

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1157 DH meeting (4-6 December 2012)

Item reference: Action plan (29/10/12)

Communication from Turkey concerning the cases of Erçep, Demirtaş and Savda against Turkey (Applications No. 43965/04, 5260/07 and 42730/05).

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Réunion : 1157 réunion DH (4-6 décembre 2012)

Référence du point : Plan d'action

Communication de la Turquie relative aux affaires Erçep, Demirtaş et Savda contre Turquie (requêtes n° 43965/04, 5260/07 et 42730/05) (**anglais uniquement**).

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## EXECUTION

### of the European Court of Human Rights Judgments in the cases of

*Erçep v. Turkey* (43965/04), *Demirtaş v. Turkey* (5260/07) and *Savda v. Turkey* (42730/05)

## ACTION PLAN

### A. THE JUDGMENTS

1. The cases concerned the refusal by the applicants, Jehovah's Witnesses in the cases of Yunus Erçep v. Turkey (22 November 2011) and Feti Demirtaş v. Turkey (17 January 2012), and conscientious objector in the case of *Halil Savda v. Turkey* (12 June 2012), to perform military service for reasons of conscience.

The Court took the view that the numerous convictions imposed on the applicants of their beliefs in the Erçep and Demirtaş judgments, in a situation where no form of civilian service offering a fair alternative existed in Turkey, amounted to a violation of Article 9.

2. Concerning the judgment in the case of Halil Savda v. Turkey (12 June 2012), the Court added to the above that Mr Savda's case was characterised by the absence of a procedure to examine his request for recognition of conscientious objector status. His request was never examined by the authorities, who merely made use of criminal-law provisions penalising the refusal to carry out military service. The Court emphasised the State's obligation to provide a regulatory framework introducing a mechanism to protect the rights of individuals. In the absence of a procedure to examine requests for the purpose of establishing conscientious objector status, the obligation to carry out military service was such as to entail a serious and insurmountable conflict with an individual's conscience. There was therefore an obligation on the authorities to provide Mr Savda with an effective and accessible procedure that would have enabled him to have established whether he was entitled to conscientious objector status, as he requested. It followed that the relevant authorities had failed to comply with their obligation under Article 9 of the Convention.

3. The Court awarded Yunus Erçep, Feti Demirtaş and Halil Savda 15.000 Euros (EUR), EUR 20.000 and EUR 12.300 respectively.

## **B. INDIVIDUAL MEASURES**

### **Just Satisfaction**

4. The just satisfaction amounts awarded by the Court have been paid to Yunus Erçep and Feti Demirtaş and relevant documents of payment have been submitted to the Department for the Execution of the Court Judgments. The payment procedure has been initiated with regard to the just satisfaction amount awarded to Halil Savda.

### **Other Individual Measures**

5. The applicant Yunus Erçep has not performed his military service, therefore he is still registered as a person liable for military service. However, there is no arrest warrant against him issued by the courts as to the offences of desertion from military or draft evading.

The sentences imposed on Yunus Erçep as a result of the proceedings at the Trabzon Military Court between 2001 and 2004 for draft evading (*bakaya kalmak*) have been executed. Following the transfer of jurisdiction for the acts of draft evading from the military courts to civil courts in 2006, the case of Yunus Erçep was transferred before the Rize Magistrates' Court.

On 31 March 2011, before the amendment in Military Criminal Law, the 1<sup>st</sup> and 2<sup>nd</sup> Divisions of Rize Magistrates' Court issued five (5) decisions of acquittal in respect of Yunus Erçep on different dates. The decisions are attached. In their reasoning, the courts emphasized that the applicant had not performed his military service due to his religious beliefs, and that he did not have a criminal intent as per the judgments of the Court and the Human Rights Committee of the United Nations.

Following the amendment of the legislation on 31 March 2011, the measures against draft evading no longer involved the deprivation of liberty but was confined to an administrative fine. On the same date, the domestic court issued a decision of non-jurisdiction with respect to the proceedings against Yunus Erçep and the decision was sent to the military recruitment office. Article 89 of the Military Law No.1111 provides that appeals may be lodged against the administrative fines, by exhausting the remedies envisaged in the Misdemeanour Law.

Moreover, there are not any ongoing investigations by the Rize Chief Public Prosecutor's Office into the draft evading of Yunus Erçep.

The applicants Halil Savda and Feti Demirtaş were discharged from military service on 25 April 2008 and 23 February 2007 respectively, based on medical board reports which held that their medical condition did not allow them to perform military service. There are no pending investigations, prosecutions or arrest warrants in respect of Halil Savda.

As for Feti Demirtaş, the İzmir Military Court convicted the applicant on 16 May 2012 to two (2) months and fifteen (15) days' imprisonment due to disobedience to an order on 1 December 2006. The applicant appealed against the judgment and therefore it is not final yet. Also, there is not any arrest warrant against him issued by the military court for the offence of desertion.

### **C. GENERAL MEASURES**

#### **Translation and Dissemination of the Judgment:**

6. Full texts of the judgments in the cases of *Yunus Erçep v. Turkey* and *Feti Demirtaş v. Turkey* as well as the press release of the Court in the case of *Halil Savda v. Turkey* have been translated into Turkish. They have been published at the official web-site of the Human Rights Department of the Ministry of Justice.

The judgments are available at <http://www.inhak.adalet.gov.tr/ara/karar/ercep2011.pdf>.

<http://www.inhak.adalet.gov.tr/ara/karar/fetidemirtas.pdf>.

<http://www.inhak.adalet.gov.tr/guncelkarar/savdakararozeti.pdf>.

The translated judgments have been forwarded to the relevant authorities, namely Ministry of Defence, the Court of Cassation and the Constitutional Court.

#### **Training and the Awareness Raising Activities**

7. A two-year Council of Europe project on "Human Rights Training of Military Judges and Prosecutors" is still in progress. The overall objective of the project is to support the interpretation and application of legal provisions related to human rights and fundamental freedoms in line with the European Convention on Human Rights ("the Convention") and the

Court's related case law. The project aims at improving the knowledge and implementation capacity of military judges and prosecutors and legal counsellors at the Ministry of National Defence on the Convention, and the case law of the Court by the end of 2012. At the end of the project, a training system for military judges and prosecutor will have been developed; access of all military judges and prosecutors and legal counselors at the Ministry of Defence to the translation of the related instruments and judgments of the Court will have been facilitated. Thus the military judges and prosecutors and legal counselors will take into consideration more often and apply the case law of the Court to the cases before them. The project will come to an end with an international conference to be organized on 12-13 December 2012.

#### **D. Execution of the Judgments**

8. The Government considers that all necessary individual measures have been taken for the execution of the judgments in the cases of *Erçep v. Turkey* (43965/04), *Demirtaş v. Turkey* (5260/07) and *Savda v. Turkey* (42730/05).

Consultations between the relevant authorities with a view to assessing the general measures required to be taken for the execution of the aforementioned judgments are ongoing. The Committee of Ministers will be informed of the progress made in due time.