

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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

Reply from the authorities following a communication from the applicant (18/04/2018) concerning the case of Fellner v. Turkey (Application No. 13312/08)

Information made available under Rule 9.5 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 : 1318<sup>e</sup> réunion (juin 2018) (DH)

Réponse des autorités suite à une communication du requérant (18/04/2018) dans l'affaire Fellner c. Turquie (Requête n° 13312/08) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.5 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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*Fellner and Others v. TURKEY* (no. 13312/08)

### **Observations of the Government as Regards the**

### **Submissions of the Applicants' Representative concerning the Execution of the**

### ***Fellner and Others v. TURKEY* (no. 13312/08) Case**

1. The Turkish Government would firstly like to submit observations concerning the letter of the applicants' representative in terms of individual measures of the case of *Fellner and Others*.
2. The case originated in 841 applications against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by nationals of different States, on different dates between 4 March 2008 and 18 January 2012.
3. The case is examined under *Reisner v. TURKEY* (46815/09) group of cases and concerns the deprivation of applicants' shares in Demirbank as a result of the actions of the State without compensation for their loss. The European Court of Human Rights ("the Court") decided to pay a total sum of EUR 9,679,799.26 to applicants in respect of pecuniary damage and a total sum of EUR 25,000 in respect of costs and expenses.
4. At this stage, the Government would like to submit the following information regarding the general practice followed with respect to the payment process of the sums awarded by the Court.

### **General Practice**

5. Following the communication of a letter to the Government confirming the fact that a judgment delivered by the Court became final, a letter is sent to the applicant or his/her representative. The said letter indicates that the Court's judgment has become final, and that the applicant/representative is required to submit the documents on which the payment is based and the duly signed powers of attorney, in order for the payment to be made in 3 months. It is also noted that when the relevant information and documents are not submitted in due time or they are insufficient; the due amount would be secured in a deposit account. Furthermore, the letter indicates that the amount secured in the deposit account would be transferred to the bank account declared by the applicant once the deficiencies preventing the completion of payment are overcome. Lastly, it is drawn to the attention of applicant/representative that the Ministry shall not be held responsible for any payment delay which may occur due to the insufficient submission or non-submission of the documents required.

6. In this connection, having regard to memorandum issued by the Committee of Ministers on monitoring of the payment of sums awarded by way of just satisfaction on 15 January 2009, there is no shadow of doubt that the law of the respondent state shall apply with respect to the

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validity of the powers of attorney and payment terms and procedures (see CM/Inf/DH(2008)7 final, §19 and 20).

7. On the other hand, when the documents related to the payment are indeed submitted, an inquiry shall be made, at the outset, to determine whether the applicants are alive or deceased. As for Turkish nationals, this can be determined via the MERNİS (Central Civil Registration System) database. The MERNİS database is a service offered by the General Directorate of Civil Registration and Citizenship functioning under the Ministry of Interior, and it is integrated with the UYAP (National Judiciary Informatics System) database which is currently used by the Ministry of Justice.

8. In the event of the death of the applicant, the power of attorney (if any) established between the applicant and his/her representative shall, as a rule, terminate pursuant to Article 513 of the Turkish Code of Obligations. Therefore, in the cases where the applicant is deceased, it becomes legally impossible according to our domestic law to make the payment to the representative. In that case, two different situations may occur as described in the abovementioned memorandum of the Committee of Ministers.

9. If the death occurs before adoption of the Court's judgment, a revised judgment must be obtained from the Court in regard to the identification of beneficiaries. Indeed, in the cases where the applicant had died before adoption of the judgment, the Court asks the applicant's heirs if they wish to continue the proceedings. Accordingly, the applicant's representative is not eligible to the payment in this situation.

10. If the death occurs after adoption of the Court's judgment, the applicant's heirs are now the beneficiaries. Thus, his/her heirs are required to submit a certificate of inheritance issued by a domestic court or a notary public after the death.

11. This practice applies to everyone, regardless of the applicants' nationality. Nonetheless, it proves relatively easy to follow up on this practice in respect of Turkish nationals via the above-mentioned database systems (see § 7 above). Because, it can be easily determined whether the applicant is alive. In comparison, it may not be always possible to promptly learn whether the applicants with other nationalities are alive or deceased at the time on which the payment is made.

12. As in the present case, the same practice applies to Turkish nationals. For example, in the cases of *Çolak and Kasımoğulları* (29969/07, 47462/07) and *Kaya* (26623/07), for the applicants' clear identity could not be determined due to the (on-going) failure to submit the documents relevant to payment and it, therefore, was not possible to inquire via the MERNİS database whether the applicants, who were Turkish nationals, were alive, the payments have been secured in a deposit account. Accordingly, in the cases where it has not been possible to determine that the applicant is alive, regardless of his/her nationality, the same practice shall apply with respect to all applicants.

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### **The Process in respect of the Applicants**

13. As of the status of the payment of the just satisfaction concerning the case of *Fellner*, the Government would like to inform the Committee that in order to complete the payment in full, an inter-Ministerial coordination has been established just after the judgment which was given by the Court.

14. As the Committee is aware of the total amount awarded by the Court; it was firstly essential to earmark fund from the general budget to proceed. The fund was earmarked on time with an instant dialog between the institutions and the total sum of EUR 9,704,799.26 in respect of both pecuniary damage, and costs and expenses was got ready to pay before the time period envisaged by the Court for the payment.

15. On the other hand, namely on 18 October 2017, the representative of the applicants was informed with a letter to obtain payment documents to initiate payment process (see § 5 above).

16. The applicants' representative submitted some documents concerning payment on 11 November 2017 attached with a letter which includes copies of apostilled powers of attorney designed for each foreign applicant on several dates from 2000 to 2004. Moreover, on 30 November 2017, the applicant also submitted powers of attorney designed for two applicants, who are Turkish citizens, dated 21 November 2017.

17. After the submission of the payment documents, the authorities identified that two applicants (Selami Menekşe and Sadık Gökçetin) are still alive via MERNİS system mentioned above and the power of attorney for these applicants are valid. Then the sum of EUR 2,330.14 in respect of both pecuniary damage and costs and expenses was paid on 18 December 2017 to the representative of these two applicants.

18. However, the authorities found out that some of the applicants are of different nationalities and many of them were born in 1917, 1919, 1922, etc. Furthermore, the powers of attorney presented in foreign languages are issued 15 years ago, e.g., 2002 or before. Therefore, there is enough reason to hold that the authorities could not determine from the documents submitted whether those applicants are still alive or dead. For this reason, relying on the domestic law, the relation based on the power of attorney shall be terminated due to the death and this situation gave rise to uncertainty for the validity of the powers of attorney. On the other hand, the Court's judgment will be subject to a revision in case of death of some applicants before the date of the Court's judgment and under these circumstances, the payment cannot be made to the applicants.

19. The government sees no reason to depart from the general practice on payment of just satisfaction outlined above in respect of the case at hand.

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20. Thus the sum of EUR 9,702,469.12 in respect of both pecuniary damage, and costs and expenses was taken into deposit account on 18 December 2017. And the representative was informed, on 26 December 2017 that this amount of money is ready to be paid and will be paid if the said deficiency is overcome.

21. Moreover the Secretariat was duly informed on 4 January 2018 as regards the status of execution of the *Fellner and Others* case which are detailed above as well.

22. All of those transmissions of information took place within the 3 months' time-limit granted to the Government. In addition, the applicants' representative was also informed orally at every stage. Besides, contrary to what the applicants' representative claims, the amounts awarded to nearly all of the applicants considerably exceed EUR 500, which is clearly observed in the Court's judgment. Furthermore, the fact that the applicants' representative will need to incur extra costs in order to reach the applicants and to issue new powers of attorney may not be laid as a fault against the Government.

23. Another point which must be borne in mind is that, under Article 23 of the said memorandum, the states are entitled to choose whether to pay the agreed sums directly to the applicant, or to his/her representative. This, of course, raises the issue of whether the applicants are alive in that regard.

***Conclusion:***

24. The Turkish Government respectfully requests the Committee to take into consideration the above-mentioned explanations concerning the allegations of the applicants' representative in respect of the execution of the case of *Fellner and Others*.

25. Furthermore, the Government would like to note that the compensation in question is ready to be paid in the case that any document indicating that the applicants are still alive or the updated powers of attorney are submitted. In this regard, the Government is of the opinion that the Government is not obliged to pay any default interest in the case that any delay occurs on the ground that the compensation cannot be paid within three months after the judgment becomes final due to the fact that the representative of the applicants cannot submit the updated documents in respect of the payment.

26. Finally, the Government will continue to inform the Committee of Ministers about the developments as regards the execution of the judgment in the *Reisner* (46815/09) group of cases.