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Conditions of detention for Mr Öcalan

Written Question No. 487 to the Chairperson of the Committee of Ministers

and

Execution of the judgement of the European Court of Human Right in the Öcalan Case

Written Question No. 488 to the Chairperson of the Committee of Ministers

Joint Reply from the Chairperson of the Committee of Ministers
adopted at the 990th meeting of the Ministers' Deputies (21 March 2007)

I. Written Question No. 487 by Mr Austin (Doc. 10880)

Noting that, despite Prime Minister Erdogan's positive statements in Diyarbakir and the consequent positive steps taken by Kongra-Gel for practically a one-sided cease-fire, tension and violence in Turkey have increased dramatically within the past year.

Further noting that at the centre of the escalation of tension is Mr Öcalan and that there are serious doubts about his health and isolated condition as the sole inmate at the Imrali island prison.

To ask the Chairman of the Committee of Ministers,

What measures the Committee has taken or will take to ensure that Mr Öcalan's health is not at risk and the isolation condition does not exceed the framework set out in the Convention.

II. Written Question No. 488 by Mr Austin (Doc. 10879)

Noting the Committee of Minister's reply to the Parliamentary Assembly Recommendation 1576 (2002) concerning the execution of the European Court's Judgments by Turkey and;

Welcoming the judgment of the European Human Rights Court of 13 May 2005 which found the original trial to be unfair (Öcalan judgment);

Noting that according to the current legislation the re-opening of domestic proceedings in cases where the Court of Human Rights has found a violation is still not possible for Mr Öcalan and 90 other judgments which became final after 4 February 2003,

To ask the Chairman of the Committee of Ministers,

If the Committee considers the new Turkish regulation of 1 June 2005, so far only applied to Mr Őcalan, to be in compliance with the European Court judgment and Convention, whether the Committee deems it acceptable that the Turkish legislation allowing the re-trial within the domestic proceedings is still inapplicable to European Court of Human Rights judgments becoming final after 4 January 2003, and what measures have been adopted by the Committee.

III. Joint Reply from the Chairperson of the Committee of Ministers

1. Having regard to the condition of Abdullah Öcalan's imprisonment, I should like to inform the Honourable Member that to date, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has visited Imrali island on three occasions – in 1999, 2001

and 2003 – in order to examine the treatment of Abdullah Öcalan. The reports on these visits as well as the responses of the Turkish authorities have all been placed in the public domain (see CPT/Inf(2000)17 and 18, CPT/Inf(2002)8, CPT/Inf(2003)13, and CPT/Inf(2004)2 and 3). The CPT continues to maintain an active ongoing dialogue with the Turkish authorities on issues related to his conditions of detention.

2. I can assure the Honourable Member that the Committee of Ministers has full confidence that the CPT will remain attentive to the situation of this prisoner. Further, it is always open to Mr Öcalan to raise issues concerning his conditions of detention before the European Court of Human Rights.

3. With regard to the European Court's judgment of 13 May 2005, at the 987th meeting of the Ministers' Deputies (13-14 February 2007) the Committee of Ministers adopted a final resolution, Resolution ResDH(2007)1, putting an end to its examination of the execution of the judgment. The text of this resolution is appended to the present reply.

4. In this context, it should be noted that the Committee of Ministers has closely followed the execution of this judgment ever since it was placed on the agenda for the first time in January 2004 (CM DH 863rd meeting). Both the Turkish Government and the applicant provided information to the Committee which has been thoroughly assessed. This information is notably reflected in the Annotated Agenda of the respective meetings as well as in the decisions taken and is publicly available under http://www.coe.int/t/cm/WCD/humanrights_en.asp# . After having been informed that the request of the applicant for a retrial had been finally rejected by the Istanbul 14th Assize Court on 21 July 2006, the Committee of Ministers carefully assessed this information in the light of the European Court's judgment and after in-depth discussions decided to close its supervision of the execution of the Court's judgment.

Appendix to the reply

ResolutionResDH(2007)1[1]
Execution of the judgment of the European Court of Human Rights
Öcalan against Turkey

(Application No. 46221/99, Grand Chamber judgment of 12 May 2005, final on 12 May 2005)

The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter referred to as "the Convention" and "the Court");

Having regard to the final Grand Chamber judgment in this case, transmitted by the Court to the Committee on 12 May 2005;

Recalling that the violations of the Convention found by the Court in this case concern several shortcomings in the criminal proceedings against the applicant, a Turkish national charged with terrorist offences and sentenced to death by the Ankara State Security Court in June 1999 (see details in Appendix);

Having invited the government of the respondent state to inform the Committee of the measures taken in order to comply with Turkey's obligation under Article 46, paragraph 1, of the Convention to abide by the judgment;

Having examined the information and observations submitted by the government and by the applicant under the Committee's Rules for the supervision of the execution of judgments and of the terms of friendly settlements (see details in the Appendix);

Having satisfied itself that the respondent state paid the applicant the just satisfaction provided in the judgment;

Recalling that a finding of violations by the Court requires, over and above the payment of just satisfaction awarded in the judgment, the adoption by the respondent state, where appropriate, of:

[1] Adopted by the Committee of Ministers on 14 February 2007 at the 987th meeting of the Ministers' Deputies.

- individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible *restitutio in integrum*; and

- general measures preventing, similar violations;

Recalling that in this case the question of individual measures was addressed already in the European Court's judgment which underlined that "in cases where an individual had been convicted by a court which did not meet the Convention requirements of independence and impartiality a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing the violation. However, the specific remedial measures, if any, required of a respondent state in order to discharge its obligations under Article 46 had to depend on the particular circumstances of the individual case and be determined in the light of the terms of the Court's judgment in that case, and with due regard to the [...] case law of the Court" (see §210 of the Grand Chamber judgment in this case);

Recalling further the constant practice of the Committee of Ministers and of contracting states in the execution of judgments by the Court, as restated e.g. in the Committee's Recommendation Rec(2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights and in the explanatory memorandum thereto and in many resolutions adopted in the course of the Committee's execution supervision;

Considering in particular that an initial judicial examination of the need for a re-trial in order to remedy the violations established may be necessary in order to take into account the particular circumstances of each case, and that such an initial examination does not have to meet all the requirements of Article 6 of the Convention;

Considering furthermore:

- that the applicant requested the reopening of the domestic proceedings impugned by the Court;
- that the competent Turkish court examined the merits of the request, and thus refused, in the light of Article 90 of the Constitution and Turkey's obligations under Article 46 of the Convention, to apply the temporal limitations contained in Article 311/2 of the Turkish Code of Criminal Procedure to this case;
- that the competent court concluded, when assessing whether or not a full re-trial was required to remedy the violations established by the Court, that this was not the case as neither the new submissions made on behalf of the applicant by his lawyers nor a full re-examination of the case file cast any serious doubts on the reliability of the impugned conviction;

Considering also that the applicant's death sentence has been commuted to life imprisonment;

Having examined the observations submitted by the applicant and the government with regard to the above- mentioned proceedings;

Concluding that the re-examination procedure above is in conformity with Turkey's obligations under Article 46 as far as individual measures are concerned;

Taking note, in this context, of the information provided by the applicant's lawyers that they have lodged an application with the European Court concerning the above-mentioned domestic proceedings for a re-examination of the applicant's case, but recalling that the Committee of Ministers' decision under Article 46, paragraph 2, in no way prejudges the Court's examination of the new complaints;

Considering as regards the general measures which the respondent state has been called to adopt without delay to prevent new, similar violations of the Conventions, that such measures were adopted as described in part II of the Appendix to this resolution;

DECLARES that it has exercised its functions under Article 46, paragraph 2, of the Convention in this case and DECIDES to close its examination.

Appendix to Resolution ResDH(2007)1

Information and observations about the measures to comply with the judgment in the case of Öcalan against Turkey

Case summary

The case concerns several shortcomings in the criminal proceedings against the applicant, a Turkish national charged with terrorist offences and sentenced to death by the Ankara State Security Court in June 1999. The judgment was in every respect upheld by the Court of Cassation in November 1999. Following the legislative reform abolishing the death penalty in peacetime, the State Security Court in October 2002 commuted the applicant's death sentence to life imprisonment.

With regard to the applicant's pre-trial detention, the European Court found that he was not brought promptly before a judge following his arrest in February 1999, as he had spent a minimum of seven days in police custody beforehand (violation of Article 5§3) and that there was no effective remedy by which he could have had the lawfulness of his continued detention in police custody decided promptly by a court (violation of Article 5§4). In this context the European Court observed that under the circumstances of the case (the applicant being kept in total isolation, possessing no legal knowledge and accused of serious charges), Article 128 § 4 of the Turkish Code of Criminal Procedure as amended in November 1992 (which entitled suspects to apply for habeas corpus to the district judge), could not be regarded as an effective remedy since the applicant had not been able to make use of it (violation of Article 6§1).

Concerning the trial, the European Court found a lack of independence and impartiality of the State Security Court in view of the presence of a military judge (replaced in June 1999) during part of the proceedings (violation of Article 6§1).

Furthermore, the European Court held that the trial had been unfair (violation of Article 6§1 together with Article 6§3(b) and (c)) due to:

- the inadequate time and facilities for preparation of the defence;
- the restrictions on legal assistance, the applicant having been denied access to a lawyer while in police custody;
- the fact that he could not consult his lawyers out of the hearing third parties;
- the fact that he was restricted to two one-hour visits with his lawyers per week;
- the fact that he did not have access to the case file of 17,000 pages until two weeks before trial.

Finally, the European Court held that to sentence to death a person who had not had a fair trial amounted to inhuman treatment (Article 3).

I. Payment of just satisfaction and individual measures

a) Details of just satisfaction

Costs and expenses	**Total**	**Paid on**
€ 120 000	**€ 120 000**	**19/08/2005** Plus € 138 default interest

b) Individual measures – the question of retrial

- *The applicant's request for a retrial*

A formal request for a retrial was lodged on 2 February 2006.

On 5 May 2006, the Ankara 11th Assize Court rejected the request, relying on Article 311/2 of the Turkish Code of Criminal Procedure (CCP), which excludes the possibility of retrial on the basis of European Court judgments rendered during the period when the present judgment was rendered.

The applicant filed an objection to this decision on 29 May 2006 and the case was referred to the Istanbul 14th Assize Court (in accordance with Article 268 CCP). Final judgment was rendered on 21 July 2006. The 14th Assize Court did not find the reliance at first instance on Article 311/2 CCP a sufficient ground for rejecting the request. Stressing the binding nature of the European Court's judgment and Turkey's international obligations under the European Convention on Human Rights, as enshrined in Article 46 of

the Convention and acknowledged in the new Article 90 of the Turkish Constitution, the court decided to examine the merits of the applicant's request. The court considered the arguments put forward by the applicant's lawyers in their submissions to it and the contents of the case file as a whole and reached the conclusion that it was not necessary to carry out any additional investigations or further hearings. Having considered the nature of the crime and the evidence in the case file (including the applicant's confessions) and having concluded that the violations established by the European Court could not change the applicant's conviction and that his submissions before it were unsubstantiated, the 14th Assize Court dismissed the request as devoid of merit.

- The applicant's position regarding the execution of the European Court's judgment in the light of the rejection of his request for a retrial

In their submissions dated 30 September 2005, 22 February 2006, 10 April 2006, 2 October 2006 and 29 January 2007, the applicant's lawyers in particular asked for:

a) the judgment of the European Court to be executed;
b) the provision excluding a request for a retrial for applicants falling into a certain time period - Article 311/2 of Act no. 5271- to be removed;
c) the legal provisions of Article 151 of Act No. 5271 and Article 59 of Act No. 5275 which restrict defence rights to be removed;
d) the non-acceptance as individual measure of the decision taken on their request for a retrial as in particular it:
- did not respect the requirements of the Court's judgment in the case;
- was beyond the authority and jurisdiction of the court in question;
- was not adopted after proceedings respecting the applicant's defence rights so that once again the applicant was unable to present the arguments which he had been denied, in violation of the Convention, to present at the original impugned trial;
- had not been independent;
e) an end to any special prison conditions for their client.

The government's position on the above issues is reflected below under Section III.

II. General measures

1) Failure to bring the applicant promptly before a judge after his arrest (Article 5§3): legislative reform commenced in 2001, see case of Sakık and others against Turkey (Final Resolution DH (2002)110). Article 91 of the Turkish Code of Criminal Procedure, in force since 01/06/2005, today provides for a right of detainees to see a judge within 24 hours in regular cases and 3 days in exceptional cases, the decision to extend to be taken by the prosecutor and open to an appeal to the court.

2) Lack of a remedy by which the applicant might have the lawfulness of his continued detention in police custody decided promptly by a court (Article 5§4): § 91 of the Turkish Code of Criminal Procedure as of 1/06/2005 now provides for a sufficient remedy, which extends the safeguards previously existing in Turkish law (see aforementioned final resolution in the case of Sakık).

3) Independence and impartiality of state security courts: the presence of military judges was abolished in 1999, see Çıraklar against Turkey (Final Resolution DH99(555)). Subsequently, state security courts were abolished following the constitutional amendments of May 2004.

4) Unfairness of the trial due to inadequate time and facilities for preparation of defence and restriction on legal assistance (Article 6§1 together with Article 6§3(b) and (c): Shortly before the 960th meeting (March 2006), the respondent state provided information on the new Code of Criminal Procedure, in force since 1/06/2005. This legislation introduced new provisions to guarantee defence rights, providing in particular for a defence lawyer to be assigned automatically in cases with a minimum sentence of 5 years (Article 150 (3)); giving the lawyer access to the case-file (including the right to make copies) from the date the indictment is accepted by the court (Article 153 (4)); and providing that the suspect or the accused may meet with the defence lawyers at any time and in such circumstances that they will not be heard by others, without requiring a power of attorney, and that correspondence between the defence lawyer and the suspect or accused may not be monitored (Article 154).

5) Imposition of the death penalty following an unfair trial, amounting to inhuman treatment (Article 3), Law No. 4771 of 09 August 2002 abolished the death penalty in peacetime.
At the 940th meeting, the Turkish authorities informed the Committee of Ministers that the judgment of the European Court had been translated and published on the web site of the Ministry of Justice and that it will also be published in the *Bulletin of the Ministry of Justice.*

III. The government's position

The government considered that the above measures have provided adequate individual redress to the applicant and stressed more particularly in its observations of 4 February 2007:

- that the domestic court had refused to apply the temporal limitations in Article 311/2 and had examined the need of a re-trial on the basis of a full re-examination of the case file in the light of the applicant's new submissions before it;
- that the domestic court had acted within its competence;
- that the proceedings had respected the rights of the defence;
- that the domestic court had acted in full independence.

Moreover, the government considered that the applicant's complaints regarding his present prison conditions were unrelated to the execution of the present judgment.

The government also considered that the general measures adopted would prevent new similar violations of the Convention. The government in particular underlined the importance of the direct effect given to the Convention and the Court's case law under the new Article 90 of the Turkish Constitution. The government expressed its conviction that this direct effect would ensure that the new legislation will continuously be applied in conformity with the Convention's requirements.