

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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**Date:** 18/04/2018

**DH-DD(2018)408**

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Meeting: 1318<sup>th</sup> meeting (June 2018) (DH)

Item reference: Action report (12/04/2018)

Communication from Turkey concerning the case of SADAY v. Turkey (Application No. 32458/96)

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Réunion : 1318<sup>e</sup> réunion (juin 2018) (DH)

Référence du point : Bilan d'action

Communication de la Turquie concernant l'affaire SADAY c. Turquie (requête n° 32458/96)  
**(anglais uniquement)**

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## **ACTION REPORT**

### **Saday v. Turkey (32458/96)**

**Judgment of 30 March 2006, final on 30 June 2006**

#### **I. CASE DESCRIPTION:**

1. The case concerns a violation of the applicant's right to a fair trial by an independent and impartial court on account of the presence of a military judge on the bench of the State Security Courts which tried and convicted him (violation of Art. 6§1).
2. The case further concerns a violation of the right to freedom of expression on account of the length and severity of the disciplinary sentence imposed on the applicant (namely two months' solitary confinement) for contempt of court under Law on Establishment and Trial Procedures of the State Security Courts (Law No.2845) (violation of Art. 10).

#### **II. INDIVIDUAL MEASURES**

3. The Turkish authorities have made measures available to be taken and those individual measures are capable of ceasing the violation at hand.

#### ***Just Satisfaction***

4. European Court awarded just satisfaction (EUR 3000) in respect of the non-pecuniary damage sustained by the applicant as well as cost and expenses (EUR 1000). The just satisfaction awarded has been paid to the applicant within the deadline set by the Court.

#### **III. GENERAL MEASURES**

##### **III.a. The Violation of Article 6/1**

5. The Government would like to recall that the measures aimed at preventing violation under Article 6§1 of the Convention has been taken within the framework of the *Gençel* (53431/99) group of cases. The Committee of Ministers decided to close the supervision of this group of cases (see Resolution CM/ResDH(2013)256, December 2013 meeting).
6. The Government furthermore notes that the impugned facts in the case took place before the measures have been taken within the framework of the *Gençel* group of cases. The Government therefore considers that no further general measures are necessary.

### **III.b. The Violation of Article 10**

7. At the outset, the Turkish authorities would like to note that the European Court found the violation of Article 10 on account of the disproportionality of the disciplinary sanction imposed on the applicant. The Court indicated that the applicant's assertion could not be defined as a criticism over the functions and structure of the State Security Courts (§ 35 of the judgment). Therefore, it flows from the judgment that the problem leading to the violation was the severity of the sanction rather than its application.

8. On this basis, the authorities would like to indicate that the underlying reason for the violation was the applicable legislation at the material time.

9. The sentence imposed on the applicant was provided in Article 23 §§ 3, 4 of the Law No.2845. This provision allowed the imposition of disciplinary confinement up to six months.

10. The State Security Courts have been abolished with constitutional amendment on 7 May 2004 and therefore the Law No.2845 is no longer in force.

11. Through the abolition of the State Security Courts, the criminal courts have become the competent courts. For this reason, in circumstances similar to the ones examined in this case, the current applicable legislation is the Code of Criminal Procedure (CMK) (Law no. 5271).

12. A judge is authorized to expel a person who disturbs the order of the hearing from the court room pursuant to Article 203 of the Code of Criminal Procedure, in addition, if the person resists, he or she may be sentenced to at most four days' disciplinary confinement. However, this sanction cannot be imposed on juveniles.

13. As it is seen, in the provision introduced by the Code of Criminal Procedure, a disciplinary sanction which can be imposed at most four days is stipulated unlike the former provision. This provision is compatible with the standards adopted by the Court. As a matter of fact, to date, there exists no application lodged with the Court or a judgment finding a violation delivered by the Court.

14. The Government is of the opinion that the measures taken are objectively capable of preventing similar violations and no other measures are required.

### **III.c. Publication and dissemination measures**

15. The Turkish authorities ensured that the Court's judgments were translated into Turkish and published on its official website which have been made available to the public and legal professionals alike (<http://hudoc.echr.coe.int/tur?i=001-124658>).

16. The Turkish authorities also ensured that the translated judgment of the Court has been disseminated among the competent bodies to ensure that similar violations are prevented. To this end, the translated judgment has been transmitted together with an explanatory note on the Court's findings to the relevant courts such as the Constitutional Court, the Court of Cassation and the court which rendered the impugned decision and the relevant institutions.

#### **IV. CONCLUSIONS**

17. 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 has been respectfully invited to close the supervision of execution of this case.