Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1381 (2004)[1]

Implementation of decisions of the European Court of Human Rights by Turkey

Parliamentary Assembly

1. In its Resolution 1268 (2002) on implementation of decisions of the European Court of Human Rights, the Parliamentary Assembly, considering the high number of decisions against Turkey that had not, at that time, been implemented, instructed its Committee on Legal Affairs and Human Rights to confer with the national delegation of Turkey and with the Government of Turkey and to report to it on the progress made.

2. In pursuance of the latter decision, the Assembly adopted its Resolution 1297 (2002) on implementation of decisions of the European Court of Human Rights by Turkey where it welcomed the constitutional and legal changes which had taken place in Turkey, in order to contribute to preventing further violations of the European Convention on Human Rights (ECHR) but where it also regretted that a number of important problems remained unsolved

3. The outstanding problems related to the modalities of payment of just satisfaction, immediate reversal of the consequences of convictions which violate the ECHR, (including restoration of the applicants' civil and political rights), excessive interferences with freedom of expression (notably in application of the criminal code and the anti-terrorism legislation), control of the action of the security forces, the dissolution of political parties, the case of Cyprus versus Turkey and finally the Loizidou case.

4. The Assembly welcomes the significant progress that has been achieved since the adoption of the constitutional and legislative changes mentioned in the previous report; however, further comprehensive action has still to be taken. As the efficient implementation of these reforms is crucial for achieving real improvement in ensuring respect for the Convention, all efforts have to be deployed towards this end.

5. Firstly, it welcomes the settlement of the Loizidou case by the payment on 2 December 2003 of the just satisfaction owed to the applicant. It none the less recalls that payment of just satisfaction, although it is a great step forward in the implementation of the judgment of 1998, still does not, in fact, implement the basic context of the decision (violation of Article 1 of the First Protocol to the ECHR, by illegal expropriation). This element will be examined by the Committee of Ministers at the end of 2005

6. Finally, it welcomes the release of Leyla Zana, Selim Sadak, Hatip Dicle and Orhan Dogan on 9 June 2004, awaiting the decision of the Court of Appeal on the applicants' appeal against their second sentence to fifteen years' imprisonment.

7. The situation in other priority areas can be summarised as follows:

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7.2. with regard to remedying unfair trials, the requests for new proceedings have been accepted and new trials have started or taken place in certain cases (Sadak, Zana, Dicle and Dogan). Although their sentences have been confirmed, the accused were released on 9 June 2004 following a decision of the Court of Cassation, while awaiting the decision of the Court of Appeal;

1. Assembly debate on 22 June 2004 (18th Sitting) (see Doc. 10192, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens). Text adopted by the Assembly on 22 June 2004 (19th Sitting).

7.3. the Assembly welcomes the fact that a constitutional reform package has been adopted by the Turkish Grand National Assembly providing for the abolition of the State Security Court, the trials of which have been deemed unfair in various judgments of the European Court of Human Rights;

7.4. regarding the reversal of the consequences of the convictions imposed in violation of Article 10 of the ECHR, such measures are presently under way, although unfortunately excessively late, in a restricted number of cases, including the restoration of the applicants' civil and political rights (among the eighteen cases mentioned in 2002, eight applicants were, at the end of 2003, no longer subjected to restrictions on their rights);

7.5. the new law on reopening of proceedings, which took effect on 4 February 2003, excludes, however, from its scope the cases pending before the Court at its date of entry into force and friendly settlements;

7.6. as regards the dissolution of political parties, no new measures have been reported since 2002; in particular, there have been no changes to Articles 68 or 69 of the Constitution or of the corresponding provisions in the Law on Political Parties; neither has any major development of case-law of the Constitutional Court been reported;

7.7. as to the Zana judgment of 1997, the new law that was to amend the Code of Criminal Procedure has not yet been

8. Concerning the case of Cyprus versus Turkey, measures have been taken on specific points but urgent questions, such as the issue of missing persons and the right of Greek Cypriot children to secondary schooling in the Greek language in northern Cyprus, continue to be examined.

9. In the light of the foregoing, it is plain that Turkey has taken important actions to implement the Court's judgments. The fact remains, however, that some of the cases mentioned in the Assembly's previous resolution are still not settled, or only partly so.

10. Accordingly, the Assembly urges the Turkish authorities:

10.1. to take further steps to improve payment procedures;

10.2. to revise the legislation on the reopening of proceedings so as to make it applicable to the judgments delivered after its entry into force, as well as to friendly settlements;

10.3. to revise Article 6 of the Anti-Terrorism Act to make it compatible with Article 10 of the ECHR (see in particular the cases of Sürek and Özdemir, and Sürek II);

10.4. to take all the necessary measures to allow the opening of a Greek secondary school in the northern part of Cyprus (case of Cyprus versus Turkey);

10.5. to take the necessary measures to enable, after the judgments, the immediate reversal of all consequences of violations of Article 10 of the ECHR found by the Court;

10.6. to amend the Code of Criminal Procedure so as to comply notably with the Zana judgment;

10.7. to rapidly step up the current action aimed at stopping all acts of torture and ill-treatment.