

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: John Darcy
Tel: 03 88 41 31 56

Date: 09/04/2018

DH-DD(2018)370

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (04/04/2018)

Communication from Turkey concerning the case of ALI OSMAN OZMEN v. Turkey (Application No. 42969/04)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1318^e réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la Turquie concernant l'affaire ALI OSMAN OZMEN c. Turquie (requête n° 42969/04)
(anglais uniquement)

Ankara, April 2018



REVISED ACTION REPORT

Ali Osman Özmen v. Turkey (42969/04)

Judgment of 5 July 2016, final on 5 October 2016

I. CASE DESCRIPTION

1. The case concerns violating of the right to liberty and security on account of the detention on remand of the applicant, a civilian, ordered by a military court in 2004 (Article 5§3). The Court decided that the military courts could not be considered as an impartial and independent court since they comprised military officers.

2. The case also concerns a violation of the same right on account of the review of lawfulness of the applicant's detention on remand by a military court (Article 5§4). The Court further decided that the objection to the decision about detention on remand and the continuation of the circumstance of being under detention on remand could not be decided by military courts which were not impartial and independent.

II. INDIVIDUAL MEASURES

3. The Turkish authorities have taken measures to ensure that the violation at issue has ceased and that the applicant is redressed for negative consequences of the violation sustained.

4. The European Court did not award any amount in respect of just satisfaction since the applicant did not claim any pecuniary or non-pecuniary damage sustained.

5. As is seen from the judgment, the applicant was released on 14 April 2005.

6. The Turkish authorities have taken all individual measures and no other individual measures are required.

III. GENERAL MEASURES

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

III.a. The Abolishment of Jurisdiction of Military Courts and Effective Remedy on Detention on Remand

A. As regards the violation of Article 5§3

8. The European Court found violation of Article 5§3 on account of the fact that the military criminal courts were not independent and impartial because of the presence of a military officer in the bench.

9. At outset, the Turkish authorities would like to note that military courts (including the High Military Court of Appeal) were completely abolished by the "Law on Amendment of the Constitution of the Republic of Turkey" (provisional Article 21) which was adopted pursuant to the Constitutional amendment which entered into force following the referendum of 16 April 2016.

10. Under the new legal framework, apart from disciplinary courts, military courts cannot be set up and also it is provided that military courts can exceptionally be set up in state of war for adjudication of cases relating to military personnel (Article 13). Therefore, on no account the civilians can be tried by military courts.

11. As a result of legislative amendments, civil criminal courts have taken over the jurisdiction of the military criminal courts. Therefore, in the future similar cases, the defendants would be tried in the Civil Assize Courts.

B. As regards violation of Article 5§4

12. Finding the violation of Article 5§4 the European Court noted again that the military courts cannot be considered independent and impartial courts within the meaning of Article 5§4.

13. As mentioned above, since the military courts were abolished, civil criminal courts will deal with similar cases. For this reason, the Code of Criminal Procedure (No. 5271) has become the applicable legislation in similar cases. The issue of lack of an effective remedy to challenge the lawfulness of detention on remand concerning the civil criminal courts was examined under *Demirel* (39324/98) group of cases.

14. In respect of this issue, the general measures adopted under *Demirel* group in particular the legislative measures, were found effective by the Committee (see Resolution CM/ResDH(2016)332).

15. As a conclusion, the Turkish authorities would like to indicate that general measures taken in response to the Court's findings concerning violations of Article 5§3 and 5§4 are effective and capable of preventing similar violations.

III.b. Introduction of Individual Application before the Constitutional Court

16. Although it is not a major response to the European Court's judgment in this case, the authorities would furthermore like to highlight that a person in the applicant's 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. An individual in the applicant's 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.

III.c. Publication and dissemination measures

17. The Government ensured that publication and dissemination measures have been taken. To this end, the European Court's judgment have been translated into Turkish and made available on the Court's website. It is available at <http://hudoc.echr.coe.int/eng?i=001-170274>

18. Furthermore, the European Court's judgment has been transmitted, together with an explanatory note on the European Court's findings, to the Ministry of Defense, to the

Revised Action Report
Ali Osman Özmen (42969/04)

Constitutional Court, the Court of Cassation, the Council of Judges and Public Prosecutors and relevant institutions to raise awareness on the Court's findings and prevent similar violations.

19. The Government therefore considers that no further general measures are necessary and the above-mentioned measures are capable of preventing similar violations in this regard.

IV. CONCLUSION

20. In light of the information submitted above, the Turkish authorities consider that all necessary measures have been taken to prevent similar violations and the Committee of Ministers is respectfully invited to close the supervision of execution of this judgment.