations for the consequences of the violation. This would also be in line with European Court of Human Rights' judgment in *Pavlov and Others v. Russia*: when environmental problems due to an industrial installation are long-standing and well known, the national authorities

²² Genç et al, Yatağan'da Kömürlü Termik Santrallerin Mortalite Üzerine Etkisinin Değerlendirilmesi [own translation: An assessment of the impact of coal-fired thermal power plants on mortality in Yatağan], Turkish Thorax Association, 26th Annual Congress Book, 2023, SS109, p. 562-564.

²³ HEAL (Health and Environment Alliance) and Europe Beyond Coal, Türkiye'de kronik kömür kirliliği [own translation: Chronic Coal Pollution in Turkey], p. 24.

²⁴ HEAL (Health and Environment Alliance) and Europe Beyond Coal, Chronic Coal Pollution Turkey: Muğla, p. 3.

²⁵ Europe Beyond Coal, HEAL (Health and Environment Alliance) and CAN (Climate Action Network) Europe, Kronik Kömürü İyileştirmek [own translation: Curing Chronic Coal], 2022.

²⁶ See e.g. European Court of Human Rights, Papamichalopoulos and Others v. Greece, application no. 14556/89, para. 36 citing the Permanent Court of International Justice.

²⁷ Department for the Execution of Judgments of the ECHR, Genc and Demirgan v. Turkey, application no. 34327/06.



can be considered to have been in a position to evaluate the pollution hazards and take adequate measures.²⁸

Climate impacts

20. The State Party's continued failure to implement the Okyay judgment also extends to neglecting to assess and address the climate impacts of the Muğla power plants.
21. Recently, in the case of *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, the Grand Chamber of the European Court of Human Rights recognised that there is "*a right for individuals to enjoy effective protection by the State authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change*".²⁹
22. As a party to Paris Agreement, Türkiye is bound by the Agreement's purpose of "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels".³⁰ In this context, Türkiye is under the obligation of establishing and implementing domestic policies for mitigation of and adaptation to climate change.³¹
23. According to recent data from the Turkish Statistical Institute (TÜİK), Türkiye's total greenhouse gas emissions (GHG) in 2022 were 558.3 million tons of carbon dioxide equivalent (MtCO₂e).³² 71.8% percent of total emissions are attributable to the energy sector as a whole, while one-fifth of Türkiye's GHG emissions come from coal-fired thermal power plants.³³ Despite coal power plants' large share in the country's GHG emissions, there are no plans to phase out these facilities – despite Türkiye's pledge to achieve net zero emissions by 2053 and its obligations stemming from the Paris Agreement.
24. Given the current knowledge about the global climate crisis and Türkiye's existing legal obligations in this regard, the climate impacts of the Muğla power plants and their auxiliary facilities must be taken into account to assess the proper implementation of the Okyay judgment. While the local court decisions at issue may not have encompassed climate change-related considerations, this is due to the low level of awareness in the late 1990s, together with the lack of legal basis at the time to address climate change.
25. It follows clearly from the European Court of Human Rights' case law on Article 46 of the European Convention on Human Rights that climate impacts must be considered. It is common ground that the State Party is under the obligation to put an end to the violation found in the Okyay judgment and make full reparation for the consequences of the violation,³⁴ acting in a way that is compatible with the conclusions and spirit of the Court judgment.³⁵ As stated by the European Court of Human Right in its case law, the reparative obligation does not stop at the time of breach, or of the judgment; where objective factors come to light after a judgment, these must be taken into account in the supervision

²⁸ European Court of Human Rights, *Pavlov and Others v. Russia*, application no. 31612/09, para. 77.

²⁹ European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, application no. 53600/20, para. 544. See also para. 519.

³⁰ *Paris Agreement*, 2015, Art. 2.

³¹ *Paris Agreement*, 2015, Art. 3, 4, 7.

³² Turkish Statistical Institute (TÜİK), *Sera Gazı Emisyon İstatistikleri* [own translation: Greenhouse Gas Emissions Statistics], 1990-2022.

³³ Ember, *Domestic coal is far from providing a baseload in Türkiye*, 6 August 2024.

³⁴ See e.g. European Court of Human Rights, *Papamichalopoulos and Others v. Greece*, application no. 14556/89, para. 34.

³⁵ See e.g. European Court of Human Rights, *Emre v. Switzerland* (no. 2), application no. 5056/10, para. 75.

process.³⁶ The supervision should be conducted “*with due regard to the applicant’s evolving situation*” and with a view to ensuring “*the adoption of such measures that are feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court*”.³⁷ The Committee of Ministers itself emphasised that State Parties have the positive obligation to regulate and control industrial activities adequately to ensure effective protection of the populations in the supervision process of the case.³⁸ Where climate risks and harms are not considered, effective protection is not possible.

26. Concerning the Communication at hand, the following are undisputed: The Muğla coal plants and majority of the associated mining facilities have never been subjected to a climate change impact assessment. While the Muğla coal plants have been operational since the 1980s, the mining facilities which became operational very recently are also exempt from the scope of the EIA and thus climate impact assessments.³⁹ This was also the case for the recent mining operations in Turgut and Akbelen, where local communities resorted to challenging EIA exemptions and mining permits in the courts.⁴⁰
27. Despite the lack of government-led assessments, the significant contribution of the Muğla coal plants to catastrophic climate change has been well-documented: As calculated by civil society organisations, between the years 1982 and 2017, the three power plants emitted a total of 360 million tonnes of carbon dioxide (CO₂) into the atmosphere.⁴¹ It is apparent that if they are permitted to operate until 2063 – the full term of the electricity generation licenses which have been issued to the plants – this amount will more than double. Therefore, the lifetime GHG emissions of only three power plants would exceed the total yearly emissions of Türkiye, which came to 558.3 MtCO_{2e} in 2022. The total carbon sink area loss associated with the expansion of mining activities is estimated to be equivalent to 9 million tonnes of CO₂.⁴²
28. Coal operations in Muğla endanger the local communities not only by directly contributing to climate change. The Muğla coal plants and the relevant mines also curtail the adaptive capacity and resilience of the locals against the negative impacts of the climate change. Notably, climate change is expected to have significant impacts on the water resources in the region which is already water stressed.⁴³ The Muğla coal plants and mining facilities in question not only pollute the scarce water resources,⁴⁴ but also bring a heavy burden due to their high water demands in the normal course of their operations.⁴⁵ The Muğla coal plants also threaten the locals’ means of subsistence as is best exemplified by the case of olive cultivation. In the context of a series of cases brought before the Yatağan Magistrate’s Court between 1998 and 2001, it has been well documented that olive growers suffered losses

³⁶ See e.g. European Court of Human Rights, Ilgar Mammadov v. Azerbaijan, application no. 15172/13, para. 183; European Court of Human Rights, Al-Saadoon and Mufdhi v. the United Kingdom, application no. 61498/08.

³⁷ European Court of Human Rights, Ilgar Mammadov v. Azerbaijan (infringement proceedings), application no. 15172/13, para. 184.

³⁸ Department for the Execution of Judgments of the ECHR, Genc and Demirgan v. Turkey, application no. 34327/06.

³⁹ Annex-3 of the Environmental Impact Assessment Regulation of 20 July 2022 requires the assessment of the proposed project’s contribution to climate change as well as how the project itself will be impacted by climate change; including the increased risks for natural disasters and accidents.

⁴⁰ Regional Administrative Court of İzmir, Decision dated 28.12.2022, found in Annex X, KARDOK submission and Muğla 1st Administrative Court with the docket number 2021/563 (Esas).

⁴¹ CAN (Climate Action Network) Europe, The Real Costs of Coal Muğla, 2019, p.10.

⁴² CAN (Climate Action Network) Europe, The Real Costs of Coal Muğla, 2019, p.51.

⁴³ Eşref Atabey, General Directorate of Mineral Research and Exploration of Turkey, Muğla İli Su Potansiyeli ve Su Krizi [own translation: Muğla Province Water Potential and Water Crisis], 2019.

⁴⁴ Hüseyin Kırmızıtaş, Report prepared for the Climate Action Network Europe: Yeniköy Termik Santrali, Kül Depolama Sahası ve İkizköy Açık Kömür Ocaklarının Su Kaynaklarına Etkisinin Değerlendirilmesi [own translation: Assessment of the Impacts on Water Sources of Yeniköy Thermal Plant, Ash Deposit Site and İkizköy Open Pit Coal Mines], 28 February 2022.

⁴⁵ CAN (Climate Action Network) Europe, The Real Costs of Coal Muğla, 2019, p. 28.



attributable to poisonous gases and ashes emitted by the Yatağan coal plant.⁴⁶ In addition, as long as the Muğla coal plants are operational, mining operations will continue expanding into olive groves, resulting in the latter's destruction. In July 2024, the General Directorate of Mining Affairs declared over 230,000 acres land in Muğla to be in the public interest for the purposes of mining activities by YK Energy, the operator of the Yeniköy and Kemerköy power plants.⁴⁷ Of this area, approximately 100,000 acres are forest land and 20,000 acres are olive groves registered as such in the title deeds. Studies demonstrate that climate change is expected to negatively impact olive output in the coming years and the continued operation of coal plants will only worsen this situation.⁴⁸

29. It is clear in light of today's technologies that the climate impacts cannot be addressed by further rehabilitations or the installation of filters in the Muğla coal plants. Thus, the Communicant invites the Committee of Ministers to indicate to the State Party the need for a planned phase-out of the facilities in question. In addition, the Committee of Ministers should indicate to the State Party its obligation to provide information to the concerned population about the risks relating to climate, their health and livelihoods which has resulted from the continued operation of the Muğla coal plants. This follows from the European Court of Human Rights' judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* where it confirmed that the duty to provide access to available information for person exposed to health risk also applies in the context of climate change.⁴⁹

Requests of the Communication

30. The Communicant respectfully requests the Committee of Ministers to require the State Party to give due consideration to the impacts on environment, health and climate change of the Muğla coal plants, and establish concrete plans and clear timelines for the shut-down of the Muğla coal plants.⁵⁰ Mindful of international law on State responsibility, the Communicant recognises that the restitution sought cannot be "materially impossible" and/or "be involving a burden out of all proportion".⁵¹ As will be seen below, the measure is materially possible in terms of energy security, employment and development – the very grounds which had been put forward by the State Party to justify the circumvention of the local court judgments in the late 1990s. In fact, the European Court of Human Rights in the *Okay* judgment clearly indicates that Türkiye's Council of Ministers' decision in 1996 to go against the domestic court decisions and continue operations of the Muğla power plants "[...] had no legal basis and was obviously unlawful under domestic law.... It was tantamount to circumventing the judicial decisions".⁵²

31. A considerable body of research published in recent years demonstrates that a phase-out of coal plants is not only a necessity in light of Türkiye's net zero commitments, but also both economically and socially possible.⁵³ A study by KARDOK focuses specifically on the region in question and presents

⁴⁶ European Court of Human Rights, *Okay and Others v. Turkey*, application No: 36220/97, para. 43.

⁴⁷ General Directorate of Mining Affairs, *Announcement of 16 July 2024*.

⁴⁸ Sevim et al, *Küresel İklim Değişikliğinin Zeytin Yetiştiriciliği ve Zeytinyağı Üzerine Etkileri* [own translation: The Impacts of Global Climate Change on Olive Production and Olive Oil], *Journal of Agricultural Faculty of Bursa Uludag University* 36(2), 415-432.

⁴⁹ European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, application no. 53600/20, para. 538(f).

⁵⁰ This was also requested by KARDOK in the following terms: "further considering the phasing out of the power plants with due regard to the projected contributions to catastrophic climate change and the impacts of mining expansions required to feed the power plants until the year 2063" in 1436th meeting (June 2022) (DH) - Rule 9.2 - Communication from an NGO (KARDOK) (05/05/2022) in the case of AHMET OKYAY AND OTHERS v. Turkey (Application No. 36220/97) (Genc and Demirgan group, 34327/06), para. 71.

⁵¹ International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, Art. 35.

⁵² European Court of Human Rights, *Okay and Others v. Turkey*, application No: 36220/97, para. 73.

⁵³ Examples for studies demonstrating the possibility of a coal phase-out in Türkiye:

-Shura Energy Transition Center, *Net Zero 2053: A Roadmap for the Turkish Electricity Sector*, 2023;

different subsistence options for the local communities in the case of the phase out of the Yeniköy and Kemerköy coal plants.⁵⁴ The solution proposed is a planned phase-out of the facilities that is just, leaving no one behind. A study by the Chamber of Electrical Engineers and Chamber of Mechanical Engineers showed that closing down all three Muğla power plants would not adversely affect the Muğla province, the Aegean region or the Turkish interconnected system in terms of total annual consumption, instantaneous demand (peak demand) or the operability of the electricity grid.⁵⁵

32. The study by SHURA Energy Transition Center suggests that the decommissioning of coal power plants is possible without compromising energy supply security and indeed, the sooner this takes place, the better:

*“Delaying immediate actions in decarbonizing the energy sector makes achieving Türkiye’s net-zero target by 2053 significantly more challenging and poses considerably higher implementation risks... running coal and lignite plants beyond 2035 increases cumulative carbon emissions while the continued presence of fossil fuels making the transition more difficult, renewables deployment”.*⁵⁶

33. Another strand of research challenges the technical and economic feasibility of coal powered plants. A recent study reveals that lignite power plants in Türkiye fail to reliably provide electricity in the following terms:

*“Coal power plants, in particular those burning domestic coal, generate electricity with low efficiency, low availability rate, and low capacity factors. Moreover, these plants frequently experience production drops and losses due to failures, diminishing their reliability. This situation not only jeopardises energy security but also leads to economic losses”.*⁵⁷

34. This finding is in part attributable to the facilities’ old technologies, combined with the low energy potential of Türkiye’s coal reserves, including those in Muğla.⁵⁸ According to the research, renewable energy sources have a comparable reliability in addition to being more cost-effective and environmentally friendly. In terms of their financial feasibility, there are strong indications that the facilities are already dependent on state aid to be able to continue their operations. They benefitted from extensive state aid despite their low capacity for providing baseload electricity. According to media reports, capacity mechanism payments for the Yeniköy and Kemerköy coal plants neared 200 million Turkish liras (roughly 5.3 million euros) in the course of 2023.⁵⁹

35. The above studies strongly indicate the proportionality and material possibility of the shut-down alternative and demonstrate that the State Party has wide room for manoeuvre to address the violation found by the European Court of Human Rights fully. As to proportionality, the Communicant recalls the severe consequences of the violation. This entails decades long exposure of local populations to excessive levels of environmental pollution, higher morbidity rates, destruction of livelihoods and

-Istanbul Policy Center, Turkey’s Decarbonization Pathway: Net Zero in 2050, 2021;

-APLUS Energy, First Step in the Pathway to a Carbon Neutral Turkey: Coal Phase Out 2030, 2021.

⁵⁴ KARDOK, Milas Kent Konseyi, CAN (Climate Action Network) Europe and 350.org, Milas Beyond Coal, 2023.

⁵⁵ TMMOB Chamber of Electrical Engineers and TMMOB Chamber of Mechanical Engineers, Yeniköy, Kemerköy ve Yatağan Termik Santrallerinin Ülke Geneli ve Ege Bölgesi Açısından Elektrik Üretimdeki ve Enterkonnekte Sistem İçindeki Yerleri [own translation: The role of the Yeniköy, Kemerköy and Yatağan thermal power plants for electricity generation and the interconnected grid from the perspective of the country as a whole and the Aegean region], July 2022.

⁵⁶ Shura Energy Transition Center, Net Zero 2053: A Roadmap for the Turkish Electricity Sector, 2023, p. 18.

⁵⁷ Ember, Domestic coal is far from providing a baseload in Türkiye, 6 August 2024.

⁵⁸ Ember, Domestic coal is far from providing a baseload in Türkiye, 6 August 2024, p. 9.

⁵⁹ Yeşil Gazete, Kemerköy Termik Santrali için yaklaşık 100 milyon TL devlet desteği [own translation: Around 100 million Turkish Lira state support for Kemerköy Thermal Plant], 12 January 2024.



significant contribution to catastrophic climate change – despite court decisions clearly ordering the suspension of the facilities.

36. With the objective of full restitution, the Communicant respectfully requests the Committee of Ministers to require the State Party to:

- draw up plans for the decommissioning of the Muğla coal plants and a just transition in the region;
- put into place comprehensive public health initiatives and ecosystem rehabilitations;
- provide information about the risks for climate, the health and livelihoods of the concerned population resulting from the continued operation of the Muğla coal plants.

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