

## TURKEY / TURQUIE

### 21 May/mai 2015

#### **Criminal proceedings**

1. The notion of “retrial” has been regulated in Articles 311 to 323 of the Code of Criminal Procedure (“CCP”) (Law no. 5271). The regulation in question which bases the retrial on the judgment of the European Court of Human Rights (“ECtHR”) is enshrined in Article 311. The said Article provides that: “*... where a final judgment of the European Court of Human Rights has established that the criminal judgment has violated the Convention on the Protection of Human Rights and Fundamental Freedoms or its Protocols. In such cases, retrial may be requested within one year after the date of the final judgment of the European Court of Human Rights*”. Furthermore, according to Article 172 § 3 of the CCP, if it is established in a final judgment of the ECtHR that the decision not to prosecute was taken without an effective investigation having been carried out and if a request is made to that effect within three months of the judgment becoming final, a new investigation is opened.

In our country, the retrial procedure in respect of criminal proceedings has been applied successfully in the case of *İşeri and Others v. Turkey* (no. 29283/07). The application of *Ümran Durmaz v. Turkey* (no. 3621/07) is an example decision in which Article 172 § 3 of the Code of Criminal Procedure has been applied.

2. Problems such as statutory time-limit in respect of penalties or cases arise in practice. On the other hand, as the provisions in question require relevant persons (applicants) to lodge a request, retrial cannot be conducted ex officio where applicants fail to lodge a request in due time. The relevant judicial organ and parties are kept informed of the judgment finding a violation within the scope of the execution of the judgment, thus enabling the relevant parties to become aware of the ECtHR’s judgment.

3. In the domestic law system of Turkey, there is no provision allowing for retrial as applications lodged with the ECtHR are concluded by friendly settlement or unilateral declarations. Our laws allow for retrial only where a judgment finding a violation is rendered.

#### **Civil proceedings**

1. The notion of “retrial” has been regulated in Articles 374 to 381 of the Code of Civil Procedure (Law no. 6100). The regulation in question which bases the retrial on the judgment of the ECtHR is enshrined in Article 375. The said Article provides as follows: “*... where a final judgment of the European Court of Human Rights has established that the judgment has violated the Convention on the Protection of Human Rights and Fundamental Freedoms or its Protocols.*”

In our country, the judgments of *Dilipak and Karakaya v. Turkey* (nos. 7942/05 and 24838/05) and *Ruhat Mengi v. Turkey* (nos. 13471/05 and 38787/07) can be cited as examples of judgments in which the retrial procedure in respect of civil proceedings has been applied successfully. In the aforesaid applications, the domestic courts ordered the reimbursement of damages on the basis of the ECtHR’s judgment.

- Problems such as the fact that cases become time-barred arise in practice.

- As a result of the retrial conducted in accordance with the ECtHR's judgment, court decisions that are contrary to the Convention are reviewed and revised, and thus the breach of applicant's right is remedied and awareness of persons about the European Convention on Human Rights and the judgments of the ECtHR is raised. It also enables the human rights law to develop harmoniously by paving the way for the European standards applied by the ECtHR in respect of human rights to be uniformly applied by the courts of the High Contracting States.
2. The relevant procedure codes provide for the right to lodge a request for retrial following the judgment of the ECtHR.